

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

336I0384

SENATE BILL NO. 204

Introduced by: Senator Kloucek and Representatives Lange, Begalka, Gassman, Sigdestad,
and Valandra

1 FOR AN ACT ENTITLED, An Act to provide for the protection of certain agricultural
2 contractors.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Active contractor," any person who owns a commodity produced by a contract
6 producer according to a production contract;

7 (2) "Agricultural contract," any marketing or production contract;

8 (3) "Capital investment," any investment in a structure, such as a building or manure
9 storage structure, or machinery or equipment with a useful life exceeding one year and
10 associated with the production of a commodity;

11 (4) "Commodity," livestock, raw milk, or a crop;

12 (5) "Contract crop field," farmland on which a crop is produced according to a
13 production contract;

14 (6) "Contract livestock facility," any animal feeding operation that produces livestock or
15 raw milk according to a production contract. The term includes any confinement



- 1 feeding operation, any open feedlot, land on which crops or other vegetation is grown
2 and used to graze or feed livestock, or land used to feed livestock for slaughter;
- 3 (7) "Contract operation," any contract livestock facility or a contract crop field;
- 4 (8) "Contract producer," any producer who holds a legal interest in a contract operation
5 and who produces a commodity under a production contract;
- 6 (9) "Contractor," any person who is an active contractor or a passive contractor;
- 7 (10) "Crop," any plant used for food, animal feed, fiber, oil, pharmaceuticals,
8 nutraceuticals, or seed, including alfalfa, barley, buckwheat, corn, flax, forage, millet,
9 oats, popcorn, rye, sorghum, soybeans, sunflowers, tobacco, wheat, and grasses used
10 for forage or silage;
- 11 (11) "Livestock," beef cattle, dairy cattle, poultry, sheep, or swine;
- 12 (12) "Marketing contract," any written agreement between a processor and a producer for
13 the purchase of commodities grown or raised by the producer in this state. A
14 marketing contract is executed when it is signed or orally agreed to by each party or
15 by a person authorized to act on the party's behalf;
- 16 (13) "Passive contractor," any person who furnishes management services to a contract
17 producer and who does not own a commodity that is produced by the contract
18 producer according to a production contract;
- 19 (14) "Processor," any person engaged in the business of manufacturing goods from
20 commodities, including by slaughtering or processing livestock, processing raw milk,
21 or crops. The term does not include custom exempt plants as defined in subdivision
22 39-5-6(4);
- 23 (15) "Produce," to provide feed or services relating to the care and feeding of livestock,
24 including milking dairy cattle and storing raw milk. The term also means planting,

1 raising, harvesting, and storing a crop, including preparing the soil for planting and
2 nurturing the crop by the application of fertilizers, soil conditioners, or pesticides;

3 (16) "Producer," any person who produces a commodity. The term does not include a
4 commercial fertilizer or pesticide applicator, feed supplier, veterinarian, grain
5 warehouse, or custom harvester if acting in such capacity;

6 (17) "Production contract," any written agreement that provides for the production of a
7 commodity or the provision of management services relating to the production of a
8 commodity by a contract producer. A production contract is executed if it is signed
9 by each party to the contract or by a person authorized to act on the party's behalf.
10 Production contracts include all contracts where the production contract is executed
11 by an active contractor and a contract producer, the production contract is executed
12 by an active contractor and a passive contractor for the provision of management
13 services to the contract producer, or the production contract is executed by a passive
14 contractor and a contract producer where the passive contractor provides
15 management services to the contract producer.

16 Section 2. Execution of an agricultural contract imposes an obligation of good faith, as
17 defined in subdivision 57A-1-201(19), on all parties with respect to the contract's performance
18 and enforcement.

19 Section 3. Any agricultural contract executed or amended after the effective date of this Act
20 shall be accompanied by a clear written disclosure statement setting forth the nature of the
21 material risks, described below, faced by the producer upon entry into the contract. The
22 disclosure statement shall meet the readability requirements of section 5 of this Act and shall
23 disclose the following:

24 (1) In the case of production contracts, the producer's right to review as provided in

1 section 6 of this Act;

2 (2) Contract duration;

3 (3) Contract termination;

4 (4) Renegotiation standards;

5 (5) Responsibility for environmental damage;

6 (6) Factors to be used in determining payment; and

7 (7) Responsibility for obtaining and complying with local, state, federal permits.

8 Section 4. Any agricultural contract executed or amended after the effective date of this Act
9 shall contain a cover sheet as the first page or pages of text. The cover sheet shall contain:

10 (1) A brief statement that the document is a legal contract between the parties;

11 (2) The following statement: "READ YOUR CONTRACT CAREFULLY. This cover
12 sheet provides only a brief summary of your contract. This is not the contract and only
13 the terms of the actual contract are legally binding. The contract itself sets forth, in
14 detail, the rights and obligations of both you and the contractor or processor. IT IS
15 THEREFORE IMPORTANT THAT YOU READ YOUR CONTRACT
16 CAREFULLY";

17 (3) The disclosure statement required by section 3 of this Act; and

18 (4) An index of the major provisions of the contract and the pages on which they are
19 found, including all of the following:

20 (a) The names of all parties to the contract.;

21 (b) The definition sections of the contract;

22 (c) The provisions governing termination, cancellation, renewal, and amendment
23 of the contract by either party;

24 (d) The duties or obligations of each party; and

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

2 Section 5. Any agricultural contract executed or amended after the effective date of this Act
3 shall be in legible type with a typeface of at least ten-point modern type, appropriately divided
4 and captioned by its various sections, and written in clear and coherent language using simple
5 sentence structure, clear definitions, and words and grammar understandable by a person of
6 average intelligence, education, and experience within the industry. Such contract shall avoid
7 esoteric legal terms and minimize references to other sections or provisions. The following terms
8 may be used in an agricultural contract:

9 (1) Legally required terms, including particular words, phrases, provisions, or forms of
10 agreement specifically required, recommended, or endorsed by a state or federal
11 statute, rule, or regulation;

12 (2) Customarily used terms, including technical terms used to describe the services or
13 property that are the subject of the contract, if the terms are customarily used by
14 producers in the ordinary course of business in connection with the services or
15 property being described.

16 Section 6. Any contract producer may cancel a production contract by mailing a written
17 cancellation notice to the contractor within three business days after the contract is executed, or
18 by the cancellation deadline if specified in the contract, whichever is later. The contract
19 producer's right to cancel, the method by which the contract producer may cancel, and the
20 deadline for canceling the production contract shall be clearly disclosed in every production
21 contract.

22 Section 7. Any provision of an agricultural contract executed or amended after the effective
23 date of this Act that imposes confidentiality on information other than trade secrets contained
24 in the agricultural contract, is void. Such a provision is void whether it is express or implied; oral

1 or written; required or conditional; or contained in the agricultural contract, another agricultural
2 contract, or in a related document, policy, or agreement. Other provisions of an agricultural
3 contract or a related document, policy, or agreement that can be given effect without the voided
4 provision are not affected. This section does not require a party to an agricultural contract to
5 divulge information about the contract to another person.

6 Section 8. Sections 9 to 12, inclusive, of this Act only apply to a production contract
7 executed by a contract producer and a contractor, if the contract producer must make capital
8 investments of one hundred thousand dollars or more. The amount of the capital investment is
9 determined by aggregating the investment requirements provided in all production contracts in
10 which the contract producer and the contractor are parties. The value of the capital investments
11 is the total dollar amount spent by the contract producer in satisfying the investment
12 requirements.

13 Section 9. Except as provided in section 11 of this Act, no contractor may terminate or
14 cancel a production contract unless such contractor has provided the contract producer written
15 notice at least ninety days before the effective date of the termination or cancellation, and the
16 contract producer has been reimbursed for damages incurred due to the termination or
17 cancellation. Damages shall be based on the value of the remaining useful life of the structures,
18 machinery, or equipment involved.

19 Section 10. Except as provided in section 11 of this Act, no contractor may terminate or
20 cancel a production contract that has been materially breached by a contract producer unless the
21 contractor has provided written notice of termination or cancellation at least forty-five days
22 before its effective date, which contains the alleged causes constituting the breach, and the
23 contract producer has failed to remedy each breach within thirty days following receipt of the
24 notice. No effort by a contract producer to remedy an alleged breach may be construed as an

1 admission of a breach in a civil cause of action.

2 Section 11. A contractor may terminate or cancel a production contract without notice or
3 remedy as required in sections 9 and 10 of this Act if the basis for the termination or cancellation
4 is voluntary abandonment of the contractual relationship by the contract producer by a failure
5 of a contract producer to perform the obligations of a production contract, or the conviction of
6 a contract producer of fraud or theft committed against the contractor.

7 Section 12. If a contractor terminates or cancels a production contract other than provided
8 in sections 9 to 11, inclusive, of this Act, the contractor shall pay the contract producer the value
9 of the remaining useful life of the structures, machinery, or equipment involved.

10 Section 13. For purposes of this Act, the term, contract input, means a commodity or an
11 organic or synthetic substance or compound used to produce a commodity, including livestock
12 or plants, agricultural seeds, semen or eggs for breeding livestock, and fertilizer or pesticide.

13 Section 14. For purposes of this Act, the term, producer right, means any of the following
14 legal rights and protections:

15 (1) The right of a producer to join or belong to, or to refrain from joining or belonging
16 to, an association of producers;

17 (2) The right of a producer to enter into a membership agreement or marketing contract
18 with an association of producers, a processor, or another producer, and the right of
19 the producer to exercise contractual rights under such a membership agreement or
20 marketing contract;

21 (3) The right of a producer to lawfully provide statements or information, including
22 statements or information to the United States Secretary of Agriculture or to a law
23 enforcement agency, regarding alleged improper actions or violations of law by a
24 contractor or processor. This right does not include the right to make libelous or

1 slanderous statements;

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3 (4) The right of a contract producer to have production contracts reviewed by financial
4 professionals, by legal counsel, and as provided by section 6 of this Act;

5 (5) The right of a producer to disclose the terms of agricultural contracts as provided by
6 section 7 of this Act; and

7 (6) The right of a producer to exercise other protections afforded by this Act or other
8 laws, rules, or regulations.

9 Section 15. No contractor or processor may knowingly engage, or permit any employee or
10 agent to engage, in any of the following actions to coerce, intimidate, disadvantage, retaliate
11 against, or discriminate against any producer because the producer exercises, or attempts to
12 exercise, any producer right. Such actions include:

13 (1) The execution, termination, extension, or renewal of an agricultural contract;

14 (2) Treatment of a producer that includes placing discriminatory or preferential terms in
15 an agricultural contract or interpreting terms of an existing agricultural contract in a
16 discriminatory or preferential manner. For purposes of this section, the term, terms,
17 includes the price paid for a commodity, the quality or the quantity of a commodity
18 demanded, financing, or investment requirements;

19 (3) The grant or denial of a reward or imposition of a penalty, including financial rewards
20 or penalties such as loans, bonuses, or inducements;

21 (4) The alteration of the quality, quantity, or delivery times of contract inputs provided
22 to a producer.

23 Section 16. No contractor or processor may knowingly do, or permit any employee or agent
24 to do, any of the following:

- 1 (1) Provide false information to the producer, including that related to the character,
2 financial condition, or management practices of a producer with whom the producer
3 associates, or an association of producers, or an agricultural organization with which
4 the producer is affiliated, or producer rights provide by this Act or other provisions
5 of law;
- 6 (2) Refuse to provide to a contract producer statistical information and data used to
7 determine the compensation paid under a production contract, including feed
8 conversion rates, feed analyses, or origination and breeder history;
- 9 (3) Refuse to allow a contract producer or a designated representative to observe at the
10 time of weighing, the weights and measures used to determine the contract producer's
11 compensation under a production contract;
- 12 (4) Use a contract producer's performance, also known as tournament compensation, to
13 determine the compensation due another contract producer under a production
14 contract, or to use that performance as the basis of the termination, cancellation, or
15 renewal of a production contract;
- 16 (5) Require a contract producer to make new or additional capital investments in
17 connection with, or to retain, continue, or renew, a production contract. It is not be
18 a violation of this section if such new or additional capital investments are partially
19 paid for by the contractor, or are offset by other compensation or modifications to the
20 original contract agreed to in writing as consideration for the new capital investment;
- 21 (6) Execute an agricultural contract in violation of the disclosure of risks and readability
22 requirements of sections 3 to 5, inclusive, of this Act;
- 23 (7) Execute an agricultural contract that includes a confidentiality provision in violation
24 of section 7 of this Act;

1 (8) Execute an agricultural contract without a mediation provision as required under
2 section 29 of this Act;

3 (9) Execute an agricultural contract that includes a waiver of any producer right or any
4 obligation of a contractor or processor established under this Act;

5 (10) Execute an agricultural contract requiring the application of the law of another state.

6 Section 17. Any provision of an agricultural contract that waives a producer right or a
7 contractor or processor obligation established by this Act is void and unenforceable. No such
8 provision affects other provisions of an agricultural contract, related document, policy, or
9 agreement, if such other provision, related, document, policy, or agreement can be given effect
10 without the voided provision.

11 Section 18. Any condition, stipulation, or provision of an agricultural contract requiring the
12 application of the law of another state is void and unenforceable.

13 Section 19. Any agricultural contract shall contain language providing for resolution of
14 disputes by mediation.

15 Section 20. Any contractor or processor committing an unfair practice under sections 23 to
16 26, inclusive, of this Act is subject to a civil penalty of up to ten thousand dollars per violation.

17 Section 21. Any producer who suffers damages because of a contractor's or processor's
18 violation of this Act may obtain appropriate legal and equitable relief, including damages,
19 pursuant to the rules of civil procedure. The court may award the prevailing producer reasonable
20 attorney fees and other litigation expenses. No producer is required to post a bond, prove the
21 absence of an adequate remedy at law, or show the existence of special circumstances, to obtain
22 temporary or permanent injunctive relief unless the court for good cause otherwise orders.

23 Section 22. In addition to the remedies provided in this Act, a court reviewing an agricultural
24 contract may change the terms of the contract or limit a provision to avoid an unfair result if the

1 court finds:

2 (1) A material provision of the contract violates sections 3 to 5, inclusive, of this Act;

3 (2) The violation caused the producer to be substantially confused about any of the rights,
4 obligations, or remedies of the contract; and

5 (3) The violation has caused or is likely to cause financial detriment to the producer.

6 If the court reforms or limits a provision of an agricultural contract, the court shall also make
7 orders necessary to avoid unjust enrichment. Bringing a claim for relief under this section does
8 not entitle a producer to withhold performance of an otherwise valid contractual obligation. No
9 relief may be granted under this section unless the claim is brought before the obligations of the
10 contract have been fully performed.

11 Section 23. In a proceeding in which civil penalties are claimed from a party for a violation
12 of sections 3 to 5, inclusive, of this Act, it is a defense to the claim that the party made a good
13 faith and reasonable effort to comply.

14 Section 24. Notwithstanding section 21 of this Act, any party who has made a good faith and
15 reasonable effort to comply may not be assessed attorney's fees for violations of sections 3 to 5,
16 inclusive, of this Act.

17 Section 25. Violation of sections 3 to 5, inclusive, of this Act is not a defense to a claim
18 arising from a producer's breach of an agricultural contract. A producer may recover actual
19 damages caused by a violation of sections 3 to 5, inclusive, of this Act only if the violation
20 caused the producer to not understand the rights, obligations, or remedies of the contract.

21 Section 26. Any claim that an agricultural contract violates sections 3 to 5, inclusive, of this
22 Act shall be raised within six years of the date the contract is executed by the producer.

23 Section 27. In addition to using other appropriate remedies, the attorney general may enforce
24 the provisions of this Act, through injunctive action to restrain a contractor or processor from

1 engaging in conduct or practices in violation of this Act, or to require a contractor or processor
2 to comply with a provision of this Act. To accomplish the objectives and to carry out the
3 provisions of this Act, the attorney general issue a subpoena to any contractor or processor to
4 obtain an agricultural contract. Any person failing to comply with such subpoena may be certified
5 to circuit court, for enforcement by order. Noncompliance with a judicial order shall be treated
6 the same as a contempt of the court.

7 Section 28. The attorney general may also bring an action in circuit court for recovery of civil
8 penalties provided in section 20 of this Act.

9 Section 29. This Act does not apply to:

- 10 (1) Agricultural contracts based on a sharecropping arrangement or agreement;
- 11 (2) Agricultural contracts in which all parties executing the contract are producers;
- 12 (3) Any contract involving forward contracting of livestock or grain entered into with any
13 packer, dairy, milk or milk products processor, public grain warehouse, grain dealer,
14 or grain or livestock exchange or other commodity exchange;
- 15 (4) Any contract involving a grain processing cooperative that is exempt under section
16 521 of the federal Internal Revenue Code as amended to January 1, 2003.