

## HOUSE BILL No. 2278

By Representatives Larkin and Faber, Alldritt, Flora, Garner, Grant, Henry, McClure, McCreary, McKinney, Merrick, O'Brien, Ostmeyer, Phelps, Thimesch, D. Williams and Wilson

2-5

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AN ACT concerning agriculture; relating to agricultural contracts; unfair and unlawful actions; prescribing penalties for violations thereof.

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

Section 1. As used in this act:

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

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

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

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

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

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

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

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

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

(h) "Contract 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.

(i) "contract livestock facility" means an animal feeding operation located in this state in which livestock or raw milk is produced according to a production contract by a contract producer who holds a legal interest in the animal feeding operation. Contract livestock facility includes a con-

1 finement feeding operation, an open feedlot, or an area which is used for  
2 the raising of crops or other vegetation and upon which livestock is fed  
3 for slaughter or is allowed to graze or feed;

4 (j) “contract operation” means a contract livestock facility or a con-  
5 tract crop field;

6 (k) “contract producer” means a producer who holds a legal interest  
7 in a contract operation and who produces a commodity under a produc-  
8 tion contract;

9 (l) “contractor” means a person who is an active contractor or a pas-  
10 sive contractor;

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

15 (n) “farmland” means agricultural land that is suitable for use in  
16 farming;

17 (o) “investment requirement” means a provision in a contract which  
18 requires the contract producer to make capital investments associated  
19 with producing a commodity subject to a production contract. The pro-  
20 visions may be included as part of one or more oral or written agreements  
21 or contracts, and may be included as part of a production contract;

22 (p) “livestock” means beef cattle, dairy cattle, poultry, sheep or swine;

23 (q) “open feedlot” means an unroofed or partially roofed animal feed-  
24 ing operation in which no crop, vegetation or forage growth or residue  
25 cover is maintained during the period that livestock is confined in the  
26 operation;

27 (r) “passive contractor” means a person who furnishes management  
28 services to a contract producer and who does not own a commodity that  
29 is produced by the contract producer at the contract producer’s contract  
30 operation according to a production contract;

31 (s) “processor” means a person engaged in the business of manufac-  
32 turing goods from commodities, including slaughtering or processing live-  
33 stock, processing raw milk or processing crops;

34 (t) “produce” means to do any of the following:

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

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

41 (u) “producer” means a person who produces a commodity, including  
42 but not limited to, a contract producer. Producer does not include a com-  
43 mercial fertilizer or pesticide applicator, a feed supplier or a veterinarian,

1 when acting in such capacity;

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

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

6 (B) the right of a producer to enter into a membership agreement  
7 with an association of producers, a processor or another producer and the  
8 right of the producer to exercise contractual rights under such a mem-  
9 bership agreement;

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

15 (D) the right of a producer to enforce other protections afforded by  
16 this act or other laws or regulations;

17 (E) the right of a producer to refuse to accept delivery of unhealthy  
18 or otherwise defective livestock; and

19 (F) the right of a producer to require the use of state inspected scales  
20 for weights used to determine contract payments.

21 (w) "production contract" means an oral or written agreement that  
22 provides for the production of a commodity or the provision of manage-  
23 ment services relating to the production of a commodity by a contract  
24 producer. A production contract is executed when it is signed or orally  
25 agreed to by each party to the contract or by a person authorized to act  
26 on the party's behalf; and

27 (x) "secretary" means the secretary of the Kansas department of  
28 agriculture.

29 Sec. 2. It shall be unlawful for any contractor or processor knowingly  
30 to engage or permit any employee or agent to engage in the following  
31 practices in connection with agricultural contracts:

32 (a) To take actions to coerce, intimidate, disadvantage, retaliate  
33 against or discriminate against any producer because the producer exer-  
34 cises or attempts to exercise, any producer right, including actions af-  
35 fecting the following:

36 (1) The execution, termination, extension or renewal of an agricul-  
37 tural contract;

38 (2) the treatment of a producer, which may include providing dis-  
39 criminatory or preferential terms in an agricultural contract or interpret-  
40 ing terms of an existing agricultural contract in a discriminatory or pref-  
41 erential manner. The terms may relate to the price paid for a commodity;  
42 the quality or the quantity of a commodity demanded; or financing, in-  
43 cluding investment requirements;

1 (3) the grant of a reward or imposition of a penalty, including the  
2 denial of a reward. The reward or penalty may be in any form, including  
3 but not limited to, financial rewards or penalties. Financial rewards or  
4 penalties may relate to loans, bonuses or inducements; and

5 (4) alter the quality, quantity or delivery times of contract inputs pro-  
6 vided to the producer.

7 (b) To provide false information to the producer, which may include  
8 false information relating to any of the following:

9 (1) A producer with whom the producer associates or an association  
10 of producers or an agricultural organization with which the producer is  
11 affiliated, including but not limited to, any of the following:

12 (A) The character of the producer; or

13 (B) the condition of the finances or the management of the associa-  
14 tion of producers or agricultural organization; or

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

16 (c) To refuse to provide to a contract producer upon request the  
17 statistical information and data used to determine compensation paid to  
18 the contract producer under a production contract, including, but not  
19 limited to, feed conversion rates, feed analyses, origination and breeder  
20 history.

21 (d) To refuse to allow a contract producer or the contract producer's  
22 designated representative to observe, by actual observation at the time of  
23 weighing, the weights and measures used to determine the contract pro-  
24 ducer's compensation under a production contract.

25 (e) To use the performance of any other contract producer to deter-  
26 mine the compensation of a contract producer under a production con-  
27 tract or as the basis of the termination, cancellation or renewal of a pro-  
28 duction contract.

29 (f) To require a contract producer to make new or additional capital  
30 investments in connection with, or to retain, continue or renew, a pro-  
31 duction contract which are beyond the investment requirements of such  
32 production contract. It shall not be a violation of this section if such new  
33 or additional capital investments are partially paid for by the contractor  
34 or offset by other compensation or modifications to contract terms, in a  
35 manner the contract producer agrees to in writing as constituting ac-  
36 ceptable and satisfactory consideration for the new capital investment.

37 (g) To execute an agricultural contract which includes a waiver of any  
38 producer right or any obligation of a contractor or processor established  
39 under this act.

40 (h) To execute an agricultural contract requiring the application of  
41 the law of another state in lieu of this act.

42 Sec. 3. Any provision of an agricultural contract which waives a pro-  
43 ducer right or an obligation of a contractor or processor established by

1 this act is void and unenforceable. This section does not affect other  
2 provisions of an agricultural contract, including an agricultural contract  
3 or related document, policy or agreement which can be given effect with-  
4 out the voided provision.

5 Sec. 4. Any condition, stipulation or provision requiring the appli-  
6 cation of the law of another state in lieu of this act is void and  
7 unenforceable.

8 Sec. 5. (a) A contractor or processor committing an unfair practice  
9 under section 2, and amendments thereto shall be subject to a civil pen-  
10 alty in an amount equal to the amount of actual damages suffered by the  
11 producer.

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

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

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

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

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

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

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

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

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

39 Sec. 6. The secretary may promulgate rules and regulations to im-  
40 plement the provisions of this act.

41 Sec. 7. This act shall take effect and be in force from and after its  
42 publication in the statute book.