

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 476*

Short Title: Poultry Producer Protection Act.

(Public)

Sponsors: Senators Cooper; and Ballance.

Referred to: Agriculture, Marine Resources, and Wildlife.

March 10, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE PROTECTION TO PRODUCERS OF POULTRY AND
3 POULTRY PRODUCTS IN NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 Section 1. A new Article is added to Chapter 106 of the General Statutes to
6 read:

7 **"ARTICLE 49H.**
8 **"NORTH CAROLINA POULTRY AND POULTRY PRODUCTS**
9 **PRODUCER PROTECTION ACT.**

10 **"§ 106-549.101. Short title.**

11 This Article is designated as the North Carolina Poultry and Poultry Products
12 Producer Protection Act.

13 **"§ 106-549.102. Legislative intent and policy.**

14 The General Assembly finds that vertical integration through production contracting
15 in the poultry industry by persons engaged in processing, marketing, distributing, and
16 retail industries, tends to create monopolies, to foster anticompetitive trade practices in
17 that industry, and to result in unfair competition for the family farmer; and, further, the
18 General Assembly declares that it is in the public interest that the family farm be
19 preserved and that producers of poultry and poultry products on the family farm be
20 protected from financial hardships caused by unfair, harmful, and unethical bargaining
21 and trade practices of integrators. The General Assembly also declares that, with regard
22 for clean air and clean water, it is in the interest of public health and welfare that
23 responsibility for the disposal of dead poultry not be placed solely on the producer. The

1 provisions of this Article shall be liberally construed to achieve these ends and shall be
2 administered and enforced with a view to carrying out the above declaration of policy.

3 **"§ 106-549.103. Definitions.**

4 For purposes of this Article, the following terms shall have the following meanings
5 stated below:

- 6 (1) 'Arbitration' is a process by which the parties to a dispute submit their
7 differences to the judgment of an impartial person. The arbitrator's
8 role is to hear the parties' arguments and issue a decision resolving the
9 dispute.
- 10 (2) 'Flock frequency' means the number of flocks placed in a producer's
11 facility in any 24-month period.
- 12 (3) 'Flock duration' means the length of time that a flock is placed in a
13 producer's facility.
- 14 (4) 'Flock size' means the number of poultry placed in a producer's
15 facility.
- 16 (5) 'Good faith' means honesty in fact in the conduct or transaction
17 concerned as that term is defined and applied in G.S. 25-1-201.
- 18 (6) 'Integrator' means a person who contracts with a producer to grow out,
19 raise, or otherwise produce poultry or poultry products and
20 subsequently processes poultry and poultry products in the State for
21 commercial purposes.
- 22 (7) 'Mediation' is a process by which the parties to a dispute jointly
23 explore and resolve all or a part of their differences with the assistance
24 of an impartial person. The mediator's role is to assist the parties in
25 resolving the dispute themselves. The mediator has no authority to
26 impose a settlement.
- 27 (8) 'Person' means any individual, partnership, association, corporation,
28 any organized group of persons whether incorporated or not, or an
29 agent or employee of any such person.
- 30 (9) 'Poultry' means any domesticated bird, whether live or dead. This
31 specifically includes, but is not limited to, laying hens, broiler breeding
32 hens, broiler breeder pullets, commercial egg hens, commercial egg
33 pullets, broilers, roasters, turkey hens, and turkey toms.
- 34 (10) 'Poultry product' means eggs, poultry carcasses, poultry by-products,
35 or any part thereof.
- 36 (11) 'Producer' means a person who produces or causes to be produced
37 poultry or poultry products by contracting with an integrator to provide
38 management, labor, machinery, facilities, or any other production
39 input for the production of poultry or poultry products.

40 **"§ 106-549.104. Unfair trade practices.**

41 (a) It is unlawful for an integrator to use coercion, intimidation, the threat of
42 retaliation, or the threat of contract termination, cancellation, or nonrenewal to impose,
43 demand, compel, or dictate the terms, payment or manner of payment, or the signing of
44 a contract by a producer.

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

4 **(c)** It is unlawful for the integrator to interfere with, restrain, or coerce producers
5 in the exercise of their rights to join, form, and assist associations of producers.

6 **(d)** It is unlawful for an integrator to terminate, cancel, or fail to renew a contract
7 with a producer other than as provided in G.S. 106-549.105 as long as the producer is
8 financially obligated for an investment in buildings and equipment which was made to
9 meet the minimum requirements of the contract.

10 **(e)** It is unlawful for an integrator to refuse to provide to the producer upon
11 request the statistical information and data used to determine compensation paid to the
12 producer for flock settlement. This statistical information and data includes, but is not
13 limited to, feed conversion rates, feed analyses, averages of other growers, flock
14 origination, and breeder history.

15 **(f)** It is unlawful for the integrator to refuse to allow a producer or his designated
16 representative to observe, by actual observation at the time of weighing, the weights and
17 measures used to determine the producer's compensation at flock settlement.

18 **(g)** It shall be unlawful for an integrator to use the performance of any other
19 producer to determine the settlement of a producer.

20 **(h)** Unfair trade practices also include those practices prohibited by the
21 Perishable Agricultural Commodities Act, 7 U.S.C. §§499a-499s and the rules
22 promulgated thereunder at 7 C.F.R. Part 46, and those practices prohibited by the
23 Packers and Stockyards Act, 7 U.S.C. §181 et seq., and the rules promulgated
24 thereunder at 7 C.F.R. Part 201 et seq.

25 **(i)** If federal and State regulation are identical, federal jurisdiction and
26 enforcement control unless the federal authority decides not to enforce the regulation.

27 **§ 106-549.105. Recapture of capital investment required by an agricultural**
28 **production contract.**

29 **(a)** An integrator shall not terminate, cancel, or fail to renew a contract that
30 requires a producer to make a capital investment secured by financing statement,
31 promissory note, deed of trust, or otherwise in buildings or equipment that cost twenty-
32 five thousand dollars (\$25,000) or more and have a useful life of five or more years
33 until:

34 **(1)** The producer has been given written notice of the intention to
35 terminate, cancel, or not renew the contract at least 180 days before the
36 effective date of the termination, cancellation, or nonrenewal, or as
37 provided in subsection (c); and

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

41 **(b)** Except as provided in subsection (c), if a producer fails to materially comply
42 with the provisions of a contract that require a capital investment subject to subsection
43 (a), an integrator may not terminate, cancel, or fail to renew that contract until:

1 (1) The integrator has given written notice with all the reasons for the
2 termination, cancellation, or nonrenewal at least 90 days before
3 termination, cancellation, or nonrenewal, or as provided in subsection
4 (c); and

5 (2) The producer, as recipient of the notice, fails to correct the reasons
6 stated for termination, cancellation, or nonrenewal in the notice within
7 60 days of receipt of the notice.

8 (c) The 180-day notice period under subsection (a)(1), and the 90-day notice
9 period and 60-day notice period under subdivisions (b)(1) and (b)(2), are waived and the
10 contract may be cancelled, terminated, or not renewed immediately if the alleged
11 grounds for termination, cancellation, or nonrenewal are:

12 (1) Voluntary abandonment of the contract relationship by the producers;
13 or

14 (2) Conviction of the producer of an offense directly related to the
15 business conducted under the contract.

16 (d) An integrator may terminate a contract if the integrator secures a bond or
17 irrevocable letter of credit in a sufficient amount to cover the probable claim if the
18 damages the producer is entitled to under subsection (a) have not been received within
19 180 days after notice of intent to terminate, cancel, or not renew has been received by
20 the producer.

21 (e) If the 180- or 90-day notice periods expire before the end of a production
22 cycle, the contract will not terminate until the end of that production cycle. An
23 integrator may terminate a contract at the end of a production cycle that occurs before
24 the end of the 180- or 90-day notice period has expired if the producer agrees to the
25 termination.

26 (f) If the integrator terminates, cancels, or fails to renew a contract other than as
27 provided above, the integrator shall assume the outstanding financial obligations and
28 liabilities of the producer and shall pay the producer fair market value for equity, if any,
29 in the buildings and equipment which were acquired as minimum requirements under
30 the contract. All buildings and equipment which accrue to the integrator pursuant to
31 this subsection must be removed from the producer's premises within 90 days of the
32 date of termination, cancellation, or nonrenewal.

33 (g) Notice shall be effective upon receipt by the producer.

34 **§ 106-549.106. Negotiation of contract terms.**

35 (a) The integrator shall agree to meet and confer with the producer or his
36 authorized representative at a time and place mutually agreeable to the parties to discuss
37 concerns of the producer.

38 (b) The integrator shall provide a 60-day written notice of intent to modify terms
39 or conditions of the contract to the producer. The written notice shall state the proposed
40 changes to the contract. Notice shall be effective upon receipt by the producer.

41 (c) The contractual terms relating to flock frequency, flock size, and flock
42 duration in a contract between the integrator and the producer shall be negotiated in
43 good faith between the parties as long as the producer remains obligated financially for

1 capital investments in buildings and equipment that were made for the purpose of
2 meeting the minimum requirements of the contract.

3 (d) All contract terms shall be negotiated between the integrator and the producer
4 at arms length and in good faith.

5 **"§ 106-549.107. Parent company responsible for contracts of subsidiaries.**

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

9 (b) If an integrator is the subsidiary of another corporation, partnership, or
10 association, the parent corporation, partnership, or association is liable to a producer for
11 the amount of any unpaid claim or contract performance claim if the integrator fails to
12 pay or perform according to the terms of the contract or the provisions of this Article.

13 **"§ 106-549.108. Reimbursement for costs of disposal of dead poultry.**

14 The integrator shall reimburse the producer for the costs incurred by the producer for
15 disposal of dead poultry. This provision includes, but is not limited to, disposal
16 required by G.S. 106-403 and G.S. 106-549.70.

17 **"§ 106-549.109. Mediation and arbitration.**

18 (a) A contract for the production of poultry and poultry products between an
19 integrator and a producer shall contain language providing for resolution of contract
20 disputes by either mediation or arbitration services as specified in the contract, to
21 facilitate resolution of disputes.

22 (b) Contracts executed prior to the effective date of this Article shall contain an
23 implied provision that all contract disputes shall be submitted to mediation or arbitration
24 for dispute resolution.

25 (c) Should the parties contract for mediation of matters that are in dispute and
26 mediation does not resolve the dispute, either the integrator or the producer may request
27 that the matter be submitted to arbitration.

28 (d) The mediators selected pursuant to this section shall be certified as required
29 by G.S. 7A-38. The arbitrators selected pursuant to this section shall be listed on the
30 National Panel of Arbitrators of the American Arbitration Association.

31 (e) Neither the mediator nor the arbitrator shall be an employee or agent of the
32 producer, the integrator, or the integrator's subsidiaries or parent company.

33 **"§ 106-549.110. Rules and regulations.**

34 The North Carolina Board of Agriculture is hereby authorized to adopt such
35 regulations as may be necessary to implement this Article.

36 **"§ 106-549.111. Violation and penalties.**

37 (a) Notwithstanding the existence or pursuit of any other remedy at law, any
38 person violating the provisions of this Article or the regulations adopted thereunder,
39 shall be guilty of a misdemeanor and shall be fined not less than two hundred dollars
40 (\$200.00) nor more than one thousand dollars (\$1,000) or be imprisoned for not more
41 than 60 days, or both, in the discretion of the court.

42 (b) In addition to the authority in subsection (a), the court, in its discretion, may
43 suspend the integrator's license to operate in this State for a period not to exceed 30
44 days or the court may revoke the integrator's license.

1 (c) In an action to recover damages or for injunctive relief, if the court finds that
2 there has been a violation of this Article, court costs and attorneys' fees may be
3 recovered by the prevailing party.

4 **"§ 106-549.112. Injunction.**

5 Notwithstanding the existence or pursuit of any other remedy, a person may, in the
6 manner provided by law, maintain an action for injunctive relief or other process to
7 prevent violations of this Article. Actions under this section shall be in accordance with
8 Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil
9 Procedure."

10 Sec. 2. Article 12 of Chapter 44 of the General Statutes shall be amended by
11 adding a new section to read as follows:

12 **"§ 44-69.4. Poultry and poultry product producers' lien on integrators' assets.**

13 (a) The definitions set out in G.S. 106-549.103 are incorporated into this section.

14 (b) A producer of poultry or poultry products shall have a lien for the contract
15 price or, if there is no contract, the fair market value of the poultry or poultry product
16 produced and delivered to an integrator.

17 (c) The lien attaches to the poultry or poultry products and proceeds thereof as
18 well as to all tangible or intangible assets of the integrator. If the poultry or poultry
19 product becomes commingled with other poultry or poultry products, the lien continues
20 in the proportionate share of the other poultry or poultry products. If the poultry or
21 poultry products become manufactured or processed to become a part of another
22 product, the lien continues and attaches to the product manufactured or processed.

23 (d) The lien claimed by the producer is perfected without filing a statement of
24 nonpayment from the time that the poultry or poultry product is delivered to the
25 integrator until 30 days after delivery.

26 (e) The producer shall file a statement of nonpayment in the office of the clerk of
27 court for the county of the integrator's principal place of business. Provided that if the
28 integrator is not a resident of the State, a filing must be made with the clerk of superior
29 court for the county in which the integrator's registered office is located. The clerk shall
30 note the claim of lien on the judgment docket and index the same under the name of the
31 integrator at the time the claim is filed.

32 (f) A statement of nonpayment must be in writing and notarized by the producer
33 and must contain:

34 (1) The name and address of the integrator to whom the poultry or poultry
35 products were delivered;

36 (2) A statement of the amount due to the producer after deducting
37 applicable credits and offsets;

38 (3) A description sufficient to identify the poultry or poultry product
39 delivered and subject to the lien;

40 (4) The date and location to which the poultry or poultry product was
41 delivered; and

42 (5) The date on which payment was due.

43 The producer shall furnish a copy of the statement of nonpayment as provided by
44 this subsection to the integrator, which shall constitute a notice of claim of lien. The

1 notice shall be served personally or by certified mail to the integrator at the place of
2 business where the producer is used to conducting business with the integrator. The lien
3 granted by this section shall be effective as of the time it is filed with the clerk of court.
4 Provided the integrator shall have the right to contest the validity of such lien by filing,
5 with the clerk of court and serving on the producer within 10 days after he receives
6 notice that the producer has filed a claim of lien, a notice that the integrator contests the
7 amount due thereunder. In the event the integrator fails to contest the lien or is
8 unsuccessful in obtaining a discharge of the lien, the lien shall be perfected as of the
9 date of filing with the clerk of court.

10 (g) A producer's lien has priority over all other liens and encumbrances in:

11 (1) The poultry or poultry products;

12 (2) The proceeds from the poultry or poultry products;

13 (3) The proportionate share of the poultry or poultry products with which
14 the poultry or poultry products have been commingled;

15 (4) The products manufactured or processed with the poultry or poultry
16 products; and

17 (5) The integrator's tangible and intangible assets.

18 A producer's lien that is continuously perfected from the time of delivery has priority
19 over other liens and encumbrances whether they are filed before or after the producer's
20 lien. A producer's lien that is filed after 30 days after delivery of the poultry or poultry
21 products has priority in the order that it is filed. Priority among perfected producers'
22 liens is according to the first lien filed. A producer's lien that is not filed has the priority
23 of an unperfected security interest under G.S. 25-9-312.

24 (h) The lien created by this section may be discharged in any of the following
25 manners:

26 (1) By filing with the clerk of superior court a notarized statement by the
27 producer that the lien has been satisfied; or

28 (2) By depositing with the clerk of superior court money equal to the
29 amount of the claim, which money shall be held for the benefit of the
30 producer; or

31 (3) By an entry in the lien docket that the action on the part of the lien
32 claimant to enforce the lien has been dismissed.

33 A producer must remove a lien statement from the filing system after the lien is
34 satisfied. If the producer does not remove the lien statement, the clerk of court shall
35 remove the lien statement upon request of an affected party who has furnished proof
36 that the lien has been terminated.

37 (i) An action to enforce the lien created by this section may be instituted within
38 120 days of the date that payment is due in any court of competent jurisdiction in the
39 county where the lien was filed or where the property to which the lien attaches is
40 located or the county where the poultry or poultry products was originally delivered.
41 The court shall, in its discretion, award costs including attorneys' fees to the prevailing
42 party. Nothing herein shall preclude the parties from mediating or arbitrating the claim
43 of nonpayment at any time before or after a lien statement has been filed."

44 Sec. 3. This act becomes effective October 1, 1993.