

House Bill 1498

By: Representatives Sims of the 167<sup>th</sup>, Porter of the 143<sup>rd</sup>, James of the 140<sup>th</sup>, Shanahan of the 10<sup>th</sup>, Jamieson of the 22<sup>nd</sup> and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 13 of the Official Code of Georgia Annotated, relating to contracts, so as to  
2 provide for the regulation of certain agricultural production contracts; to provide a short title;  
3 to provide for definitions; to provide for applicability; to provide for the effect and terms of  
4 such contracts; to require and provide for certain requirements and disclosure statements; to  
5 provide for notices; to provide for the rights of parties to such contracts; to provide for  
6 review and enforcement of contracts, contractual rights, and the laws related thereto; to  
7 provide for cancellation of such contracts; to prohibit the inclusion of certain terms and  
8 conditions in such contracts; to provide that certain contracts shall be void and shall not be  
9 enforceable; to provide for termination, cancellation, and failure to renew such contracts and  
10 the requirements connected therewith; to prohibit certain unfair practices and conduct; to  
11 prohibit binding arbitration for resolution of disputes; to require mediation and provide for  
12 resolution of disputes; to provide for civil penalties; to provide for criminal penalties; to  
13 provide for injunctions and other legal and equitable relief; to provide for applicability; to  
14 provide for other matters relating to the foregoing; to repeal conflicting laws; and for other  
15 purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by  
19 adding at the end thereof a new Chapter 12 to read as follows:

20 "CHAPTER 12

21 13-12-1.

22 (a) This chapter shall be known and may be cited as the 'Fair Farming Act.'

23 (b) As used in this chapter, the term:

- 1 (1) 'Active contractor' means a person who owns a commodity that is produced by a  
2 contract producer at the contract producer's contract operation according to a production  
3 contract.
- 4 (2) 'Animal feeding operation' means a lot, corral, building, or other area in which  
5 livestock is confined and fed. An animal feeding operation does not include a livestock  
6 market.
- 7 (3) 'Capital investment' means an investment in one of the following:  
8 (A) A structure, such as a building or manure storage structure; or  
9 (B) Machinery or equipment associated with producing a commodity which has a  
10 useful life in excess of one year.
- 11 (4) 'Commodity' means livestock, raw milk, or a crop.
- 12 (5) 'Confinement feeding operation' means an animal feeding operation in which  
13 livestock is confined to areas which are totally roofed.
- 14 (6) 'Contract crop field' means farmland located in this state where a crop is produced  
15 according to a production contract by a contract producer who owns or leases the  
16 farmland.
- 17 (7) 'Contract livestock facility' means an animal feeding operation located in this state  
18 in which livestock or raw milk is produced according to a production contract by a  
19 contract producer who holds a legal interest in the animal feeding operation. 'Contract  
20 livestock facility' includes a confinement feeding operation, an open feedlot, or an area  
21 which is used for the raising of crops or other vegetation and upon which livestock is fed  
22 for slaughter or is allowed to graze or feed.
- 23 (8) 'Contract operation' means a contract livestock facility or a contract crop field.
- 24 (9) 'Contract producer' means a producer who holds a legal interest in a contract  
25 operation and who produces a commodity under a production contract.
- 26 (10) 'Contractor' means a person who is an active contractor or a passive contractor.
- 27 (11) 'Crop' means a plant used for food, animal feed, fiber, oil, or nutraceuticals,  
28 including, but not limited to, alfalfa, barley, buckwheat, corn, flax, forage, millet, oats,  
29 popcorn, rye, sorghum, soybeans, sunflowers, tobacco, wheat, and grasses used for forage  
30 or silage, but not timber or timber products.
- 31 (12) 'Farmland' means agricultural land that is suitable for use in farming.
- 32 (13) 'Investment requirement' means a provision in a contract which requires the contract  
33 producer to make capital investments associated with producing a commodity subject to  
34 a production contract. The provisions may be included as part of one or more written  
35 agreements or contracts and may be included as part of a production contract.
- 36 (14) 'Livestock' means beef cattle, dairy cattle, poultry, sheep, or swine.

1 (15) 'Open feedlot' means an unroofed or partially roofed animal feeding operation in  
 2 which no crop, vegetation, or forage growth or residue cover is maintained during the  
 3 period that livestock is confined in the operation.

4 (16) 'Processor' means a person engaged in the business of manufacturing goods from  
 5 commodities, including by slaughtering or processing livestock, processing raw milk, or  
 6 processing crops.

7 (17) 'Produce' means to do any of the following:

8 (A) Provide feed or services relating to the care and feeding of livestock. If the  
 9 livestock is dairy cattle, then 'produce' includes milking the dairy cattle and storing raw  
 10 milk; or

11 (B) Provide for planting, raising, harvesting, and storing a crop. 'Produce' includes  
 12 preparing the soil for planting and nurturing the crop by the application of fertilizers or  
 13 soil conditioners or pesticides.

14 (18) 'Producer' means a person who produces a commodity, including, but not limited  
 15 to, a contract producer. 'Producer' does not include a commercial fertilizer or pesticide  
 16 applicator, a feed supplier, or a veterinarian when acting in such capacity.

17 (19) 'Production contract' means a written agreement that provides for the production of  
 18 a commodity or the provision of management services relating to the production of a  
 19 commodity by a contract producer. A production contract is executed when it is signed  
 20 by each party to the contract or by a person authorized to act on the party's behalf.

21 13-12-2.

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

25 (1) The production contract is executed by an active contractor and a contract producer  
 26 for the production of the commodity; or

27 (2) The production contract is executed by an active contractor for the provision of  
 28 management services to the contract producer in the production of the commodity.

29 13-12-3.

30 A production contract imposes an obligation of good faith, as defined in Code Section  
 31 11-1-201, on all parties with respect to the performance and enforcement of the production  
 32 contract.

1 13-12-4.

2 (a) A production contract must be in writing and must be accompanied by a clear written  
3 disclosure statement setting forth the nature of the material risks faced by the producer if  
4 the producer enters into the contract. The statement must meet the readability requirements  
5 of subsection (b) of this Code section. The statement may be in the form of a written  
6 statement or checklist and may be developed in cooperation with producers or producer  
7 organizations. The statement shall disclose the following:

8 (1) In the case of production contracts, the producer's right to review as provided in  
9 Code Section 13-12-5;

10 (2) Contract duration;

11 (3) Contract termination;

12 (4) Renegotiation standards;

13 (5) Responsibility for environmental damage;

14 (6) Factors to be used in determining payment; and

15 (7) Responsibility for obtaining and complying with local, state, and federal permits.

16 (b)(1) As used in this subsection, the term 'legible type' means a typeface at least as large  
17 as ten-point modern type, one-point leaded. A production contract entered into, amended,  
18 or renewed after the effective date of this chapter must contain as the first page, or first  
19 page of text if it is preceded by a title page or pages, a cover sheet as provided in this  
20 subsection. The cover sheet or sheets must comply with paragraph (2) of this subsection  
21 and must contain all of the following:

22 (A) A brief statement that the document is a legal contract between the parties;

23 (B) The statement:

24 **'READ YOUR CONTRACT CAREFULLY. This cover sheet provides only a brief**  
25 **summary of your contract. This is not the contract and only the terms of the actual**  
26 **contract are legally binding. The contract itself sets forth, in detail, the rights and**  
27 **obligations of both you and the contractor or processor. IT IS THEREFORE**  
28 **IMPORTANT THAT YOU READ YOUR CONTRACT CAREFULLY.';**

29 (C) The written disclosure of risks required by subsection (a) of this Code section;

30 (D) A statement detailing, in plain language, the producer's right to review the contract  
31 as described in Code Section 13-12-5;

32 (E) An index of the major provisions of the contract and the pages on which they are  
33 found, including all of the following:

34 (i) The names of all parties to the contract;

35 (ii) The definition sections of the contract;

36 (iii) The provisions governing termination, cancellation, renewal, and amendment of  
37 the contract by either party;

1 (iv) The duties or obligations of each party; and

2 (v) Any provisions subject to change in the contract.

3 (2) A production contract must be in legible type, appropriately divided and captioned  
4 by its various sections, and written in clear and coherent language using words and  
5 grammar that are understandable by a person of average intelligence, education, and  
6 experience within the industry. This paragraph does not apply to the following terms in  
7 a production contract:

8 (A) Particular words, phrases, provisions, or forms of agreement specifically required,  
9 recommended, or endorsed by a state or federal statute, rule, or regulation; or

10 (B) Technical terms used to describe the services or property which are the subject of  
11 the contract if the terms are customarily used by producers in the ordinary course of  
12 business in connection with the services or property being described.

13 (c) In addition to the remedies provided in Code Section 13-12-9, a court reviewing a  
14 production contract may change the terms of the contract or limit a provision to avoid an  
15 unfair result if the court finds all of the following:

16 (1) A material provision of the contract violates subsection (a) or (b) of this Code  
17 section;

18 (2) The violation caused the producer to be substantially confused about any of the  
19 rights, obligations, or remedies of the contract; and

20 (3) The violation has caused or is likely to cause financial detriment to the producer.

21 (d) If the court reforms or limits a provision of a production contract, the court shall also  
22 make orders necessary to avoid unjust enrichment. Bringing a claim for relief under this  
23 subsection does not entitle a producer to withhold performance of an otherwise valid  
24 contractual obligation. No relief may be granted under this subsection unless the claim is  
25 brought before the obligations of the contract have been fully performed.

26 (e)(1) In a proceeding in which civil penalties are claimed from a party for a violation  
27 of this Code section, it is a defense to the claim that the party made a good faith and  
28 reasonable effort to comply.

29 (2) Notwithstanding Code Section 13-12-9, a party who has made a good faith and  
30 reasonable effort to comply with this Code section may not be assessed attorney's fees  
31 or costs of investigation in an action for violating this Code section.

32 (f) Violation of this Code section is not a defense to a claim arising from a producer's  
33 breach of a production contract. A producer may recover actual damages caused by a  
34 violation of this Code section only if the violation caused the producer to not understand  
35 the rights, obligations, or remedies of the contract.

36 (g) A claim that a production contract violates this Code section must be raised within six  
37 years of the date the contract is executed by the producer.

1 13-12-5.

2 A contract producer may cancel a production contract by mailing a written cancellation  
3 notice to the contractor within three business days after the contract is executed or before  
4 a later cancellation deadline if a later deadline is specified in the contract. The contract  
5 producer's right to cancel, the method by which the contract producer may cancel, and the  
6 deadline for canceling the production contract shall be clearly disclosed in every  
7 production contract.

8 13-12-6.

9 (a) As used in this Code section, the term:

10 (1) 'Contract input' means a commodity or an organic or synthetic substance or  
11 compound that is used to produce a commodity including, but not limited to, any of the  
12 following:

- 13 (A) Livestock or plants;
- 14 (B) Agricultural seeds;
- 15 (C) Semen or eggs for breeding livestock;
- 16 (D) A fertilizer or pesticide.

17 (2) 'Producer right' means one of the following legal rights and protections:

- 18 (A) The right of a producer to join or belong to, or to refrain from joining or belonging  
19 to, an association of producers;
- 20 (B) The right of a producer to enter into a membership agreement with an association  
21 of producers, a processor, or another producer and the right of the producer to exercise  
22 contractual rights under such a membership agreement;
- 23 (C) The right of a producer to lawfully provide statements or information regarding  
24 alleged improper actions or violations of law by a contractor or processor. This right  
25 does not include the right to make statements or provide information if the statements  
26 or information are determined to be libelous or slanderous;
- 27 (D) The right of a producer to review a proposed production contract with any other  
28 person, including an attorney, chosen by the producer for a period of three business  
29 days prior to the execution of the contract;
- 30 (E) The right of a producer to disclose the terms of a production contract under this  
31 Code section; or
- 32 (F) The right of a producer to enforce other protections afforded by this chapter or  
33 other laws or regulations.

34 (b) It shall be unlawful for any contractor or processor knowingly to engage or permit any  
35 employee or agent to engage in the following unfair practices in connection with  
36 production contracts:

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

4 (A) The execution, termination, extension, or renewal of a production contract;

5 (B) The treatment of a producer, which may include providing discriminatory or  
6 preferential terms in a production contract or interpreting terms of an existing  
7 production contract in a discriminatory or preferential manner. The terms may relate  
8 to the price paid for a commodity, the quality or the quantity of a commodity  
9 demanded, or financing, including investment requirements;

10 (C) The grant of a reward or imposition of a penalty, including the denial of a reward.  
11 The reward or penalty may be in any form, including, but not limited to, financial  
12 rewards or penalties. Financial rewards or penalties may relate to loans, bonuses, or  
13 inducements; or

14 (D) The alteration of the quality, quantity, or delivery times of contract inputs  
15 provided to the producer;

16 (2) To provide false information to the producer, which may include false information  
17 relating to any of the following:

18 (A) A producer with whom the producer associates or an association of producers or  
19 a production organization with which the producer is affiliated, including, but not  
20 limited to any of the following:

21 (i) The character of the producer; or

22 (ii) The condition of the finances or the management of the association of producers  
23 or agricultural organization; or

24 (B) Producer rights provided by this chapter or other provisions of law;

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

29 (4) To refuse to allow a contract producer or the contract producer's designated  
30 representative to observe, by actual observation at the time of weighing, the weights and  
31 measures used to determine the contract producer's compensation under a production  
32 contract;

33 (5) To execute a production contract in violation of the disclosure of risks and readability  
34 requirements of Code Section 13-12-4;

35 (6) To execute a production contract which includes a confidentiality provision;

36 (7) To execute a production contract without a mediation provision as required under  
37 Code Section 13-12-9;

1 (8) To execute a production contract which includes a waiver of any producer right or  
2 any obligation of a contractor or processor established under this chapter; or

3 (9) To execute a production contract requiring the application of the law of another state  
4 in lieu of this chapter.

5 13-12-7.

6 Any provision of a production contract which waives a producer's right or an obligation  
7 of a contractor or processor established by this chapter is void and unenforceable. This  
8 Code section does not affect other provisions of a production contract, including a  
9 production contract or related document, policy, or agreement which can be given effect  
10 without the voided provision.

11 13-12-8.

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

14 13-12-9.

15 No production contract shall require binding arbitration as a method for resolution of  
16 disputes concerning the contract. A production contract must contain language providing  
17 for resolution of disputes concerning the contract by mediation. If there is a dispute  
18 involving a production contract, either party may make a written request for mediation  
19 services as specified in the contract to facilitate resolution of the dispute. The parties must  
20 receive a release from the mediator before the dispute can be heard by a court.

21 13-12-10.

22 (a) A contractor, processor, or producer committing an unfair practice under Code Section  
23 13-12-6 shall be subject to a civil penalty of up to \$10,000.00.

24 (b) A contractor, processor, or producer committing an unfair practice under Code Section  
25 13-12-6 shall be guilty of a misdemeanor and, upon conviction, shall be fined \$1,000.00.

26 (c)(1) A producer who suffers damages because of a contractor's or processor's violation  
27 of this chapter may obtain appropriate legal and equitable relief, including damages.

28 (2) In such a civil action against the contractor or processor, the court shall award the  
29 producer who is the prevailing party reasonable attorney's fees and other litigation  
30 expenses.

31 (3) In order to obtain injunctive relief, the producer is not required to post a bond, prove  
32 the absence of an adequate remedy at law, or show the existence of special circumstances,  
33 unless the court for good cause otherwise orders. The court may order any form of

1 prohibitory or mandatory relief that is appropriate under principles of equity, including,  
2 but not limited to, issuing a temporary or permanent restraining order.

3 13-12-11.

4 (a) Except as provided in subsection (b) of this Code section, this chapter applies to  
5 production contracts in force on or after the effective date of this chapter, regardless of the  
6 date the production contract is executed.

7 (b) Code Section 13-12-4 (relating to disclosure of risks and readability), Code Section  
8 13-12-5 (relating to contract producer's three business day right to review), Code Section  
9 13-12-6 (relating to the use of 'tournament compensation'), Code Section 13-12-8 (relating  
10 to choice of law), and Code Section 13-12-9 (relating to mediation) shall apply to  
11 production contracts executed or substantively amended after the effective date of this  
12 chapter."

13

## **SECTION 2.**

14 All laws and parts of laws in conflict with this Act are repealed.