

1 AN ACT in relation to agriculture.

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

4 Section 1. Short title. This Act may be cited as the
5 Agriculture Production Contract Code.

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

8 "Capital investment" means a purchase of any of the
9 following:

10 (1) A structure used for producing or storing a
11 commodity, including, but not limited to, swine farrowing
12 buildings, grain storage facilities, or manure storage
13 lagoons.

14 (2) Machinery or equipment used for producing a
15 commodity, if the machinery or equipment has a useful
16 life in excess of one year, including, but not limited
17 to, trucks, tractors, combines, wagons, augers, and
18 planters.

19 "Code" means this Agriculture Production Contract Code.

20 "Commodity" means livestock, raw milk, or a crop.

21 "Contract input" means a commodity or an organic or
22 synthetic substance or compound that is used to produce a
23 commodity, including but not limited to any of the following:

24 (1) Livestock or plants.

25 (2) Agricultural seeds.

26 (3) Semen or eggs for breeding livestock.

27 (4) Fertilizer, pesticides, or petroleum products.

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

31 "Crop" means a plant used for food, animal feed, fiber,

1 oil, pharmaceuticals, nutraceuticals, or seed, including, but
2 not limited to, alfalfa, barley, buckwheat, canola, corn,
3 flax, forage, fruits, millet, oats, popcorn, rye, sorghum,
4 soybeans, sunflowers, tobacco, vegetables, wheat, and grasses
5 used for forage or silage.

6 "Department" means the Department of Agriculture.

7 "Director" means the Director of Agriculture or the
8 Director's designee.

9 "Family members" means a spouse, children, siblings, and
10 parents.

11 "Investment requirement" means any capital investment
12 made by a producer to produce a commodity in accordance with
13 a production contract that specifically requires that capital
14 investment.

15 "Livestock" means beef cattle, dairy cattle, poultry,
16 sheep, or swine.

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

21 "Produce" means to do any of the following:

22 (1) Provide feed or services relating to the care
23 and feeding of livestock.

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

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

31 "Producer" means a person who has been offered or who has
32 entered into a production contract whereby that person would
33 produce a commodity. "Producer" does not include a commercial
34 fertilizer or pesticide applicator, a feed supplier, or a

1 veterinarian when acting in that capacity.

2 "Production contract" means (1) any written document
3 offered to or executed by a producer, under the provisions of
4 which (i) the producer would sell to a contractor, or the
5 contractor's designee, an identified commodity or commodities
6 and (ii) the contractor has or exercises some control or
7 direction over the production process; or (2) any written
8 agreement offered to or executed by a producer under the
9 provisions of which the producer would produce, care for, or
10 raise a commodity or commodities that are not owned by the
11 producer, using land, equipment, or facilities owned or
12 leased by the producer, in exchange for payment.

13 For purposes of this definition, "control or direction
14 over the production process" means (i) the contractor's
15 designation of special commodity characteristics, such as
16 those present in value enhanced grains, or specific genetics
17 in livestock; or (ii) the contractor's designation of a
18 production input, such as a seed variety or varieties, to be
19 used by the producer to fulfill the production contract.

20 "Value enhanced grains" means:

21 (1) grain that has been bred or engineered to
22 provide specific characteristics, including, but not
23 limited to, high oil content, a specific composition of
24 amino acids, or a particular level of amylopectin starch;
25 or

26 (2) grain that has been produced and controlled in
27 such a way as to enhance characteristics, including, but
28 not limited to, low stress cracks, organic content,
29 freedom from post-harvest pesticides or contaminants, and
30 the like.

31 Section 10. Limited Applicability. Sections 15 and 20 and
32 subsection (d) of Section 30 do not apply to a production
33 contract under the provisions of which the commodity is to be

1 delivered by the producer to the contractor, or the
2 contractor's designee, within 20 days after the date of the
3 production agreement.

4 Section 15. Summary of certain terms and conditions.

5 (a) Summary sheet. A production contract offered,
6 provided, entered into, amended, or renewed after the
7 effective date of this Act must contain as the first page, or
8 as the first page of text if it is preceded by a title page
9 or pages, a summary sheet as provided in this Section. The
10 summary sheet shall have the following heading: "SUMMARY OF
11 CERTAIN TERMS AND CONDITIONS". It shall provide a summary
12 explanation of the terms and conditions listed in subsection
13 (b) of this Section and designate the page or pages where
14 these terms and conditions are found within the text of the
15 document. In addition, it shall designate the page or pages
16 where the compensation examples required by subsection (p) of
17 Section 30 are found within the text of the document.

18 This summary shall meet the readability and
19 understandability requirements of Section 20 and shall
20 accurately reflect the text of the production contract.
21 Nothing in this Section shall be construed to prohibit a
22 contractor from summarizing terms and conditions in addition
23 to those specified in subsection (b) of this Section.

24 (b) Terms and conditions.

25 (1) the special production or handling guidelines
26 required by the contractor, including, but not limited
27 to, disease protocols for livestock; segregation or
28 identity preservation for grain; and the testing
29 methodology and procedures to be used to assist in
30 calculating and determining the compensation due to
31 producer;

32 (2) the circumstances under which the amount to be
33 received by the producer might be discounted or

1 increased;

2 (3) the circumstances under which the commodity
3 produced under the production contract might be rejected
4 in whole or in part by the contractor, or any other
5 person; and

6 (4) the cancellation or termination provisions, and
7 specific causes for the cancellation and termination.

8 Section 20. Readability and understandability of
9 production contracts. A production contract must:

10 (1) be in a typeface at least as large as 10-point
11 modern, one-point leaded;

12 (2) be divided and captioned by its various sections;

13 (3) use commonly utilized and understood words and
14 terms;

15 (4) limit references to other sections or provisions;
16 and

17 (5) have a Flesch scale of reading ease of at least 35.

18 Section 25. Investment requirements.

19 (a) Applicability. This Section applies to all
20 production contracts that have investment requirements. The
21 value of the capital investments shall be deemed to be the
22 total dollar amount spent or committed to by the producer in
23 satisfying the investment requirements.

24 (b) Breach. Except as provided in subsection (c), if a
25 producer breaches a production contract, a contractor may not
26 terminate or cancel that production contract until the
27 following have occurred:

28 (1) The contractor has provided a written notice of
29 termination or cancellation to the producer that has been
30 received by the producer at least 15 days before the
31 effective date of the termination or cancellation. The
32 notice must provide a comprehensive listing of the reason

1 or reasons for the termination or cancellation.

2 (2) The producer has failed to remedy each breach,
3 as alleged in the listing provided in the notice, within
4 15 days following receipt of the notice. An effort by a
5 producer to remedy an alleged breach shall not be
6 construed as an admission of the breach in a judicial
7 proceeding or an alternative dispute resolution
8 proceeding.

9 (c) Exceptions. A contractor may terminate or cancel a
10 production contract without regard to the provisions of
11 subsection (b) if the basis for the termination or
12 cancellation is either of the following:

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

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

19 (d) Penalty. If a contractor terminates or cancels a
20 production contract other than as provided in this Section,
21 the contractor shall pay the producer:

22 (1) the value of the remaining useful life of the
23 capital investments, taking into account the producer's
24 ability to mitigate damages by using the capital
25 investments in the producer's other business enterprises
26 and the opportunity to recoup the cost of the capital
27 investments by selling or leasing them; and

28 (2) any other damages allowed by law.

29 Section 30. Good contracting practices. A contractor
30 shall comply with the following good contracting practices:

31 (a) Compensation information. Provide to a producer in a
32 timely manner any data used to determine compensation paid to
33 the producer under the production contract, including, but

1 not limited to, feed conversion rates, feed analyses, and
2 origination and breeder history.

3 (b) Observation of weighing and testing. Allow a
4 producer or the producer's designated representative to
5 observe, at the time of weighing or testing for quality
6 characteristics and contract specifications, the weights and
7 measures, and tests, used to determine in whole or in part
8 the producer's compensation under a production contract.

9 (c) Readability and understandability. Not provide,
10 offer, or execute a production contract in violation of the
11 requirements of Sections 15 and 20.

12 (d) Confidentiality provisions. Not provide, offer, or
13 execute a production contract that includes a confidentiality
14 provision that prohibits a producer from discussing any or
15 all terms and details of a production contract with
16 producer's legal advisor, lender, accountant, farm manager,
17 landlord, or family members. Nothing in this subsection shall
18 be interpreted as requiring a party to a production contract
19 to divulge information in the production contract to another
20 person.

21 (e) Waivers. Not provide, offer, or execute a production
22 contract that includes a waiver of any producer right or
23 protection, or any obligation of a contractor established
24 under this Act.

25 (f) Forum for judicial proceedings. Not provide, offer,
26 or execute a production contract requiring that any judicial
27 proceedings related to that production contract be brought or
28 conducted in a location outside the state of Illinois.
29 Nothing in this Act shall prohibit a production contract that
30 requires the application of the substantive law of a state
31 other than Illinois.

32 (g) Location of alternative dispute resolution
33 proceedings. Not provide, offer, or execute a production
34 contract that requires alternative dispute resolution

1 proceedings that would require or necessitate the attendance
2 by a producer at a location outside the state of Illinois.
3 For purposes of this subsection, the phrase "alternative
4 dispute resolution proceedings" shall include, but not
5 necessarily be limited to, arbitration and mediation.

6 (h) Limitation on damages. Not provide, offer, or
7 execute a production contract that contains language limiting
8 the producer's damages against the contractor in the event of
9 a material breach or other failure to materially perform the
10 production contract by the contractor.

11 (i) Contract inputs. Not provide, offer, or execute a
12 production contract in which the contractor provides or
13 requires certain contract inputs for which the producer
14 compensates the contractor, but that also contains language
15 disclaiming implied warranties relating to those contract
16 inputs, or limits the damages or remedies against the
17 contractor if the contract inputs do not perform in
18 accordance with product descriptions and other express
19 warranties.

20 (j) Use of certain undefined terms. Not provide, offer,
21 or execute a production contract requiring or suggesting that
22 the producer "segregate", "identity preserve", or "channel"
23 the commodity, or that uses variations or derivatives of
24 these terms, without providing definitions of these terms and
25 guidelines describing how producers should satisfy these
26 requirements or suggestions.

27 (k) Alteration of terms. Not alter the quality,
28 quantity, or delivery times of contract inputs provided to
29 the producer, unless agreed to in writing by the producer.

30 (l) Change in compensation. Not provide, offer, or
31 execute a production contract that contains a provision
32 allowing the contractor to unilaterally alter or modify the
33 formula or other basis for calculating a producer's
34 compensation, including any premium, in such a way that

1 amounts received by the producer might be less, unless the
2 producer is also given at least 60 days advance notice of the
3 change, and the option to terminate or cancel the production
4 contract without any liability to the contractor.

5 (m) Indemnification. Not provide, offer, or execute a
6 production contract that contains a provision requiring
7 producer to indemnify the contractor for matters beyond the
8 negligent or intentional acts of producer or producer's
9 agents.

10 (n) Buyer's call. Not provide, offer, or execute a
11 production contract that includes a "buyer's call", or
12 similar provision, without provision for the giving of at
13 least 3 days advance notice to the producer of the exercise
14 of that provision.

15 (o) Limitation of producer liability. Not provide,
16 offer, or execute a production contract wherein the
17 producer's liability for failure to provide a commodity
18 meeting the requirements of the production contract for
19 physical characteristics, specifications, or purity continues
20 beyond the time when the producer completes his or her
21 performance with reference to the physical delivery of the
22 commodity.

23 (p) Compensation examples. Not provide, offer, or
24 execute a production contract that does not contain examples
25 as to the calculation of the price, premium levels, or other
26 compensation to be received by the producer under the
27 production contract.

28 Section 35. Penalties and enforcement.

29 (a) Powers and duties of Director. The Director has all
30 powers necessary and proper to fully and effectively enforce
31 the provisions of this Code and has the general duty to
32 implement this Code, with the exception of the remedies
33 provided in Section 25. The Director's powers and duties

1 include, but are not limited to:

2 (1) The Director may, upon his or her initiative or
3 upon the written verified complaint of a producer setting
4 forth facts that if proved would constitute grounds for
5 requiring a contractor to appear at a hearing under this
6 Act, investigate the actions of any contractor providing,
7 offering, or executing production contracts covered by
8 the provisions of this Act.

9 (2) The Director (but not the Director's designee)
10 may issue subpoenas and bring before the Department any
11 person and take testimony either at an administrative
12 hearing or by deposition with witness fees and mileage
13 fees and in the same manner as prescribed by the Code of
14 Civil Procedure. The Director may administer oaths to
15 witnesses at any proceeding that the Department is
16 authorized by law to conduct. The Director (but not the
17 Director's designee) may issue subpoenas duces tecum to
18 command the production of records of any contractor.

19 (3) Notwithstanding other judicial remedies, the
20 Director may file a complaint and apply for a temporary
21 restraining order or a preliminary or permanent
22 injunction restraining or enjoining any person from
23 violating or continuing to violate this Code.

24 (4) The Director shall collect and deposit any
25 monetary penalties into the Agricultural Premium Fund.

26 (b) Administrative action and penalties.

27 (1) The Director shall, after becoming aware of a
28 violation of this Code, contact the contractor and give
29 the contractor 15 days after receipt of correspondence to
30 comply with the provisions of the Code and give the
31 Director adequate evidence of compliance. Compliance by a
32 contractor shall be in lieu of a hearing or any penalty.

33 (2) Following an administrative hearing and the
34 finding of a violation, the hearing officer may impose a

1 civil penalty of up to \$1,000 per violation per day.

2 (3) Following an administrative hearing and a
3 finding of a second violation of this Code within 6
4 months after the first violation, the hearing officer may
5 impose a civil penalty of up to \$5,000 per violation per
6 day.

7 (4) In a hearing where it is determined that any
8 provision of a production contract violates this Code,
9 the Director may declare that provision void and
10 unenforceable or may declare the entire production
11 contract void and unenforceable.

12 (c) Administrative procedure and review. The Illinois
13 Administrative Procedure Act applies to this Code. Final
14 administrative procedures of the Department are subject to
15 judicial review under Article III of the Code of Civil
16 Procedures and its rules. The term "administrative decision"
17 is defined as in Section 3-101 of the Code of Civil
18 Procedure.

19 (d) Rules. The Department may adopt rules that are
20 necessary for the implementation and administration of this
21 Code.

22 (e) Private cause of action. A producer who suffers
23 damages because of a contractor's violation of this Act may
24 bring a private civil action against the contractor and
25 obtain appropriate legal and equitable relief, including
26 damages.

27 Section 40. Conflict with Uniform Commercial Code. To the
28 extent any portion of this Code conflicts with or is
29 inconsistent with any portion of the Uniform Commercial Code,
30 the provisions of this Code control.

31 Section 45. Rulemaking. The Director must adopt rules
32 necessary to implement this Act not later than January 1,

1 2003.

2 Section 99. Effective date. This Act takes effect on

3 January 1, 2003.