

AN ACT concerning agriculture.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 1. Short title. This Act may be cited as the
Agricultural Production Contract Code.

Section 5. Definitions. As used in this Act, unless the
context otherwise requires:

"Capital investment" means a purchase or lease of any of
the following:

(1) A structure used for producing or storing a
commodity required to be provided by the producer under
the terms of the production contract if the structure has
a useful life in excess of 3 years. This includes, but
is not limited to, swine farrowing buildings, grain
storage facilities, and manure storage structures.

(2) Machinery or equipment used for producing a
commodity required to be provided by the producer under
the terms of the production contract if the machinery has
a useful life in excess of 3 years. This includes, but
is not limited to, trucks, tractors, combines, wagons,
augers, and planters.

"Commodity" means livestock, raw milk, fruits,
vegetables, or a crop.

"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, livestock, plants,
agricultural seeds, semen or eggs for breeding livestock,
fertilizer, pesticides, or petroleum products.

"Contractor" means a person who offers, provides, or
enters into a production contract with a producer for the
production of commodities in this State by the producer.

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

"Livestock" includes, but is not limited to, beef cattle, dairy cattle, poultry, sheep, or swine.

"Person" means an individual or entity, including but not limited to, a sole proprietorship, a partnership, a corporation, a cooperative, an association, a limited liability company, an estate, or a trust.

"Produce" means to do any of the following:

(1) 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.

(2) Provide for planting, raising, harvesting, identity preserving, or storing a crop.

"Produce" includes preparing the soil for planting and also for nurturing the crop by the application of fertilizers or soil conditioners, including those substances regulated under the Illinois Fertilizer Act of 1961, or pesticides as defined in the Illinois Pesticide Act.

"Producer" means a person who has been offered or who has entered into a contract to produce a commodity. "Producer" does not include a fertilizer or pesticide applicator, a feed supplier, or a veterinarian, when acting in that capacity.

"Production contract" means: (1) Any written document offered to or executed by a producer, under the provisions of which (i) the producer would sell to a contractor, or the contractor's designee, an identified commodity or commodities and (ii) the contractor has, or exercises some control or direction over, the production process; or (2) any written

agreement offered to or executed by a producer under the provisions of which the producer would produce, care for, or raise a commodity or commodities not owned by the producer, using land, equipment, or facilities owned or leased by the producer, in exchange for payment. For purposes of this definition, control or direction over the production process includes (i) the contractor's designation of special commodity characteristics, such as those present in value-enhanced grains, or specific genetics in livestock or (ii) the contractor's designation of a production input, such as a seed variety, to be used by the producer to fulfill the production contract.

Section 10. Limited applicability. This Act shall not apply to a production contract under the provisions of which the commodity is to be delivered by the producer to the contractor or the contractor's designee within 30 days after the date of the production agreement.

Section 20. Readability of production contracts.

(a) A production contract must comply with all of the following:

(1) It must be in a typeface at least as large as 10-point modern, one-point leaded.

(2) It must be divided and captioned by its various sections, have an index of the major provisions of the production contract and the pages on which they are found, and use commonly-used and understood words and terms, but may include technical or industry terms customarily used and understood by producers in the ordinary course of business.

(3) It must limit references to other sections or provisions and, when incorporating a document, have a copy of the document attached.

(4) It must have a Flesch scale analysis readability score of at least 50.

(b) A contractor may include a provision in the index required by Section 25 that the production contract being offered meets the requirements of this Section as to readability.

Section 25. Index. An index of the major portions of the contract and the pages on which they are found must be included with each production contract offered to a producer that exceeds 2 pages in length. The index must contain references for any of the following that are included in the contract:

- (1) The names of the parties to the contract.
- (2) The definition sections of the contract.
- (3) The provisions governing cancellation, renewal, or amendment of the contract by either party.
- (4) The sections outlining the duties or obligations of each party.
- (5) The compensation information.
- (6) Any provisions subject to change in the contract.
- (7) Any special provisions relative to production guidelines.

Section 30. Confidentiality clauses. A production contract may include a confidentiality provision, but communications with any of the following shall not be considered a breach of any such provision: (i) a producer's spouse; (ii) a producer's parents, siblings, and children of the age of majority if these persons are partners, shareholders, officers, or directors of the producer's agricultural operations; (iii) accountants; (iv) attorneys; (v) bankers; (vi) financial institutions; (vii) farm

managers; (viii) trusts or trust beneficiaries; or (ix) the partners, officers, or directors of the producer's agricultural operations. When communicating with these persons, the producer must request each person to treat the information as privileged and confidential.

Section 35. Special provisions. If a production contract requires any special production or handling guidelines required by the producer, these provisions must be fully explained in the contract. These provisions include, but are not limited to, disease protocols for livestock and segregation or identity preservation for grain.

Section 40. Termination or alteration of contracts.

(a) A contractor may not provide, offer, or execute a production contract that allows the contractor to unilaterally terminate the contract unless (i) the termination is the result of a legitimate force majeure as applied to the contractor or (ii) the producer breaches a material term of the contract or voluntarily abandons the contractual relationship.

(b) A contractor may not alter the quality, quantity, or delivery times of contract inputs provided to the producer, unless agreed to by the producer.

(c) Any cancellation or termination provisions must include specific causes for the cancellation or termination and any circumstances under which the commodity produced under the contract might be rejected in whole or part by the contractor.

(d) Any circumstances in which the compensation to be paid by a producer may be discounted or increased shall include specific causes to be clearly and concisely stated.

Section 45. Investment requirements.

(a) This Section applies to all production contracts that have capital investment requirements.

(b) Except as provided in subsection (c), a contractor shall not take action to terminate or cancel a production contract until the contractor has done the following:

(1) Provided the producer with written notice of the intention to terminate or cancel at least 60 days before the effective date of the termination or cancellation.

(2) Reimbursed the contract producer for the value of the remaining useful life of the capital investment items. In calculating this reimbursement amount, the contractor may take into account the producer's ability to use the capital investments in other business enterprises of the producer and the opportunity to recoup the cost of the capital improvements by sale or lease.

(c) Exceptions. A contractor may terminate or cancel a production contract without remedy as required in subsection (b) if the basis for the termination or cancellation is any of the following:

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

(2) Failure of the producer to meet the specific provisions of the contract and failure to remedy his or her default.

(3) The conviction of a producer of an offense of fraud or theft committed against the contractor.

Section 50. Enforcement; offenses; remedies. The Attorney General is primarily responsible for enforcing this Act.

A person who violates Section 20, 25, 30, or 35 commits a

business offense under the Code of Civil Procedure.

A producer may recover his or her actual damages for a contractor's violation of Section 40 or 45 of this Act.

Section 55. Statute of limitations. A claim that a production contract violates this Act must be filed within 4 years after the date on which the party alleging the violation knew or should have known of the existence of the violation.

Section 60. Conflict with the Uniform Commercial Code. To the extent that any provision of this Act conflicts with or is inconsistent with any provision of the Uniform Commercial Code, the provision of this Act shall control.

Section 90. The Uniform Commercial Code is amended by adding Section 1-104b as follows:

(810 ILCS 5/1-104b new)

Sec. 1-104b. Agriculture Production Contract Code. This Act is subject to the provisions of the Agriculture Production Contract Code.

Section 99. Effective date. This Act takes effect on January 1, 2005.