

House Bill 644

By: Representatives Sims of the 130th, Black of the 144th and James of the 114th

A BILL TO BE ENTITLED
AN ACT

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

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

17 Title 2 of the Official Code of Georgia Annotated, relating to agriculture, is amended by
18 adding at the end thereof a new Chapter 22 to read as follows:

19 style="text-align:center">"CHAPTER 22

20 2-22-1.

21 As used in this chapter, the term:

22 (1) 'Active contractor' means an entity or person who owns poultry produced by a
23 contract producer at the contract producer's contract operation according to a production
24 contract.

1 (2) 'Contract producer' means a producer who holds a legal interest in a contract
2 operation and who produces poultry under a production contract.

3 (3) 'Contractor' means an active contractor or a passive contractor.

4 (4) 'Crop' means a plant used for food, animal feed, fiber, oil, or nutraceuticals.

5 (5) 'Investment requirement' means a provision in a contract that requires the contract
6 producer to make capital investments associated with producing poultry subject to a
7 production contract. The provisions may be included as part of one or more written
8 agreements or contracts and may be included as part of a production contract.

9 (6) 'Passive contractor' means a person who furnishes management services to a contract
10 producer and who does not own poultry produced by the contract producer at the contract
11 producer's contract operation according to a production contract.

12 (7) 'Produce' means to provide feed or services relating to the care and feeding of
13 poultry.

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

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

18 (A) The right of a producer to have all contracts reviewed by an attorney and to have
19 three business days to terminate the contract after it has been executed;

20 (B) The right of a producer to join or belong to, to refrain from joining or belonging
21 to, or to form or initiate the formation of an association of producers;

22 (C) The right of a producer to enter into a membership agreement with an association
23 of producers, a processor, or another producer and the right of the producer to exercise
24 contractual rights under such membership agreement;

25 (D) The right of a producer to lawfully provide statements or information regarding
26 alleged improper actions or violations of law by a contractor or processor. This right
27 does not include the right to make statements or provide information determined to be
28 libelous or slanderous;

29 (E) The right of a producer to lawfully choose between two kinds of contracts offered
30 by any contractor or processor that include resolution of disputes concerning the
31 contract by either mediation or binding arbitration agreements;

32 (F) The right of a producer, upon request, to receive the statistical information and data
33 used to determine compensation paid to the contract producer under a production
34 contract, including, but not limited to:

35 (i) Feed conversion rates;

36 (ii) Feed analysis;

37 (iii) Origin and breeder history; and

1 (iv) Morphology of dead animals; and

2 (G) The right of a contract producer or his or her designated representative to observe,
3 by actual observation at the time of weighing, the weights and measures used to
4 determine the contract producer's compensation under a production contract.

5 (10) 'Production contract' means a written agreement that provides for the production of
6 poultry or the provision of management services relating to the production of poultry by
7 a contract producer. A production contract is executed when it is signed by each party to
8 the contract or by a person authorized to act on a party's behalf.

9 2-22-2.

10 This chapter applies to production contracts that relate to the production of poultry by an
11 active or passive contractor and produced by a contract producer at the producer's contract
12 operation, if the following applies:

13 (1) The production contract is executed by an active or passive contractor for the
14 production of poultry; or

15 (2)(A) The production contract is executed by an active or passive contractor for the
16 provision of management services to the contract producer in the production of poultry;

17 (B) The contract provides for management services furnished by the passive contractor
18 to the contract producer in the production of poultry; or

19 (C) The passive contractor has a contractual relationship with the active contractor
20 involving the production of poultry.

21 2-22-3.

22 A production contract must impose an obligation of good faith, as defined by Code Section
23 11-1-201, on all parties with respect to the performance and enforcement of the production
24 contract.

25 2-22-4.

26 (a) A production contract must be in writing and must be accompanied by a clear written
27 disclosure statement setting forth the nature of material risks faced by the producer if the
28 producer enters into the contract. The contract and the disclosure statement must be in
29 legible type, appropriately divided and captioned by their various sections, and written in
30 clear and coherent language using words and grammar understandable by a person of
31 average intelligence, education, and experience within the industry. This subsection does
32 not apply to the following terms in a production contract:

33 (1) Particular words, phrases, provisions, or forms of agreement specifically required,
34 recommended, or endorsed by a state or federal statute, rule, or regulation; or

1 (2) Technical terms used to describe the services or property that are the subject of the
2 contract if the terms are customarily used by producers in the ordinary course of
3 business in connection with the services or property being described.

4 (b) The disclosure statement must be in the form of a written statement or checklist and
5 may be developed in cooperation with producers or producer organizations. The statement
6 shall disclose the following:

7 (1) The producer's right to review the contract and to have the contract reviewed by an
8 attorney;

9 (2) Contract duration;

10 (3) Contract termination;

11 (4) Renegotiation standards;

12 (5) Responsibility for environmental damage;

13 (6) Factors to be used to determine payment;

14 (7) Responsibility for obtaining and complying with local, state, and federal permits;

15 (8) Provision that determines contractual disputes and options for resolution of disputes;

16 (9) Provisions governing termination, cancellation, renewal, and amendment of the
17 contract by either party;

18 (10) Any provisions subject to change in the contract; and

19 (11) The duties and obligations of each party.

20 2-22-5.

21 A contract producer may cancel a production contract by mailing a written cancellation
22 notice to the contractor within three business days after the contract is executed. The
23 contract producer's right to cancel shall be clearly disclosed in every production contract.

24 2-22-6.

25 (a) This Code section shall only apply to a production contract executed by a contract
26 producer and a contractor if the contract requires the contract producer to make capital
27 investments of \$100,000.00 or more.

28 (b) Except as provided in subsection (d) of this Code section, a contractor shall not
29 terminate, cancel, or fail to renew a production contract until the contractor has done the
30 following:

31 (1) Given written notice to the contract producer of the intention to cancel, terminate, or
32 not renew at least 90 days prior to the effective date of the cancellation, termination, or
33 nonrenewal;

1 (2) Reimbursed the contract producer for damages incurred due to the termination,
 2 cancellation, or failure to renew. Damages shall be based on the remaining useful life of
 3 the structures, machinery, or equipment involved.

4 (c) Except as provided in subsection (d) of this Code section, if a contract producer
 5 materially breaches a production contract, including, but not limited to, investment
 6 requirements of a production contract, a contractor may not terminate, cancel, or fail to
 7 renew the production contract until the following have occurred:

8 (1) The contractor has provided written notice of termination, cancellation, or
 9 nonrenewal at least 45 days before the effective date of such termination, cancellation,
 10 or nonrenewal. The notice must contain a list of complaints alleging the causes for the
 11 breach; and

12 (2) The contract producer has failed to remedy each cause of the breach as alleged in the
 13 list of complaints provided in the notice within 30 days following the receipt of the
 14 notice. An effort by a contract producer to remedy a cause of the alleged breach shall not
 15 be construed as an admission of a breach in a civil cause of action.

16 (d) A contractor may terminate, cancel, or fail to renew a production contract without
 17 notice or remedy as required by subsections (b) and (c) of this Code section if the basis for
 18 such action is any of the following:

19 (1) Voluntary abandonment of the contractual relationship by the contract producer. A
 20 complete failure of a contract producer's performance under a production contract shall
 21 be deemed abandonment; or

22 (2) The conviction of the contract producer of an offense of fraud, theft, arson, or any
 23 violent act perpetrated against the contractor. Upon conviction of any such offense, a
 24 contract producer shall pay restitution in the amount or value of the property involved.

25 2-22-7.

26 It shall be unlawful for any contractor or processor knowingly to engage in or permit any
 27 employee or agent to engage in the following unfair practices in connection with
 28 production contracts:

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

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

33 (B) The treatment of a producer, which may include providing discriminatory or
 34 preferential terms in a production contract or interpreting terms of an existing
 35 production contract in a discriminatory or preferential manner;

- 1 (C) The grant of a reward or imposition of a penalty, including the denial of a reward;
 2 or
 3 (D) The alteration of the quality, quantity, or delivery times of contract inputs provided
 4 to the producer;
- 5 (2) To provide false information to the producer, which may include, but is not limited
 6 to, false information relating to the following:
- 7 (A) A producer with whom the producer associates or an association of producers or
 8 an agricultural organization with which the producer is affiliated, including, but not
 9 limited to:
- 10 (i) The character of the producer; or
 11 (ii) The condition of the finances or management of the association of producers or
 12 agricultural organization; or
- 13 (B) Producer rights provided by this chapter or other provisions of law;
- 14 (3) To refuse to provide to a contract producer upon request the statistical information
 15 and data used to determine compensation paid to the contract producer;
- 16 (4) To refuse to allow a contract producer or his or her authorized designee to observe,
 17 by actual observation at the time of weighing, the weights and measures used to
 18 determine the contract producer's compensation under a production contract;
- 19 (5) To execute a production contract in violation of the disclosed risks and readability
 20 requirements;
- 21 (6) To execute a production contract without giving the contract producer his or her
 22 choice of either mediation or binding arbitration as a method of settling disputes;
- 23 (7) To execute a production contract which includes a waiver of any producer right; or
 24 (8) To execute a production contract requiring the application of the law of another state
 25 in lieu of this chapter. Any such provision shall be void and unenforceable.

26 2-22-8.

- 27 (a) A production contract must contain language providing for resolution of disputes
 28 concerning the contract. All contractors and processors shall offer to each contract
 29 producer an option for mediation or binding arbitration for resolution of disputes. The
 30 contract producer shall have the freedom to choose one of these options for contract dispute
 31 resolution.
- 32 (b) If there is a dispute involving the production contract, either party may make a written
 33 request for binding arbitration or mediation as specified in the contract to facilitate
 34 resolution of the dispute. If mediation is selected, the parties must receive a release from
 35 the mediator before the dispute can be heard by a court.

1 (c) If binding arbitration is selected as the method for resolution of disputes, the arbitrator
2 shall not be on a retainer by either party to the dispute. The arbitrator shall be an
3 uninterested third party.

4 2-22-9.

5 (a) A contractor or processor committing an unfair practice under this chapter shall be
6 subject to a civil penalty of up to \$10,000.00.

7 (b) A contractor or processor committing an unfair practice under this chapter shall be
8 guilty of a misdemeanor.

9 (c) The resolution of a contract dispute through binding arbitration shall not be admissible
10 in any action for a civil penalty brought pursuant to subsection (a) of this Code section or
11 in any prosecution pursuant to subsection (b) of this Code section.

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

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

17 (3) In order to obtain injunctive relief, the producer is not required to post a bond, prove
18 the absence of an adequate remedy at law, or show the existence of special circumstances,
19 unless the court for good cause otherwise orders. The court may order any form of
20 prohibitory or mandatory relief appropriate under principles of equity, including, but not
21 limited to, issuing a temporary or permanent restraining order.

22 (e) The Commissioner of Agriculture is authorized to adopt rules and regulations to
23 implement this chapter. In no way shall such rules and regulations impose any
24 modification upon the producer bill of rights contained in this chapter, any method of
25 contract dispute resolution authorized by this chapter, or any civil or criminal penalties
26 authorized by this chapter.

27 (f) The Commissioner of Agriculture shall be primarily responsible for enforcing this
28 chapter. In enforcing this chapter the Commissioner may do any of the following:

29 (1) Apply to the superior court for an injunction to:

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

32 (B) Require a contractor or processor to comply with the provisions of this chapter;

33 (2) Apply to the superior court for the issuance of a subpoena to obtain a production
34 contract for the purposes of enforcing this chapter; and

35 (3) Bring an action in the superior court to enforce the penalties provided in subsections
36 (a) and (b) of this Code section.

1 2-22-10.

2 This chapter shall apply to acts committed and to contracts entered into, renewed, or
3 substantively amended on or after the effective date of this chapter.”

4 **SECTION 2.**

5 This Act shall become effective upon its approval by the Governor or upon its becoming law
6 without such approval.

7 **SECTION 3.**

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