

Senate Bill 790

Sponsored by Senator ATKINSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes required terms and format for production contracts between agricultural seed producers and seed dealers. Establishes remedies for nonperformance. Provides for resolution of disputes. Establishes responsibility of seed dealer's parent company.

Applies to written contracts and other agricultural seed production agreements formed on or after September 1, 2011.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to agricultural seed; creating new provisions; amending ORS 576.710, 576.725 and 576.727;
3 and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. As used in sections 1 to 7 of this 2011 Act:

5 (1) "Agricultural seed" has the meaning given that term in ORS 633.511.

6 (2) "Producer" means a person that grows agricultural seed in this state for commercial
7 purposes and does not sell agricultural seed grown by other producers.

8 (3) "Protected variety" means an agricultural seed variety that is subject to the federal
9 Plant Variety Protection Act, 7 U.S.C. 2541(b).

10 (4) "Seed bailment contract" means a seed production contract under which the seed
11 dealer retains title to all seed, seed stock and plant life grown or used by the producer under
12 the terms of the contract.

13 (5) "Seed dealer" means a person that in the ordinary course of business contracts to
14 buy agricultural seed grown in this state by a producer or contracts with a producer for the
15 growing of agricultural seed in this state.

16 (6) "Seed production contract" means a written agreement between a producer and a
17 seed dealer for the growing of agricultural seed in this state. "Seed production contract"
18 does not include an agreement entered into between a cooperative organized under ORS
19 chapter 62 and a member of that cooperative.

20 (7) "Variety Not Stated Seed" means agricultural seed that is sold in plastic bags that
21 lack any reference to a variety name for the seed.

SECTION 2. (1) The following terms apply to all seed production contracts:

22 (a) Except as provided in paragraph (d) of this subsection, if the price of seed is not ex-
23 pressly stated in the contract as a specific monetary amount:

24 (A) The price for seed of a kind described in ORS 62.848 is the most recent proposed or
25 modified price, if any, approved by the Director of Agriculture for seed of like kind, variety
26 and quality to be delivered in the same calendar year; or

27 (B) The price for seed that is not subject to price determination under subparagraph (A)
28
29

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 of this paragraph is the market price for seed of like kind, variety and quality at the time
2 of delivery.

3 (b) Except as provided in paragraph (d) of this subsection, payment to the producer is
4 due no later than the earlier of:

5 (A) Thirty days after delivery of the seed; or

6 (B) May 1 of the calendar year following the harvesting of the seed.

7 (c) Except as expressly provided in the contract, the risk of loss and the responsibility
8 for the payment of storage fees transfer from the producer to the seed dealer upon the
9 earlier of:

10 (A) The delivery of the seed to the seed dealer; or

11 (B) The delivery to the seed dealer of test results establishing that the seed meets quality
12 standards set forth in the contract.

13 (d) For seed that does not meet the quality standards set forth in the contract:

14 (A) If the contract or a contemporaneous document does not expressly state a discounted
15 price for the seed, the price is the market price for seed of that kind and quality.

16 (B) If the seed dealer does not take delivery and pay the discounted price of the seed on
17 or before May 1 of the calendar year following the harvesting of the seed, the producer may
18 send the seed dealer a written notice that the producer intends to sell the seed if the seed
19 dealer fails to take delivery and pay for the seed. If the seed dealer does not take delivery
20 and pay for the seed on or before 30 days after receiving the written notice, the seed dealer
21 is deemed to have refused purchase of the seed and to have authorized the producer to sell
22 the seed in a commercially reasonable manner as "Variety Not Stated Seed" and to apply
23 proceeds from the sale against any amount owed to the producer by the seed dealer. This
24 paragraph does not authorize the sale of any seed, seed stock or plant life of a protected
25 variety grown or used by the producer other than a sale of seed as "Variety Not Stated
26 Seed." The remedy provided in this paragraph is in addition to any other remedy available
27 to a producer by law. An authorization for sale arising under this paragraph is in addition
28 to any other conditional or unconditional authorization for sale that a seed dealer may grant
29 to a producer.

30 (e) Disputes regarding a seed production contract are subject to mediation and, if medi-
31 ation fails, to arbitration. Arbitration shall be nonbinding unless otherwise provided in the
32 contract or agreed to by the parties.

33 (2) A seed production contract may not:

34 (a) Provide for exclusive venue or jurisdiction in another state;

35 (b) Provide for the terms of the contract to be interpreted under the laws of another
36 state;

37 (c) Waive the application of sections 1 to 7 of this 2011 Act to the contract; or

38 (d) Authorize a unilateral material modification of the contract.

39 (3) A term in a seed production contract that conflicts with subsection (1) or (2) of this
40 section is void as a matter of public policy.

41 (4) Subject to ORS 72.2010, the terms applicable under subsections (1) and (2) of this
42 section to a seed production contract also apply to a nonwritten agreement for the pro-
43 duction of agricultural seed, except an agreement between a cooperative and a member of
44 that cooperative.

45 **SECTION 3.** (1) A party to a seed production contract may not, as a condition of per-

1 formance, require the other party to agree to a material modification of the contract. A
2 contract modification obtained in violation of this subsection is unenforceable.

3 (2) In any action to recover damages for breach of a seed production contract, if the
4 court finds that a party to the contract failed to act in good faith as defined in ORS 71.2010,
5 the court may award the prevailing party court costs and reasonable attorney fees.

6 **SECTION 4.** A seed production contract must be in legible type with 10-point or larger
7 font. The contract language must be readable at the ninth grade level of reading, as deter-
8 mined using the Flesch, Fry or Dale-Chall formulas or another standard readability formula
9 recognized by the Director of Agriculture. However, the readability requirements do not
10 apply to any contract language expressly required, recommended or endorsed under federal
11 or state laws, rules or regulations. The contract may not use technical terminology to de-
12 scribe goods or services that are the subject of the contract unless the terminology has a
13 commonly understood meaning among producers dealing with the type of goods or services
14 described. The contract sections and divisions must be appropriately distinguished and la-
15 beled.

16 **SECTION 5.** (1) If a seed dealer that is subject to ORS 633.700 is a subsidiary of another
17 company, the State Department of Agriculture may require as a condition of issuing the seed
18 dealer a license under ORS 633.700 that the parent company of the seed dealer guarantee the
19 performance of the seed dealer under all seed production contracts entered into by the seed
20 dealer.

21 (2) If the parent company of a seed dealer is a corporation, partnership or association,
22 the parent company is liable to a producer for failure in performance by the seed dealer
23 under a seed production contract.

24 (3) An agent that enters into a seed production contract on behalf of a seed dealer is
25 conclusively presumed to have actual authority to establish the performance obligations of
26 the seed dealer under the contract.

27 **SECTION 6.** (1) A seed bailment contract does not create a possessory security interest
28 in goods under ORS chapter 79. Filing, recording or notice of the contract is not a require-
29 ment for establishing during the term of the seed bailment contract the validity of the con-
30 tract or for establishing and confirming in the seed dealer the title to all seed, seed stock
31 and plant life grown or used by the producer under the terms of the contract.

32 (2) Payments due from a seed dealer to a producer under the terms of a seed bailment
33 contract are subject to lien under ORS 87.226 and to security interests perfected as provided
34 under ORS chapter 79.

35 **SECTION 7.** (1) The Director of Agriculture may adopt rules for the administration and
36 enforcement of sections 1 to 7 of this 2011 Act.

37 (2) The director may make mediation services available through the State Department
38 of Agriculture for the resolution of seed production contract disputes.

39 **SECTION 8.** ORS 576.710 is amended to read:

40 576.710. ORS 576.705 does not apply to any processor:

41 (1) [*Who*] **That** purchases from a producer seed that requires cleaning and germination tests;
42 [*or*]

43 (2) **That** arranges for the production of agricultural seed under a contract that is subject
44 to section 2 of this 2011 Act;

45 [(2)] (3) Of sugar beets whose contract with a producer for sale of the crop provides for profit

1 sharing; *or*

2 [(3)] (4) Of fish or seafood products; or

3 [(4)] (5) Of meat animals.

4 **SECTION 9.** ORS 576.725 is amended to read:

5 576.725. As used in this section and ORS 576.727:

6 [(1)] “*Final payment date*” means a date specified in a seed production or purchase contract by
7 which the wholesale seed dealer must complete payment to the seed grower or, if a date is not specified
8 in the contract, May 1 of the year following production and harvesting of the grass or clover seed.]

9 [(2)] (1) “Seed delivery” means the date on which the seed grower delivers grass or clover seed
10 to the wholesale seed dealer pursuant to a notice from the dealer.

11 [(3)] (2) “Seed *[production or]* purchase contract” means a written agreement **for a wholesale**
12 **seed dealer to purchase grass or clover seed that has been grown by a seed grower. “Seed**
13 **purchase contract” does not include a seed production contract as defined in section 1 of this**
14 **2011 Act.** *[that must include:]*

15 [(a)] *The estimated date for seed delivery;*

16 [(b)] *The terms and estimated dates for the wholesale seed dealer to pay the seed grower;*

17 [(c)] *The number of acres of grass or clover seed to be grown; and]*

18 [(d)] *The species, cultivars and quality standards of the grass or clover seed to be produced or*
19 *purchased.]*

20 **SECTION 10.** ORS 576.727 is amended to read:

21 576.727. (1) **The terms of a seed purchase contract must include:**

22 (a) **The estimated date for seed delivery;**

23 (b) **The terms and estimated date for the wholesale seed dealer to pay the seed grower;**

24 (c) **The amount of grass or clover seed to be purchased; and**

25 (d) **The species, cultivars and quality standards of the grass or clover seed to be pur-**
26 **chased.**

27 [(1)] (2) A seed *[production or]* purchase contract must require the wholesale seed dealer to
28 make payment to the seed grower within 30 days after seed delivery. *[Upon written mutual agreement*
29 *of the seed grower and the wholesale seed dealer, the grower may extend the period available for the*
30 *dealer to make payment.]*

31 [(2)] (3) If a licensed wholesale seed dealer fails to pay a seed grower as required pursuant to
32 subsection [(1)] (2) of this section, the grower may notify the State Department of Agriculture. Upon
33 notification by a grower, the department shall determine whether payment has been made in ac-
34 cordance with **the** terms of the **seed purchase** contract. If the department determines that payment
35 has not been made, the department shall notify the wholesale seed dealer in writing that the dealer
36 has 30 days to pay the seed grower all delinquent amounts plus interest on each delinquent amount
37 at the rate of one percent per month simple interest from the final payment date for that delinquent
38 amount.

39 [(3)] (4) A seed *[production or]* purchase contract may not vary the terms of the remedy provided
40 by subsection [(2)] (3) of this section. A wholesale seed dealer may appeal the notice given by the
41 department under subsection [(2)] (3) of this section as provided in ORS chapter 183. Subsection
42 [(2)] (3) of this section does not prevent a seed grower from filing a notice of lien against a whole-
43 sale seed dealer.

44 [(4)] (5) If a wholesale seed dealer fails to make payment as required by a notice given by the
45 department under subsection [(2)] (3) of this section, the department shall suspend the license of the

1 dealer until the dealer demonstrates to the satisfaction of the department that the dealer is current
 2 on all payments due to seed growers.

3 [(5)] (6) A wholesale seed dealer [who] **that** fails to make payment as required by a notice given
 4 by the department under subsection [(2)] (3) of this section is considered to have authorized the seed
 5 grower to sell any seed from the **seed purchase** contract that is still in the possession of the
 6 grower. [and to use the variety as provided under the federal Plant Variety Protection Act, 7 U.S.C.
 7 2541(b), subject to a right of first refusal by the owner of a protected variety.] This subsection does
 8 not prevent a wholesale seed dealer from giving consent to the seed grower by other means and does
 9 not supersede the terms of a consent given by other means.

10 **SECTION 11. Sections 1 to 7 of this 2011 Act and the amendments to ORS 576.710 by**
 11 **section 8 of this 2011 Act apply to seed production contracts and other agreements for the**
 12 **production of agricultural seed formed on or after September 1, 2011.**

13 **SECTION 12. The amendments to ORS 576.725 and 576.727 by sections 9 and 10 of this 2011**
 14 **Act apply to grass and clover seed purchase contracts formed on or after September 1, 2011.**

15 **SECTION 13. This 2011 Act being necessary for the immediate preservation of the public**
 16 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 17 **on its passage.**

18 _____