

1 AMENDMENT TO HOUSE BILL 0264

2 AMENDMENT NO. _____. Amend House Bill 264 by replacing the
3 title with the following:

4 "AN ACT concerning agriculture."; and

5 by replacing everything after the enacting clause with the
6 following:

7 "Section 1. Short title. This Act may be cited as the
8 Agricultural Production Contract Code.

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

11 "Capital investment" means a purchase or lease of any of
12 the following:

13 (1) A structure used for producing or storing a
14 commodity required to be provided by the producer under
15 the terms of the production contract if the structure has
16 a useful life in excess of 3 years. This includes, but
17 is not limited to, swine farrowing buildings, grain
18 storage facilities, and manure storage structures.

19 (2) Machinery or equipment used for producing a
20 commodity required to be provided by the producer under

1 the terms of the production contract if the machinery has
2 a useful life in excess of 3 years. This includes, but
3 is not limited to, trucks, tractors, combines, wagons,
4 augers, and planters.

5 "Commodity" means livestock, raw milk, fruits,
6 vegetables, or a crop.

7 "Contract input" means a commodity or an organic or
8 synthetic substance or compound that is used to produce a
9 commodity, including but not limited to, livestock, plants,
10 agricultural seeds, semen or eggs for breeding livestock,
11 fertilizer, pesticides, or petroleum products.

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

15 "Crop" means a plant used for food, animal feed, fiber,
16 oil, pharmaceuticals, nutraceuticals, industrial uses, or
17 seed, including but not limited to, alfalfa, barley,
18 buckwheat, canola, corn, flax, forage, fruits, millet, oats,
19 popcorn, rye, sorghum, soybeans, sunflowers, tobacco,
20 vegetables, wheat, and grasses used for forage or silage.

21 "Livestock" includes, but is not limited to, beef cattle,
22 dairy cattle, poultry, sheep, or swine.

23 "Person" means an individual or entity, including but not
24 limited to, a sole proprietorship, a partnership, a
25 corporation, a cooperative, an association, a limited
26 liability company, an estate, or a trust.

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

28 (1) Provide feed or services relating to the care
29 and feeding of livestock. If the livestock is dairy
30 cattle, then "produce" includes milking the dairy cattle
31 and storing raw milk.

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

34 "Produce" includes preparing the soil for planting and

1 also for nurturing the crop by the application of fertilizers
2 or soil conditioners, including those substances regulated
3 under the Illinois Fertilizer Act of 1961, or pesticides as
4 defined in the Illinois Pesticide Act.

5 "Producer" means a person who has been offered or who has
6 entered into a contract to produce a commodity. "Producer"
7 does not include a fertilizer or pesticide applicator, a feed
8 supplier, or a veterinarian, when acting in that capacity.

9 "Production contract" means: (1) Any written document
10 offered to or executed by a producer, under the provisions of
11 which (i) the producer would sell to a contractor, or the
12 contractor's designee, an identified commodity or commodities
13 and (ii) the contractor has, or exercises some control or
14 direction over, the production process; or (2) any written
15 agreement offered to or executed by a producer under the
16 provisions of which the producer would produce, care for, or
17 raise a commodity or commodities not owned by the producer,
18 using land, equipment, or facilities owned or leased by the
19 producer, in exchange for payment. For purposes of this
20 definition, control or direction over the production process
21 includes (i) the contractor's designation of special
22 commodity characteristics, such as those present in
23 value-enhanced grains, or specific genetics in livestock or
24 (ii) the contractor's designation of a production input, such
25 as a seed variety, to be used by the producer to fulfill the
26 production contract.

27 Section 10. Limited applicability. This Act shall not
28 apply to a production contract under the provisions of which
29 the commodity is to be delivered by the producer to the
30 contractor or the contractor's designee within 30 days after
31 the date of the production agreement.

32 Section 20. Readability of production contracts.

1 (a) A production contract must comply with all of the
2 following:

3 (1) It must be in a typeface at least as large as
4 10-point modern, one-point leaded.

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

12 (3) It must limit references to other sections or
13 provisions and, when incorporating a document, have a
14 copy of the document attached.

15 (4) It must have a Flesch scale analysis
16 readability score of at least 50.

17 (b) A contractor may include a provision in the index
18 required by Section 25 that the production contract being
19 offered meets the requirements of this Section as to
20 readability.

21 Section 25. Index. An index of the major portions of
22 the contract and the pages on which they are found must be
23 included with each production contract offered to a producer
24 that exceeds 2 pages in length. The index must contain
25 references for any of the following that are included in the
26 contract:

27 (1) The names of the parties to the contract.

28 (2) The definition sections of the contract.

29 (3) The provisions governing cancellation, renewal,
30 or amendment of the contract by either party.

31 (4) The sections outlining the duties or
32 obligations of each party.

33 (5) The compensation information.

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

3 (7) Any special provisions relative to production
4 guidelines.

5 Section 30. Confidentiality clauses. A production
6 contract may include a confidentiality provision, but
7 communications with any of the following shall not be
8 considered a breach of any such provision: (i) a producer's
9 spouse; (ii) a producer's parents, siblings, and children of
10 the age of majority if these persons are partners,
11 shareholders, officers, or directors of the producer's
12 agricultural operations; (iii) accountants; (iv) attorneys;
13 (v) bankers; (vi) financial institutions; (vii) farm
14 managers; (viii) trusts or trust beneficiaries; or (ix) the
15 partners, officers, or directors of the producer's
16 agricultural operations. When communicating with these
17 persons, the producer must request each person to treat the
18 information as privileged and confidential.

19 Section 35. Special provisions. If a production
20 contract requires any special production or handling
21 guidelines required by the producer, these provisions must be
22 fully explained in the contract. These provisions include,
23 but are not limited to, disease protocols for livestock and
24 segregation or identity preservation for grain.

25 Section 40. Termination or alteration of contracts.

26 (a) A contractor may not provide, offer, or execute a
27 production contract that allows the contractor to
28 unilaterally terminate the contract unless (i) the
29 termination is the result of a legitimate force majeure as
30 applied to the contractor or (ii) the producer breaches a
31 material term of the contract or voluntarily abandons the

1 contractual relationship.

2 (b) A contractor may not alter the quality, quantity, or
3 delivery times of contract inputs provided to the producer,
4 unless agreed to by the producer.

5 (c) Any cancellation or termination provisions must
6 include specific causes for the cancellation or termination
7 and any circumstances under which the commodity produced
8 under the contract might be rejected in whole or part by the
9 contractor.

10 (d) Any circumstances in which the compensation to
11 be paid by a producer may be discounted or increased shall
12 include specific causes to be clearly and concisely stated.

13 Section 45. Investment requirements.

14 (a) This Section applies to all production contracts
15 that have capital investment requirements.

16 (b) Except as provided in subsection (c), a contractor
17 shall not take action to terminate or cancel a production
18 contract until the contractor has done the following:

19 (1) Provided the producer with written notice of
20 the intention to terminate or cancel at least 60 days
21 before the effective date of the termination or
22 cancellation.

23 (2) Reimbursed the contract producer for the value
24 of the remaining useful life of the capital investment
25 items. In calculating this reimbursement amount, the
26 contractor may take into account the producer's ability
27 to use the capital investments in other business
28 enterprises of the producer and the opportunity to recoup
29 the cost of the capital improvements by sale or lease.

30 (c) Exceptions. A contractor may terminate or cancel a
31 production contract without remedy as required in subsection
32 (b) if the basis for the termination or cancellation is any
33 of the following:

1 (1) A voluntary abandonment of the contractual
2 relationship by the producer. A complete failure of a
3 producer's performance under a production contract shall
4 be deemed to be abandonment.

5 (2) Failure of the producer to meet the specific
6 provisions of the contract and failure to remedy his or
7 her default.

8 (3) The conviction of a producer of an offense of
9 fraud or theft committed against the contractor.

10 Section 50. Enforcement; offenses; remedies. The
11 Attorney General is primarily responsible for enforcing this
12 Act.

13 A person who violates Section 20, 25, 30, or 35 commits a
14 business offense under the Code of Civil Procedure.

15 A producer may recover his or her actual damages for a
16 contractor's violation of Section 40 or 45 of this Act.

17 Section 55. Statute of limitations. A claim that a
18 production contract violates this Act must be filed within 4
19 years after the date on which the party alleging the
20 violation knew or should have known of the existence of the
21 violation.

22 Section 60. Conflict with the Uniform Commercial Code.
23 To the extent that any provision of this Act conflicts with
24 or is inconsistent with any provision of the Uniform
25 Commercial Code, the provision of this Act shall control.

26 Section 90. The Uniform Commercial Code is amended by
27 adding Section 1-104b as follows:

28 (810 ILCS 5/104b new)

29 Sec. 1-104b. Agriculture Production Contract Code. This

1 Act is subject to the provisions of the Agriculture
2 Production Contract Code.

3 Section 99. Effective date. This Act takes effect on
4 January 1, 2005.".