

SHORT TITLE: Agriculture; creating the Oklahoma Contract Growers
Fair Practices Act; codification; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 1094

By: Littlefield

AS INTRODUCED

An Act relating to agriculture; providing short title; creating the Oklahoma Contract Growers Fair Practices Act; stating legislative findings; defining terms; prohibiting certain acts by integrator; prohibiting certain unfair trade practices; providing for mediation services; providing for assistance in proposing and implementing arbitration agreements; providing for compulsory and binding arbitration; prohibiting integrator to terminate contract under certain circumstances; providing exception; prohibiting producer to terminate contract under certain circumstances; providing exception; providing for waiving of notice period and allowing termination of contract under certain circumstances; allowing termination of contract by integrator if certain bond or letter of credit has not been received by producer within certain time; providing for contract termination after production cycle; requiring integrator to assume certain financial obligations and liabilities of producer under certain circumstances and upon termination of contract; requiring integrator to meet with producer; requiring sixty-day written notice of intent to modify contract; requiring negotiations to be at arm's length and in good faith; allowing

licensing authority to set certain conditions of licensing; stating liability of certain parent corporation for certain claims under certain conditions; requiring integrator to reimburse producer for costs of disposal of dead poultry; providing for civil proceedings by Commissioner if certain provision is violated; providing for appropriate relief; providing for certain penalties; providing for suspension of integrator's license; awarding court costs and attorney fees to prevailing party; providing for injunctive relief to prohibit violations of this act; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2101 of Title 2, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Contract Growers Fair Practices Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2102 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that the contract production of poultry constitutes an important and growing portion of the state's economy; that it is beneficial to the citizens of this state to protect the vitality of these industries; that there are many contract poultry growers in the State of Oklahoma who need assistance and protection in order to maintain their businesses; and that contract growers of poultry should be protected from hardships caused by unfair,

deceptive, and unethical bargaining and trade practices of integrators.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2103 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in this act, the following words and phrases shall have the meanings ascribed herein unless the context clearly reflects otherwise:

1. "Association" means any association of agricultural producers as defined in Section 15(a) of the Agricultural Marketing Act of 1929, as amended (29 Stat. 317; 12 U.S.C. 1141(a)), or in Section 1 of the act entitled "An Act to Authorized Association of Agricultural Producer" approved February 18, 1922 (42 Stat. 388, 7 U.S.C. 291);

2. "Commissioner" means the Commissioner of the State Department of Agriculture;

3. "Flock frequency" means the number of flocks placed in a producer's facility in any twelve-month period;

4. "Flock duration" means the length of time that a flock is placed in a producer's facility;

5. "Flock size" means the number of poultry placed in a producer's facility;

6. "Good faith" means honesty in fact in the conduct or transaction concerned as that term is defined and applied in negotiations;

7. "Integrator" means a person who contracts with a producer to grow out, raise, or otherwise produce poultry or poultry products and subsequently processes poultry and poultry products in the State of Oklahoma for commercial purposes;

8. "Mediation" is a process by which the parties to a dispute jointly explore and resolve all or part of their differences with

the assistance of an impartial person. The mediator's role is to assist the parties in resolving the dispute themselves;

9. "Person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not, or an agent or employee of any such person;

10. "Poultry" means any domesticated bird, whether live or dead. This specifically includes, but is not limited to, laying hens, broiler breeding hens, broiler breeding pullets, commercial egg hens, commercial egg pullets, broilers, roasters, turkey hens, and turkey toms;

11. "Poultry product" means eggs, poultry carcasses, poultry by-products, or any part thereof; and

12. "Producer" means a person who produces or causes to be produced poultry or poultry products by contracting with an integrator to provide management, labor, machinery, facilities, or any other production input for the production of poultry or poultry products.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2104 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for an integrator to use coercion, intimidation, the threat of retaliation, or the threat of contract termination, cancellation, or nonrenewal in order to impose, demand, compel, or dictate the terms, payment, or manner of payment, and the signing of a contract by a producer.

B. It is unlawful for an integrator to use coercion, intimidation, the threat of retaliation, or the threat of contract termination, cancellation, or nonrenewal, in order to require the producer to make capital improvements such as buildings or equipment.

C. It is unlawful for the integrator to interfere with, restrain, or coerce producers in the exercise of their rights to join, form, and assist associations of producers.

D. It is unlawful for an integrator to refuse to provide to the producer upon request, the statistical information and data used to determine compensation paid to the producer for flock settlement. This statistical information and data includes, but is not limited to, feed conversion rates, feed analysis, averages of growers, flock origination, and breeder history.

E. It is unlawful for an integrator to refuse to allow a producer or his or her designated representative to observe, by actual observation at the time of weighing, the weights and measures used to determine the producer's compensation at flock settlement.

F. It shall be unlawful for an integrator to differentiate in producers' price per pound, i.e. all producers shall be paid the same base price per pound.

G. It shall be unlawful for an integrator to use any other method to determine the settlement of a producer, other than that stated in the integrator/grower contract.

H. It shall be unlawful to engage in unfair trade practices prohibited by the Perishable Agricultural Commodities Act, 7 U.S.C. Sections 499a-499s and the rules promulgated thereafter at 70 C.F.R. Part 46, and those practices prohibited by the Packers and Stockyards Act, 7 U.S.C., Section 181 et seq., and the rules promulgated thereunder at 7 C.F.R., Part 201 et seq.

I. If federal and state regulations are identical, federal jurisdiction and enforcement control, unless the federal authority decides not to enforce the regulation.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2105 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Commissioner may provide mediation services if requested either by an accredited association or a designated integrator engaged in bargaining with an accredited association, and if, in the Commissioner's judgment, an impasse in bargaining has occurred. The Commissioner shall provide assistance in proposing and implementing arbitration agreements between accredited association and designated integrators. The Commissioner shall establish a procedure for compulsory and binding arbitration if he or she finds that an impasse in bargaining exists and such impasse will cause substantial economic hardship to contract growers or integrators involved in the bargaining.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2106 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. An integrator shall not terminate, cancel, or fail to renew a contract that requires a producer to make a capital investment secured by a finance statement, promissory note, deed of trust, or otherwise, in buildings or equipment having a useful life of five (5) or more years until:

1. The producer has been given written notice of the intention to terminate, cancel, or not renew the contract at least one hundred eighty (180) days before the effective date of the termination, cancellation, or nonrenewal or as provided in subsection C of this section; and

2. The producer has been reimbursed for damages incurred by an investment in buildings or equipment that was made for the purpose of meeting minimum requirements of the contract.

B. Except as otherwise provided in subsection C of this section, if the producer fails to materially comply with the provisions of a contract that requires a capital investment subject to subsection A of this section, an integrator may not terminate, cancel, or fail to renew that contract until:

1. The integrator has given written notice with all reasons for the termination, cancellation, or nonrenewal at least ninety (90) days before termination, cancellation, or nonrenewal, as provided for in subsection C of this section; and

2. The producer, as recipient of the notice, fails to correct the reasons stated for the termination, cancellation, or nonrenewal in the notice within sixty (60) days of receipt of the notice.

C. The one-hundred-eighty-day notice period under paragraph 1 of subsection A of this section, and the ninety-day notice period and sixty-day notice period under paragraphs 1 and 2 of subsection B of this section are waived and the contract may be canceled, terminated, or not renewed immediately if the alleged grounds for termination, cancellation, or nonrenewal are:

1. Voluntary abandonment of the contract relationship by the producers; or

2. Conviction of the producer of an offense directly related to the business conducted under the contract.

D. An integrator may terminate a contract if the integrator secures a bond or irrevocable letter of credit in a sufficient amount to cover the probable claim if the damages the producer is entitled to under subsection A of this section have not been received within one hundred eighty (180) days after notice of intent to terminate, cancel, or not renew has been received by the producer.

E. If the one-hundred-eighty-day or ninety-day notice periods expire before the end of a production cycle, the contract will not terminate until the end of that production cycle. An integrator may terminate a contract at the end of a production cycle that occurs before the end of the one-hundred-eighty-day or ninety-day notice period, if the producer agrees to the termination.

F. If the integrator terminates, cancels, or fails to renew a contract other than as provided above, the integrator shall assume

the outstanding financial obligations and liabilities of the producer and shall pay the producer fair market value for equity, if any, in the buildings and equipment which were acquired as minimum requirements under the contract. All buildings and equipment which accrue to the integrator pursuant to this subsection must be removed from the producer's premises within ninety (90) days of the date of termination, cancellation or nonrenewal.

G. Notice shall be effective upon receipt by the producer.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2107 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The integrator shall agree to meet and confer with the producer or his or her authorized representative at a time and place mutually agreeable to the parties to discuss concerns of the producer.

B. The integrator shall provide a sixty-day written notice of intent to modify terms or conditions of the contract to the producer. The written notice shall state the proposed changes to the contract. Notice shall be effective upon receipt by the producer.

C. All contract terms shall be negotiated between the integrator and the producer at arm's length and in good faith.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2108 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. If an integrator is required to obtain a license to purchase poultry or poultry products, the licensing authority may require the parent company of a licensee subsidiary to guarantee payment or contract performance as a condition of licensing.

B. If an integrator is the subsidiary of another corporation, partnership, or association, the parent corporation is liable to a producer for the amount of any unpaid claim or contract performance

claim if the integrator fails to pay or perform according to the terms of the contract or the provisions of this act.

C. The integrator shall reimburse the producer for the costs incurred by the producer for disposal of dead poultry. This provision includes, but is not limited to, the requirements of the Environmental Protection Agency (EPA).

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2109 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Whenever on the basis of any information available to him or her, the Commissioner finds that any person is in violation of Section 4 of this act, or in violation of any order of the Commissioner, he or she shall bring a civil action in accordance with subsection B of this section.

B. The Commissioner is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction. Any action under this section may be brought in the district court of the county in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

C. Any person who violates Section 4 of this act or order of the Commissioner issued under Section 9 or 10 of this act shall be subject to a civil penalty not to exceed One Thousand Dollars (\$1,000.00) per day of such violation.

D. Any person who willfully violates Section 4 of this act, or any order of the Commissioner under Section 9 or 10 of this act, shall be guilty of a misdemeanor punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) per day of such violation or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

E. In addition to the authority of the Commissioner in subsection A of this section, the court, in its discretion, may

suspend the integrator's license to operate in this state for a period not to exceed thirty (30) days or the court may revoke the integrator's license.

F. In an action to recover damages or for injunctive relief, if the court finds that there has been a violation of this act, court costs and attorney fees may be awarded to the prevailing party.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2110 of Title 2, unless there is created a duplication in numbering, reads as follows:

Notwithstanding the existence or pursuit of any other remedy, a person may, in the manner provided by law, maintain an action for injunctive relief to prohibit violations of this act. Actions under this section shall be in accordance with Section 1381 et seq. of Title 12 of the Oklahoma Statutes.

SECTION 11. This act shall become effective September 1, 1994.

44-2-1910 DB