

Enrolled
House Bill 4068

Sponsored by Representative POST; Representatives CLEM, ESQUIVEL, EVANS, MCLAIN, NEARMAN, NOBLE, PARRISH, SMITH DB, WILSON, WITT (Presession filed.)

CHAPTER

AN ACT

Relating to seed contracts.

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

SECTION 1. As used in sections 1 to 10 of this 2018 Act:

- (1) **“Authenticate” has the meaning given that term in ORS 79.0102.**
- (2)(a) **“Other seed,” except as provided in paragraph (b) of this subsection, means seed or a mixture of seed grown for commercial purposes.**
- (b) **“Other seed” does not include:**
 - (A) **Agricultural seed as defined in ORS 576.715 or a mixture containing agricultural seed.**
 - (B) **Any seed or mixture of seed that the Director of Agriculture excludes by rule in response to a request by a producer organization or other producer group.**
 - (C) **Seed or a mixture of seed produced or processed under ORS 475B.785 to 475B.949.**
- (3) **“Producer” means a person that grows other seed in this state on a commercial basis for a seed dealer.**
- (4) **“Seed bailment contract” means a seed production contract under which the seed dealer retains title to all seed, seed stock and plant life grown or used by the producer under the terms of the contract.**
- (5) **“Seed dealer” means a person that in the ordinary course of business contracts to buy other seed grown in this state by a producer or contracts with a producer for the growing of other seed in this state.**
- (6) **“Seed delivery” means the date on which the seed grower delivers other seed to the seed dealer pursuant to a notice from the dealer.**
- (7) **“Seed grower” means a person that grows other seed in this state on a commercial basis without entering into a contract with a seed dealer prior to harvesting of the seed.**
- (8) **“Seed production contract” means a written agreement between a producer and a seed dealer for the growing of other seed in this state.**
- (9) **“Seed purchase contract” means a written agreement for a seed dealer to purchase other seed that has been grown by a seed grower. “Seed purchase contract” does not include a seed production contract.**
- (10) **“Variety Not Stated Seed” means other seed that is sold in unmarked plastic bags or other unmarked containers without any reference to a variety name for the seed.**

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

- (a) **If the contract does not settle the price of the other seed, the contract is enforceable and the price shall be determined as described in ORS 72.3050 (1) to (3).**

(b) Except as provided in section 3 (1) or (3) of this 2018 Act, payment to the producer is due no later than the earliest of the following:

(A) The dates specified in the contract.

(B) Thirty days after seed delivery.

(C) July 1 of the calendar year following the harvesting of the seed.

(c) Unless expressly provided otherwise in a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the other seed, the risk of loss and the responsibility for the payment of storage fees transfer from the producer to the seed dealer upon the earlier of:

(A) The delivery of the seed to the seed dealer pursuant to a notice from the seed dealer;
or

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

(2) It is an implied condition of any price or payment requirement described in subsection (1) of this section that the producer is performing, or has completed performance, in accordance with the seed production contract and has not otherwise breached the contract.

(3) Except as provided in subsection (5) of this section, a seed production contract described in this section may contain any additional terms agreed to by the parties.

(4) If a seed production contract is extended or renewed, for the extension or renewal period the parties may:

(a) Subject to paragraph (b) of this subsection, continue the terms of the original contract or agree to new or different contract terms; and

(b) Agree to payment due date terms as provided under this section or under section 3 (3) of this 2018 Act.

(5) A seed production contract may not:

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

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

(c) Waive the application of sections 1 to 10 of this 2018 Act to the contract; or

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

(6) Subject to ORS 72.2010, subsections (1) and (5) of this section also apply to a non-written agreement for the production of other seed.

(7) A term in a seed production contract that conflicts with subsection (1) or (5) of this section is void as a matter of public policy.

(8) ORS 576.705 does not apply to a processor as defined in ORS 576.700 that arranges for the production of other seed under a contract that is subject to this section or section 3 of this 2018 Act.

SECTION 3. (1) A seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the other seed may contain payment due date terms that differ from the payment due date terms described in section 2 (1)(b) of this 2018 Act if the contract states the date by which final payment for the other seed is due.

(2) If a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the other seed does not contain the information required under subsection (1) of this section, notwithstanding any contrary payment due date terms stated in the contract, the payment due date terms of the contract are subject to section 2 (1)(b) of this 2018 Act.

(3) An extension or renewal of any seed production contract, regardless of when the contract was authenticated, may contain payment due date terms that differ from the payment due date terms described in section 2 (1)(b) of this 2018 Act if the extension or renewal contains the information required under subsection (1) of this section. If an extension or renewal of a seed production contract does not contain the information required under subsection (1) of this section, notwithstanding any contrary payment due date terms stated in

the extension or renewal, the payment due date terms for the extension or renewal are subject to section 2 (1)(b) of this 2018 Act.

(4) It is an implied condition of any payment requirement created as provided under this section that the producer is performing, or has completed performance, in accordance with the seed production contract and has not otherwise breached the contract.

SECTION 4. (1) A seed bailment contract or seed purchase contract does not create a possessory security interest in goods under ORS chapter 79. For a seed bailment contract, filing, recording or notice of the contract is not a requirement for establishing, during the term of the contract, the validity of the contract or for establishing and confirming in the seed dealer the title to all seed, seed stock and plant life grown or used by the producer under the terms of the contract.

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

SECTION 5. (1) The terms of a seed purchase contract must include:

- (a) The estimated date for seed delivery;
- (b) The terms and estimated date for the seed dealer to pay the seed grower;
- (c) The amount of other seed to be purchased; and
- (d) The species, cultivars and quality standards of the other seed to be purchased.

(2) If the seed purchase contract does not settle the price of the other seed, the contract is enforceable and price shall be determined as described in ORS 72.3050 (1) to (3). A seed purchase contract must require the seed dealer to make payment to the seed grower within 30 days after seed delivery. However, upon written mutual agreement of the seed grower and the seed dealer, the grower may extend the period available for the dealer to make payment.

SECTION 6. (1) A seed dealer that requests modification to the payment terms of a seed production contract for other seed shall pay an amount equal to at least 25 percent of the value of the contract prior to modification of the contract.

(2) A party to a seed production contract or seed purchase contract may not, as a condition of performance, require the other party to agree to a material modification of the contract. A contract modification obtained in violation of this subsection is unenforceable.

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

SECTION 7. (1) If testing as provided under a seed production contract establishes that other seed does not meet the quality standards set forth in the contract, the producer may at any time send the test results to the seed dealer and inquire whether the seed dealer intends to purchase the seed. If, within 30 days after the seed dealer receives the test results and inquiry from the producer, the seed dealer delivers a response informing the producer that the seed dealer intends to purchase the seed, the response is an accord that forms a seed purchase contract for the seed purchased under this subsection. Except as provided in this subsection regarding price, the parties may establish the terms of the seed purchase contract as provided under section 5 of this 2018 Act. The price of the seed that is subject to the seed purchase contract shall be:

- (a) Any price stated in the seed production contract for seed not meeting quality standards;
- (b) If not determined by the seed production contract, any price agreed to by the parties; or
- (c) If not determined by the seed production contract or by agreement, the market price for seed of the same kind and quality as the produced seed. However, a seed price established

by the use of market price may not exceed any price established in the seed production contract for seed that meets quality standards.

(2) An accord that creates a seed purchase contract under subsection (1) of this section does not affect the terms of a seed production contract for any seed that was not described in the test results and inquiry sent by the producer.

(3) A producer may send test results and make an inquiry under subsection (1) of this section in any manner that documents seed dealer receipt of the test results and inquiry. A seed dealer may send a response under subsection (1) of this section to a producer in any manner that documents producer receipt of the response.

(4) If, within 30 days after the seed dealer receives the test results and inquiry from the producer, the seed dealer has not delivered a response informing the producer that the seed dealer intends to purchase the seed, the seed dealer is deemed to have refused purchase of the seed and to have authorized the producer to sell the seed in a commercially reasonable manner as "Variety Not Stated Seed." This subsection does not authorize the sale of any seed, seed stock or plant life of a protected variety grown or used by the producer other than a sale of seed as "Variety Not Stated Seed." The remedy provided under this subsection is in addition to any other remedy available to a producer by law. An authorization for sale arising under this subsection is in addition to any other conditional or unconditional authorization for sale that a seed dealer may grant to a producer.

SECTION 8. (1) If a seed dealer fails to pay a producer for other seed when payment is due under a seed production contract or fails to pay a seed grower for other seed when payment is due under a seed purchase contract, the producer or seed grower may notify the State Department of Agriculture. Upon notification by a producer or seed grower, the department shall determine whether payment has been made when due. If the department determines that the seed dealer has not made a payment that is due under a seed production contract or seed purchase contract, the department shall notify the seed dealer in writing that the dealer has 30 days to pay the producer or seed grower all delinquent amounts plus interest on each delinquent amount at the rate of one percent per month simple interest from the final payment date for that delinquent amount.

(2) A seed production contract or seed purchase contract may not vary the terms of the remedy provided by this section. A seed dealer may appeal the notice given by the department under this section as provided in ORS chapter 183. This section does not prevent a producer or seed grower from filing a notice of lien against a seed dealer.

(3) If a seed dealer fails to make payment as required by a notice given by the department under this section, the department shall suspend any seed dealer license issued to the dealer until the dealer demonstrates to the satisfaction of the department that the dealer is current on all payments due to all producers and seed growers. An order suspending a license under this subsection is subject to ORS chapter 183. However, the department may not suspend a seed dealer license under this section using the procedure described in ORS 183.430 (2).

(4) A seed dealer that fails to make payment on a seed production contract or seed purchase contract as required by a notice given by the department under this section is considered to have authorized the producer or seed grower to sell in a commercially reasonable manner any seed from the contract that is still in the possession of the producer or seed grower. This subsection does not prevent a seed dealer from giving consent to the producer or seed grower by other means and does not supersede the terms of a consent given by other means.

(5) The department may charge a producer or seed grower a fee, not to exceed \$200, for determining whether payment has been made in accordance with the terms of a seed production contract or seed purchase contract. The department may charge a producer or seed grower a fee, not to exceed \$50, for notifying a seed dealer in writing regarding the deadline for payment of delinquent amounts plus interest.

SECTION 9. (1) As used in this section:

(a) **“Officer” means any of the following individuals:**

- (A) A president, vice president, secretary, treasurer or director of a corporation.
- (B) A general partner in a limited partnership.
- (C) A manager in a manager-managed limited liability company.
- (D) A member of a member-managed limited liability company.
- (E) A trustee.

(F) An individual that is an officer as defined by the State Department of Agriculture by rule. A definition of “officer” adopted by department rule may include individuals not listed in this paragraph who may exercise substantial control over a business.

(b) **“Owner” means:**

- (A) A sole proprietor of, partner in or holder of a controlling interest in an applicant;

or

- (B) Any person that is an owner as defined by the department by rule.

(2) The State Department of Agriculture may adopt rules to require, as a condition of issuing a seed dealer license under ORS 633.700, that each seed dealer provide the department financial assurance for the performance by the seed dealer under any seed production contract or seed purchase contract entered into by the seed dealer.

(3) The department may refuse to issue a seed dealer license to an applicant if the applicant, any owner or officer of the applicant or any individual exercising substantial control over the seed industry activities of the applicant:

(a) Is a seed dealer for which the license has been suspended under section 8 of this 2018 Act;

(b) Is or was an owner or officer of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended under section 8 of this 2018 Act; or

(c) Was an individual who exercised substantial control over the seed industry activities of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended under section 8 of this 2018 Act.

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

SECTION 10. (1) The Director of Agriculture may adopt rules for the administration and enforcement of sections 1 to 10 of this 2018 Act.

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

SECTION 11. If the State Department of Agriculture adopts a rule described in section 9 (2) of this 2018 Act, the department shall report to the next regular session of the Legislative Assembly following the rule adoption regarding the contents of the rule and the matters considered by the department in developing the rule.

SECTION 12. Sections 1 to 10 of this 2018 Act apply to seed contracts entered into, extended or renewed on or after the effective date of this 2018 Act.

Passed by House February 13, 2018

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate February 22, 2018

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2018

Approved:

.....M,....., 2018

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2018

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Dennis Richardson, Secretary of State