

AN ACT

ENTITLED, An Act to provide for the revision of the South Dakota Family Farm Act of 1974 to conform with a proposed amendment to the South Dakota Constitution regulating corporate farming in South Dakota.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 47-9A-1 be amended to read as follows:

47-9A-1. The Legislature of the State of South Dakota recognizes the importance of the family farm to the economic and moral stability of the state, and the Legislature recognizes that the existence of the independent family farm is important to the economic viability of rural South Dakota and is jeopardized by downward vertical integration in farming. Therefore, it is hereby declared to be the public policy of this state, and shall be the purpose of this chapter, that, notwithstanding the provisions of § 47-2-3, no foreign or domestic limited liability entity, except as provided herein, shall be formed or licensed under the laws of this state for the purpose of owning, leasing, holding, or otherwise controlling agricultural land or owning livestock.

Section 2. That § 47-9A-2 be amended to read as follows:

47-9A-2. Terms used in this chapter mean:

- (1) "Agricultural land," land used for farming, ranching, livestock feeding, or grazing and which is not zoned for a nonagricultural use;
- (2) "Limited liability entity," any legal entity which limits the individual liability of any investor or owner, including corporations, cooperatives, limited liability companies, limited liability partnerships, and limited partnerships;
- (3) "Family farm," any farming unit owned by one or more natural persons who own the land or livestock and where at least one owner is actively engaged in day-to-day implementation of the management of the farming operation;

- (4) "Farming," the cultivation of land for the production of agricultural or horticultural crops, or the ownership of livestock; and
- (5) "Livestock," cattle, sheep, horses, pigs, poultry, and any other animal, if the animal is raised or fed for profit and intended for end-use as a food product.

Section 3. That § 47-9A-3 be amended to read as follows:

47-9A-3. Except as provided in this chapter, no foreign or domestic limited liability entity may own livestock for more than two weeks prior to delivery for slaughter or engage in farming; nor may any foreign or domestic limited liability entity, directly or indirectly, own, acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any title to agricultural land in this state.

Section 4. That § 47-9A-3.1 be repealed.

Section 5. That § 47-9A-4 be repealed.

Section 6. That § 47-9A-5 be amended to read as follows:

47-9A-5. The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to agricultural land or livestock which:

- (1) Is owned by an entity in which all investors are natural persons, and one of the investors is actively engaged in the day-to-day implementation of the management of the farm land or farm operation; or
- (2) Is owned by an entity in which a majority of the voting rights are owned by qualified persons who own agricultural land or an interest in a farming operation. For purposes of this exception a qualified person may be either a natural person or an entity which meets the requirements of exception number one of this section; or
- (3) Is owned by an entity which engages in farming primarily for scientific, medical, research, or experimental purposes; or
- (4) Is owned by an entity which owns only mineral rights, a right-of-way, a utility easement,

a transportation easement, a water line easement, a drainage easement, a telecommunication easement, or any less than fee simple interest in land which is held primarily for a nonfarming purpose or use; or

- (5) Is owned by an entity which purchases any interest in agricultural land primarily for a nonfarming purpose, if the nonfarming purpose is applied to the land within five years of the date of purchase. This exemption applies as long as the land is used for the nonfarming purpose, and if any farming operations on such land are merely incidental to the primary use, and are conducted by contract or lease to a person or entity who is not otherwise prohibited from farming or owning agricultural land in this state; or
- (6) Is owned by an entity which is a lender, which acquires land or livestock as collateral on a debt, if the lender disposes of the land within five years and livestock within one year, of acquisition; or
- (7) Is owned by a trustee holding lands or livestock for the benefit of persons or entities who are not prohibited from farming or owning agricultural land in South Dakota; or
- (8) Was owned by an entity or person with a vested property interest in agricultural land or farming on June 1, 2002, or who lawfully engaged in farming or owned agricultural land in this state on November 1, 1998. However, no expansion is allowed under this exemption beyond the size and extent of the farming operation on June 1, 2002.

Section 7. That § 47-9A-6 be repealed.

Section 8. That § 47-9A-7 be repealed.

Section 9. That § 47-9A-8 be repealed.

Section 10. That § 47-9A-9 be repealed.

Section 11. That § 47-9A-10 be repealed.

Section 12. That § 47-9A-11 be repealed.

Section 13. That § 47-9A-12 be amended to read as follows:

47-9A-12. The restrictions of § 47-9A-3 do not apply to agricultural land acquired by a corporation which has entered into an agreement with the United States of America pursuant to the New Community Act of 1968, (Title IV of the Housing and Urban Development Act of 1968, 42 U.S.C. 3901-3914), as amended, or a subsidiary or assign of such a corporation.

Section 14. That § 47-9A-13 be repealed.

Section 15. That § 47-9A-13.1 be repealed.

Section 16. That § 47-9A-14 be repealed.

Section 17. That § 47-9A-15 be repealed.

Section 18. That § 47-9A-16 be amended to read as follows:

47-9A-16. Every limited liability entity engaged in farming or proposing to commence farming in this state shall file with the secretary of state a report containing:

- (1) The name of the entity and its place of formation;
- (2) The address of the registered office of the entity in this state, the name and address of its registered agent in this state and, in the case of a foreign entity, the address of its principal office in its place of formation;
- (3) The acreage and location listed by section, township, and county of each lot or parcel of land in this state owned by the entity and used for the growing of crops or the keeping or feeding of livestock; and
- (4) The names and addresses of any officers and the members of the board of directors of the entity.

Section 19. That § 47-9A-17 be repealed.

Section 20. That § 47-9A-18 be amended to read as follows:

47-9A-18. No limited liability entity may commence farming in this state until the secretary of

state has inspected the report required by § 47-9A-16 and certified that its proposed operations comply with the provisions of § 47-9A-16.

Section 21. That § 47-9A-19 be repealed.

Section 22. That § 47-9A-20 be amended to read as follows:

47-9A-20. Any limited liability entity which fails to file any report required by this chapter or intentionally files false information on any report required by this chapter is subject to a civil fine of not more than one thousand dollars.

Section 23. That § 47-9A-21 be amended to read as follows:

47-9A-21. If the attorney general has reason to believe that a limited liability entity is in violation of this chapter, the attorney general shall commence an action in the circuit court for the county in which any agricultural lands relative to such violation are situated, or if situated in two or more counties, in any county in which a substantial part of the lands are situated. If the court finds that the lands in question are being held in violation of this chapter, it shall enter an order so declaring.

Section 24. That § 47-9A-22 be amended to read as follows:

47-9A-22. The attorney general shall file any order under § 47-9A-21 for record with the register of deeds of each county in which any portion of the lands are located. Thereafter, the limited liability entity owning such land shall have a period of five years from the date of such order to divest itself of such lands. The five-year limitation period shall be deemed a covenant running with the title to the land against any corporate grantee or assignee or the successor of such entity. Any lands not so divested within the time prescribed shall be sold at public sale in the manner prescribed by order of the court.

Section 25. That § 47-9A-23 be amended to read as follows:

47-9A-23. This chapter shall be known and may be cited as the Family Farm Act.

Section 26. The provisions of this Act become effective on July 1, 2002, if the electors of the

State of South Dakota approve the repeal of sections 21, 22, 23, and 24 of Article XVII of the South Dakota Constitution at the June 2002, primary election.

An Act to provide for the revision of the South Dakota Family Farm Act of 1974 to conform with a proposed amendment to the South Dakota Constitution regulating corporate farming in South Dakota.

=====
I certify that the attached Act
originated in the
SENATE as Bill No. 156

\_\_\_\_\_  
Secretary of the Senate
=====

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 156  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

=====
Received at this Executive Office
this \_\_\_\_ day of \_\_\_\_\_ ,
20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor
=====

The attached Act is hereby
approved this \_\_\_\_\_ day of
\_\_\_\_\_, A.D., 20\_\_

\_\_\_\_\_  
Governor

=====
STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State