

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 162

By: Muegge

AS INTRODUCED

An Act relating to agriculture; creating the Producer Protection Act; providing short title; defining terms; stating application of act and providing parameters; stating effect of an agricultural contract; requiring written disclosure statement; specifying contents and readability requirements of disclosure statement; allowing submission of agricultural contract to Attorney General for review; specifying parameters of Attorney General action after review; stating factors that Attorney General shall consider in assessing readability of contract; making specified actions of Attorney General not subject to judicial review; stating specified presumption pertaining to contract certification; stating effect of contract certification or lack thereof; stating effect of failure to submit contract for review; providing remedies and conditions thereto; requiring orders to avoid unjust enrichment; prohibiting withholding of performance of valid contractual obligation; stating condition for granting relief under contract; stating defense to claim; limiting assessment of attorney's fees or cost of investigation; stating that violation of section of law is not defense to specified claim; limiting recovery of actual damages; providing statute of limitations on specified claim; providing for three day right to review production contract; prohibiting enforcement of confidential contract provision; making specified contractual provision void; construing effect of section of law; stating application of section of law; stating conditions under which a production contract can be terminated, cancelled or renewed; making certain practices unlawful; stating conditions under which provisions of agricultural contracts are void and unenforceable; requiring dispute resolution language and providing procedures thereto; omitting requirements for written disclosure of material risks in specified contracts; providing for civil and criminal penalties; allowing legal and equitable relief; specifying award of attorney fees; providing procedure for injunctive relief; making Attorney General's Office primary enforcer of act; allowing Attorney General to take specified actions in enforcement of act; providing for rulemaking; stating application of act; and providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-1 of Title 2, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Producer Protection Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-2 of Title 2, unless there is created a duplication in numbering, reads as follows:

Definitions. As used in the Producer Protection Act:

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

2. "Agricultural contract" means a marketing contract or a production contract;

3. "Capital investment" means an investment in one of the following:

a. a structure, such as a building or manure storage structure, or

b. machinery or equipment associated with producing a commodity which has a useful life in excess of one year;

4. "Commodity" means livestock, raw milk, or a crop;

5. "Confinement feeding operation" means a lot, corral, building or other building in which livestock is confined to areas which are totally roofed;

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

7. "Contract livestock facility" means a confinement feeding operation located in this state in which livestock or raw milk is produced according to a production contract by a contract producer.

The contract producer must hold a legal interest in the confinement 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;

8. "Contract operation" means a contract livestock facility or a contract crop field;

9. "Contract producer" means a producer who holds a legal interest in a contract operation and who produces a commodity under a production contract;

10. "Contractor" means an person who is an active contractor or a passive contractor;

11. "Crop" means a plant used for food, animal feed, fiber, oil, pharmaceuticals, nutraceuticals, or seed, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, tobacco, wheat, and grasses used for forage or silage;

12. "Farmland" means agricultural land that is suitable for use in farming;

13. "Investment requirement" means a provision in a contract which requires the contract producer to make capital investments associated with producing a commodity subject to a production contract. The provisions may be included as part of one or more written agreements or contracts, and may be included as part of a production contract;

14. "Livestock" means beef cattle, dairy cattle, poultry, sheep, or swine;

15. "Marketing contract" means a written agreement between a processor and a producer for the purchase of commodities grown or raised by the producer in this state. A marketing contract is executed when it is signed by each party or by a person authorized to act on the party's behalf;

16. "Open feedlot" means an unroofed or partially roofed animal feeding operation in which no crop, vegetation, or forage growth or residue cover is maintained during the period that livestock is confined in the operation;

17. "Passive contractor" means a person who furnishes management services to a contract producer, and who does not own a commodity that is produced by the contract producer at the contract producer's contract operation according to a production contract;

18. "Processor" means a person engaged in the business of manufacturing goods from commodities, including by slaughtering or processing livestock, processing raw milk, or processing crops;

19. "Produce" means to do any of the following:

- a. provide feed or services relating to the care and feeding of livestock. If the livestock is dairy cattle, then "produce" includes milking the dairy cattle and storing raw milk, or
- b. provide for planting, raising, harvesting, and storing a crop. "Produce" includes preparing the soil for planting and nurturing the crop by the application of fertilizers, soil conditioners or pesticides;

20. "Producer" means a person who produces a commodity, including but not limited to, a contract producer. "Producer" does not include a commercial fertilizer or pesticide applicator, a feed supplier, or a veterinarian, when acting in such capacity; and

21. "Production contract" means a 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. A production contract is executed when it is signed by each party to the contract or by a person authorized to act on the party's behalf.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-3 of Title 2, unless there is created a duplication in numbering, reads as follows:

This act applies to production contracts that relate to the production of a commodity owned by an active contractor and produced by a contract producer at the contract producer's contract operation, if one of the following applies:

1. Contract with active contractor. The production contract is executed by an active contractor and a contract producer for the production of the commodity;

2. Contract with active contractor and passive contractor. The production contract is executed by an active contractor and a passive contractor for the provision of management services to the contract producer in the production of the commodity; or

3. Contract with passive contractor. The production contract is executed by a passive contractor and a contract producer, if all of the following apply:

- a. the contract provides for management services furnished by the passive contractor to the contract producer in the production of the commodity, and
- b. the passive contractor has a contractual relationship with the active contractor involving the production of the commodity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-4 of Title 2, unless there is created a duplication in numbering, reads as follows:

An agricultural contract imposes an obligation of good faith, as defined in Section 1-201 of the Uniform Commercial Code, on all parties with respect to the performance and enforcement of the agricultural contract.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-5 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. An agricultural contract must be accompanied by a clear written disclosure statement setting forth the nature of the material risks faced by the producer if the producer enters into the contract. The statement must meet the readability requirements of subsection B of this section.

2. The statement may be in the form of a written statement or checklist and may be developed in cooperation with producers or producer organizations. The statement shall disclose the following:

- a. in the case of production contracts, the producer's right to review as provided in Section 6 of this act,
- b. contract duration,
- c. contract termination,
- d. renegotiation standards,
- e. responsibility for environmental damage,
- f. factors to be used in determining payment,
- g. responsibility for obtaining and complying with local, state, and federal permits, and
- h. any other contract term which the Attorney General determines is appropriate for disclosure.

B. 1. An agricultural contract entered into, or renewed after the effective date of this act must contain as the first page, or first page of text if it is preceded by a title page or pages, a cover sheet as provided in this section.

2. The cover sheet or sheets must comply with paragraph 3 of this subsection and must contain all of the following:

- a. a brief statement that the document is a legal contract between the parties,

- b. the statement: "READ YOUR CONTRACT CAREFULLY. THIS COVER SHEET PROVIDES ONLY A BRIEF SUMMARY OF YOUR CONTRACT. THIS IS NOT THE CONTRACT AND ONLY THE TERMS OF THE ACTUAL CONTRACT ARE LEGALLY BINDING. THE CONTRACT ITSELF SETS FORTH, IN DETAIL, THE RIGHTS AND OBLIGATIONS OF BOTH YOU AND THE CONTRACTOR OR PROCESSOR. IT IS THEREFORE IMPORTANT THAT YOU READ YOUR CONTRACT CAREFULLY",
- c. the written disclosure of risks required by subsection A of this section,
- d. a statement detailing, in plain language, the producer's right to review the contract as described in Section 6 of this act,
- e. an index of the major provisions of the contract and the pages on which they are found, including all of the following:
 - (1) the names of all parties to the contract,
 - (2) the definition sections of the contract,
 - (3) the provisions governing termination, cancellation, renewal, and amendment of the contract by either party,
 - (4) the duties or obligations of each party, and
 - (5) any provisions subject to change in the contract.

3. An agricultural contract must be in legible type, appropriately divided and captioned by its various sections, and written in clear and coherent language using words and grammar that are understandable by a person of average intelligence, education, and experience within the industry. As used in this subsection, "legible type" means a typeface at least as large as ten-point modern type, twelve-point leaded. This paragraph does not apply to the following terms in an agricultural contract:

- a. particular words, phrases, provisions, or forms of agreement specifically required, recommended, or endorsed by a state or federal statute, rule or regulation, or
- b. technical terms used to describe the services or property which are the subject of the contract, if the terms are customarily used by producers in the ordinary course of business in connection with the services or property being described.

C. 1. A contractor or processor may submit an agricultural contract to the Attorney General for review as to whether it complies with this section. After reviewing the contract, the Attorney General shall do one of the following:

- a. certify that the contract complies with this section,
- b. decline to certify that the contract complies with this section and note objections,
- c. decline to review the contract because the contract's compliance with this section is subject to pending litigation, or
- d. decline to review the contract because the contract is not subject to this section.

2. In determining whether an agricultural contract or cover sheet is readable within the meaning of subsection B of this section, the Attorney General shall consider at least the following factors:

- a. the simplicity of the sentence structure,
- b. the extent to which commonly used and understood words are employed,
- c. the extent to which esoteric legal terms are avoided,
- d. the extent to which references to other sections or provisions of the contract are minimized,

- e. the extent to which clear definitions are used in the text of the contract, and
- f. additional factors relevant to the readability or understandability of the contract.

3. Actions of the Attorney General under this subsection are not subject to judicial review.

4. A contract certified under this subsection is presumed to comply with subsection B of this section. Certification of a contract under this subsection does not constitute an approval of the contract's legality or legal effect. If the Attorney General certifies a contract or fails to respond within (30) thirty days of receipt of the contract, then the contractor or processor will have complied with paragraphs 1 and 2 of this subsection and the remedies stated in paragraph 6 of this subsection and Section 14 of this act are not available for violations of the provisions of subsection B of this section.

5. Failure to submit a contract to the Attorney General for review under this subsection does not show a lack of good faith or raise a presumption that the contract violates this section.

6. a. In addition to the remedies provided in Section 14 of this act, a court reviewing an agricultural contract may change the terms of the contract or limit a provision to avoid an unfair result if the court finds all of the following:
- (i) a material provision of the contract violates a requirement of this act,
 - (ii) the violation caused the producer to be substantially confused about any of the rights, obligations, or remedies of the contract, and
 - (iii) the violation has caused or is likely to cause financial detriment to the producer.

b. If the court reforms or limits a provision of an agricultural contract, the court shall also make orders necessary to avoid unjust enrichment. Bringing a claim for relief under this paragraph does not entitle a producer to withhold performance of an otherwise valid contractual obligation. No relief may be granted under this paragraph unless the claim is brought before the obligations of the contract have been fully performed.

7. a. In a proceeding in which civil penalties are claimed from a party for a violation of this section, it is a defense to the claim that the party made a good faith and reasonable effort to comply.

b. Notwithstanding Section 14 of this act, a party who has made a good faith and reasonable effort to comply with this section may not be assessed attorney's fees or costs of investigation in an action for violating this section.

8. Violation of this section is not a defense to a claim arising from a producer's breach of an agricultural contract. A producer may recover actual damages caused by a violation of this section only if the violation caused the producer to not understand the rights, obligations, or remedies of the contract.

9. A claim that an agricultural contract violates this section must be raised within six (6) years of the date the contract is executed by the producer.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-6 of Title 2, unless there is created a duplication in numbering, reads as follows:

Contract producer's five-day right to review. A contract producer may cancel a production contract by delivery in person or by mailing a written cancellation notice to the contractor within

five (5) business days after the contract is executed, or before a later cancellation deadline if a later deadline is specified in the contract. Such mailing must be postmarked no later than five (5) business days after the contract has been executed. The contract producer's right to cancel, the method by which the contract producer may cancel, and the deadline for canceling the production contract shall be clearly disclosed in every production contract.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-7 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. A contractor or processor shall not enforce a provision in an agricultural contract if the provision provides that information contained in the agricultural contract is confidential.

B. A provision which is part of an agricultural contract is void if the provision states that information contained in the agricultural contract is confidential. The confidentiality provision is void whether the confidentiality provision is express or implied; oral or written; required or conditional; contained in the agricultural contract, another agricultural contract, or in a related document, policy, or agreement. This section does not affect other provisions of an agricultural contract or a related document, policy, or agreement which can be given effect without the voided provision. This section does not require a party to an agricultural contract to divulge information in the agricultural contract to another person.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-8 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. This section only applies to a production contract executed by a contract producer and a contractor, if the contract producer must make capital investments of One Hundred Thousand Dollars (\$100,000.00) or more according to investment requirements provided

in all production contracts in which the contract producer and the contractor are parties. The value of the capital investments shall be deemed to be the total dollar amount spent by the contract producer in satisfying the investment requirements, if that amount is ascertainable.

B. Except as provided in subsection D of this section, a contractor shall not terminate, cancel, or fail to renew a production contract until the contractor has done the following:

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

2. The contract producer has been reimbursed for damages incurred due to the termination, cancellation, or failure to renew. Damages shall be based on the value of the remaining useful life of the structures, machinery or equipment involved.

C. Except as provided in subsection D of this section, if a contract producer materially breaches a production contract, including the investment requirements of a production contract, a contractor may not terminate, cancel, or fail to renew the production contract until the following have occurred:

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

2. The contract producer fails to remedy each cause of the breach as alleged in the list of complaints provided in the notice within thirty (30) days following receipt of the notice. Provided, when a contract producer gives notice to the contractor within thirty (30) days of receipt of a notice of termination, cancellation or nonrenewal that the producer is attempting to remedy each alleged

cause of the breach, but because of circumstances beyond the control of the contract producer, some or all of the alleged causes of the breach cannot be remedied within thirty (30) days of receipt of the notice of termination, cancellation or nonrenewal, and requests additional time to cure the alleged causes of the breach, the contractor shall grant the additional time requested by the producer not to exceed an additional sixty (60) days. An effort by a contract producer to remedy a cause of an alleged breach shall not be construed as an admission of a breach in a civil cause of action.

D. A contractor may terminate, cancel, or fail to renew a production contract without notice or remedy as required in subsections B and C of this section if the basis for the termination, cancellation, or nonrenewal is any of the following:

1. A voluntary abandonment of the contractual relationship by the contract producer. A complete failure of a contract producer's performance under a production contract shall be deemed to be abandonment; or

2. The conviction of a contract producer of an offense of fraud or theft committed against the contractor.

E. If a contractor terminates, cancels, or fails to renew a production contract other than as provided in this section, the contractor shall pay the contract producer the value of the remaining useful life of the structures, machinery, or equipment involved.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-9 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "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 or the following:

a. livestock or plants,

- b. agricultural seeds,
- c. semen or eggs for breeding livestock, or
- d. a fertilizer or pesticide; and

2. "Producer right" means one of the following legal rights and protections:

- a. the right of a producer to lawfully provide statements or information, including to the United States Secretary of Agriculture or to a law enforcement agency, regarding alleged improper actions or violations of law by a contractor or processor. This right does not include the right to make statements or provide information if the statements or information are determined to be libelous or slanderous,
- b. the right of a contract producer to utilize protections to review production contracts under Section 6 of this act,
- c. the right of a producer to disclose the terms of agricultural contracts under Section 7 of this act, or
- d. the right of a producer to enforce other protections afforded by this act or other laws or regulations.

B. It shall be unlawful for any contractor or processor knowingly to engage or permit any employee or agent to engage in the following practices in connection with agricultural contracts:

1. To take actions to coerce, intimidate, disadvantage, retaliate against, or discriminate against any producer because the producer exercises, or attempts to exercise, any producer right, including actions affecting the following:

- a. the execution, termination, extension, or renewal of an agricultural contract,
- b. the treatment of a producer, which may include providing discriminatory or preferential terms in an agricultural contract or interpreting terms of an

existing agricultural contract in a discriminatory or preferential manner. The terms may relate to the price paid for a commodity; the quality or the quantity of a commodity demanded; or financing, including investment requirements,

- c. the grant of a reward or imposition of a penalty, including the denial of a reward. The reward or penalty may be in any form, including but not limited to, financial rewards or penalties. Financial rewards or penalties may relate to loans, bonuses, or inducements, or
- d. alter the quality, quantity, or delivery times of contract inputs provided to the producer;

2. To provide false information to the producer, which may include false information relating to any of the following:

- a. a producer with whom the producer associates or an association of producers or an agricultural organization with which the producer is affiliated, including, but not limited, to any of the following:
 - (1) the character of the producer, or
 - (2) the condition of the finances or the management of an association of producers or an agricultural organization, or
- b. producer rights provided by this act or other provisions of law;

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

4. To refuse to allow a contract producer or the contract producer's designated representative to observe, by actual

observation at the time of weighing, the weights and measures used to determine the contract producer's compensation under a production contract;

5. To use the performance of any other contract producer to determine the compensation of a contract producer under a production contract or as the basis of the termination, cancellation, or renewal of a production contract;

6. To require a contract producer to make new or additional capital investments in connection with, or to retain, continue, or renew a production contract which are beyond the investment requirements of such production contract. It shall not be a violation of this section if such new or additional capital investments are partially paid for by the contractor, or offset by other compensation or modifications to contract terms, in a manner the contract producer agrees to in writing as constituting acceptable and satisfactory consideration for the new capital investment;

7. To execute an agricultural contract in violation of the disclosure of risks and readability requirements of Section 5 of this act;

8. To execute an agricultural contract which includes a confidentiality provision in violation of Section 7 of this act;

9. To execute an agricultural contract without a mediation provision as required under Section 12 of this act; and

10. To execute an agricultural contract which includes a waiver of any producer right or any obligation of a contractor or processor established under this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-10 of Title 2, unless there is created a duplication in numbering, reads as follows:

Any provision of an agricultural contract which waives a producer right or an obligation of a contractor or processor

established by this act is void and unenforceable. This section does not affect other provisions of an agricultural contract, including an agricultural contract or related document, policy, or agreement which can be given effect without the voided provision.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-11 of Title 2, unless there is created a duplication in numbering, reads as follows:

Any condition, stipulation, or provision requiring the application of the law of another state in lieu of this act is void and unenforceable.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-12 of Title 2, unless there is created a duplication in numbering, reads as follows:

An agricultural contract must contain language providing for resolution of disputes concerning the contract by mediation. If there is a dispute involving an agricultural contract, either party may make a written request to the Oklahoma Agriculture Mediation Program for mediation services as specified in the contract, to facilitate resolution of the dispute. The parties must receive a release from the Oklahoma Agriculture Mediation Program before the dispute can be heard by a court.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-13 of Title 2, unless there is created a duplication in numbering, reads as follows:

The requirements for the written disclosure of material risks in subsection A of Section 5, the five-day review period in Section 6, the cover sheet requirement in subsection B of Section 5, and the contract readability requirements in Section 5 of this act, do not apply to contracts which provide for:

1. The sale and purchase of a fixed amount of a commodity for delivery at a set price;
2. Price-later grain contracts;

3. Future contracts which involve the sale or purchase of a standardized quantity of a commodity for future delivery on a regulated commodity exchange;

4. Agricultural marketing contracts between an association organized pursuant to the Cooperative Marketing Association Act and its members;

5. Occasional sales between persons who produce or cause to be produced food, feed, or fiber in a quantity beyond their own family use; or

6. Transactions which are subject to the provisions of the United States Warehouse Act, 7 U.S.C., Section 241.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-14 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Civil penalties. A contractor or processor violating any provision of this act shall be subject to a civil penalty of up to _____.

B. A contractor or processor violating any provision of this act shall be guilty of a misdemeanor punishable by a fine of up to _____.

C. A producer who suffers damages because of a contractor's or processor's violation of this act may obtain appropriate legal and equitable relief, including damages, at a suit in common law pursuant to Oklahoma's rules of civil procedure.

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

2. Injunctive relief. In order to obtain injunctive relief, the producer is not required to post a bond, prove the absence of an adequate remedy at law, or show the existence of special circumstances, unless the court for good cause otherwise orders. The court may order any form of prohibitory or mandatory relief that

is appropriate under principles of equity, including but not limited to issuing a temporary or permanent restraining order.

D. The Office of the Attorney General is the agency primarily responsible for enforcing this act. In enforcing the provisions of this act, the Attorney General may do all of the following:

1. Apply to the district court for an order to do any of the following:

- a. restrain a contractor or processor from engaging in conduct or practices in violation of this act, or
- b. require a contractor or processor to comply with a provision of this act;

2. Apply to district court for the issuance of a subpoena to obtain an agricultural contract for purposes of enforcing this act;

3. Initiate and prosecute a civil or criminal action in district court to enforce penalties provided in subsections A and B of this section; or

4. The Attorney General is authorized to recover the cost of an investigation, the cost of the action and attorneys fees.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-15 of Title 2, unless there is created a duplication in numbering, reads as follows:

Rulemaking. The Attorney General may adopt rules under the Administrative Procedures Act to implement this act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19-16 of Title 2, unless there is created a duplication in numbering, reads as follows:

This act applies to agricultural contracts executed after the effective date of this act.

SECTION 17. This act shall become effective July 1, 2001.

SECTION 18. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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