

SECOND REGULAR SESSION

HOUSE BILL NO. 1375

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES CRAWFORD (Sponsor), SANDER AND JETTON (Co-sponsors).

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STEPHEN S. DAVIS, Chief Clerk

3529L.011

AN ACT

To amend chapter 265, RSMo, by adding thereto eleven new sections relating to the agricultural production contract code, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 265, RSMo, is amended by adding thereto eleven new sections, to
2 be known as sections 265.700, 265.703, 265.706, 265.709, 265.712, 265.715, 265.718, 265.721,
3 265.724, 265.727, and 265.730, to read as follows:

265.700. 1. Sections 265.700 to 265.730 shall be known and may be cited as the
2 **"Agricultural Production Contract Code".**

3 **2. As used in sections 265.700 to 265.730 and unless the context otherwise requires,**
4 **the following terms shall mean:**

5 **(1) "Capital investment", a purchase or lease of any of the following:**

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

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

14 **(2) "Commodity", livestock, raw milk, fruits, vegetables, or a crop;**

15 **(3) "Contract input", a commodity or an organic or synthetic substance or**
16 **compound that is used to produce a commodity, including but not limited to livestock,**
17 **plants, agricultural seeds, semen or eggs for breeding livestock, fertilizer, pesticides, or**

18 petroleum products;

19 (4) "Contractor", a person who offers, provides, or enters into a production
20 contract with a producer for the production of commodities in this state by the producer;

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

25 (6) "Livestock", includes but is not limited to beef cattle, dairy cattle, poultry,
26 sheep, or swine;

27 (7) "Person", an individual or entity, including but not limited to a sole
28 proprietorship, a partnership, a corporation, a cooperative, an association, a limited
29 liability company, an estate, or a trust;

30 (8) "Produce", to do any of the following:

31 (a) Provide feed or service relating to the care and feeding of livestock. If the
32 livestock is dairy cattle, produce includes milking the dairy cattle and storing raw milk;

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

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35 Produce includes preparing the soil for planting and also for nurturing the crop by the
36 application of fertilizers or soil conditioners;

37 (9) "Producer", a person who has been offered or who has entered into a contract
38 to produce a commodity. Producer does not include a fertilizer or pesticide applicator, a
39 feed supplier, or a veterinarian, when acting in that capacity;

40 (10) "Production contract":

41 (a) Any written document offered to or executed by a producer under the
42 provisions of which:

43 a. The producer would sell to a contractor or the contractor's designee an identified
44 commodity or commodities; and

45 b. The contractor has or exercises some control or direction over the production
46 process; or

47 (b) Any written agreement offered to or executed by a producer under the
48 provisions of which the producer would produce, care for, or raise a commodity or
49 commodities not owned or leased by the producer in exchange for payment. For purposes
50 of this definition, control or direction over the production process includes:

51 a. The contractor's designation of special commodity characteristics, such as those
52 present in value-enhanced grains, or specific genetics in livestock; or

53 b. The contractor's designation of a production input, such as seed variety, to be

54 used by the producer to fulfill the production contract.

265.703. Sections 265.700 to 265.730 shall not apply to a production contract under
2 the provisions of which the commodity is to be delivered by the producer to the contractor
3 or the contractor's designee within thirty days after the date of the production agreement.

265.706. 1. A production contract shall comply with all of the following:

2 (1) It must be in a typeface at least as large as ten-point modern, one-point leaded;

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

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

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

11 2. A contractor may include a provision in the index required in section 265.709
12 that the production contract being offered meets the requirements of this section as to
13 readability.

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

5 (1) The names of the parties to the contract;

6 (2) The definition sections of the contract;

7 (3) The provisions governing cancellation, renewal, or amendment of the contract
8 by either party;

9 (4) The sections outlining the duties or obligations of each party;

10 (5) The compensation information;

11 (6) Any provisions subject to change in the contract;

12 (7) Any special provisions relative to production guidelines.

265.712. A production contract may include a confidentiality provision, but
2 communications with any of the following shall not be considered a breach of any such
3 provision:

4 (1) A producer's spouse;

5 (2) A producer's parents, siblings, and children of the age of majority if such
6 persons are partners, shareholders, officers, or directors of the producer's agricultural
7 operations;

- 8 **(3) Accountants;**
- 9 **(4) Attorneys;**
- 10 **(5) Bankers;**
- 11 **(6) Financial institutions;**
- 12 **(7) Farm managers;**
- 13 **(8) Trusts or trust beneficiaries; or**
- 14 **(9) The partners, officers, or directors of the producer's agricultural operations.**

15

16 **When communicating with such persons, the producer shall request each person to treat**
17 **the information as privileged and confidential.**

265.715. If a production contract requires any special production or handling
2 **guidelines required by the producer, such provisions shall be fully explained in the**
3 **contract. Such provisions include, but are not limited to, disease protocols for livestock**
4 **and aggregation or identity preservation for grain.**

265.718. 1. A contractor shall not provide, offer, or execute a production contract
2 **that allows the contractor to unilaterally terminate the contract unless:**

3 **(1) The termination is the result of a legitimate force majeure as applied to the**
4 **contractor; or**

5 **(2) The producer breaches a material term of the contract or voluntarily abandons**
6 **the contractual relationship.**

7 **2. A contractor shall not alter the quality, quantity, or delivery times of contract**
8 **inputs provided to the producer, unless agreed to by the producer.**

9 **3. Any cancellation or termination provisions shall include specific causes for the**
10 **cancellation or termination and any circumstances under which the commodity produced**
11 **under the contract may be rejected in whole or part by the contractor.**

12 **4. Any circumstances in which the compensation to be paid by a producer may be**
13 **discounted or increased shall include specific causes to be clearly and concisely stated.**

265.721. 1. This section applies to all production contracts that have capital
2 **investment requirements.**

3 **2. Except as provided in subsection 3 of this section, a contractor shall not take**
4 **action to terminate or cancel a production contract until the contractor has done the**
5 **following:**

6 **(1) Provided the producer with written notice of the intention to terminate or cancel**
7 **at least sixty days before the effective date of the termination or cancellation;**

8 **(2) Reimbursed the contract producer for the value of the remaining useful life of**
9 **the capital investment items. In calculating such reimbursement amount, the contractor**

10 may take in to account the producer's ability to use the capital investments in other
11 business enterprises of the producer and the opportunity to recoup the cost of the capital
12 improvements by sale or lease.

13 **3. A contractor may terminate or cancel a production contract without remedy as**
14 **required in subsection 2 of this section if the basis for the termination or cancellation is any**
15 **of the following:**

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

19 **(2) Failure of the producer to meet the specific provisions of the contract and**
20 **failure to remedy his or her default;**

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

265.724. 1. The attorney general is primarily responsible for enforcing the
2 **provisions of sections 265.700 to 265.730.**

3 **2. Any person who violates the provisions of section 265.706, 265.709, 265.712, or**
4 **265.715 is guilty of a class A misdemeanor and shall be subject to civil liability for any**
5 **damages resulting from such violation.**

6 **3. A producer may recover his or her actual damages for a contractor's violation**
7 **of section 265.718 or 265.721.**

265.727. A claim that a production contract violates sections 265.700 to 265.730
2 **shall be filed within four years after the date on which the party alleging the violation knew**
3 **or should have known of the existence of the violation.**

265.730. To the extent that any provision of sections 265.700 to 265.730 conflicts
2 **with or is inconsistent with any provision of the Uniform Commercial Code, the provisions**
3 **of sections 265.700 to 265.730 shall control.**