

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

336H0233

## HOUSE BILL NO. 1200

Introduced by: Representatives Kloucek, Flowers, and Lange and Senators Hutmacher,  
Koetzle, and Reedy

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," a person who owns a commodity produced by a contract  
6 producer according to a production contract;

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

8 (3) "Capital investment," an 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," an animal feeding operation that produces livestock or  
15 raw milk according to a production contract. The term includes a confinement feeding



- 1 operation, an open feedlot, land on which crops or other vegetation is grown and used  
2 to graze or feed livestock, or land used to feed livestock for slaughter;
- 3 (7) "Contract operation," a contract livestock facility or a contract crop field;
- 4 (8) "Contract producer," a producer who holds a legal interest in a contract operation and  
5 who produces a commodity under a production contract;
- 6 (9) "Contractor," a person who is an active contractor or a passive contractor;
- 7 (10) "Crop," a plant used for food, animal feed, fiber, oil, pharmaceuticals, nutraceuticals,  
8 or seed, including alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn,  
9 rye, sorghum, soybeans, sunflowers, tobacco, wheat, and grasses used for forage or  
10 silage;
- 11 (11) "Livestock," beef cattle, dairy cattle, poultry, sheep, or swine;
- 12 (12) "Marketing contract," a 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," a 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," a 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 § 39-5-6(4);
- 22 (15) "Produce," to provide feed or services relating to the care and feeding of livestock,  
23 including milking dairy cattle and storing raw milk. The term also means planting,  
24 raising, harvesting, and storing a crop, including preparing the soil for planting and

1 nurturing the crop by the application of fertilizers, soil conditioners, or pesticides;

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

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

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

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

23 (1) In the case of production contracts, the producer's right to review as provided in  
24 section 6 of this Act;

- 1 (2) Contract duration;
- 2 (3) Contract termination;
- 3 (4) Renegotiation standards;
- 4 (5) Responsibility for environmental damage;
- 5 (6) Factors to be used in determining payment; and
- 6 (7) Responsibility for obtaining and complying with local, state, federal permits.

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

- 9 (1) A brief statement that the document is a legal contract between the parties;
- 10 (2) The following statement: "READ YOUR CONTRACT CAREFULLY. This cover  
11 sheet provides only a brief summary of your contract. This is not the contract and only  
12 the terms of the actual contract are legally binding. The contract itself sets forth, in  
13 detail, the rights and obligations of both you and the contractor or processor. IT IS  
14 THEREFORE IMPORTANT THAT YOU READ YOUR CONTRACT  
15 CAREFULLY";
- 16 (3) The disclosure statement required by section 3 of this Act; and
- 17 (4) An index of the major provisions of the contract and the pages on which they are  
18 found, including all of the following:
  - 19 (a) The names of all parties to the contract.;
  - 20 (b) The definition sections of the contract;
  - 21 (c) The provisions governing termination, cancellation, renewal, and amendment  
22 of the contract by either party;
  - 23 (d) The duties or obligations of each party; and
  - 24 (e) Any provisions subject to change in the contract.

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

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

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

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

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

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

5 Section 8. A contract producer has a lien for the amount owed by an active contractor  
6 pursuant to the terms of the production contract.

7 Section 9. If the production contract is for livestock, the lien established pursuant to section  
8 of this Act applies as follows:

- 9 (1) If the livestock is not sold or slaughtered by the contractor, the lien is on the  
10 livestock;
- 11 (2) If the livestock is sold by the contractor, the lien is on sale proceeds;
- 12 (3) If the livestock is slaughtered by the contractor, the lien is on any property of the  
13 contractor that may be subject to a security interest as provided in § 57A-9-102.

14 Section 10. If the production contract is for raw milk, the lien established pursuant to section  
15 of this Act applies as follows:

- 16 (1) If the raw milk is not sold or processed by the contractor, the lien is on the raw milk;
- 17 (2) If the raw milk is sold by the contractor, the lien is on sale proceeds;
- 18 (3) If the raw milk is processed by the contractor, the lien is on any property of the  
19 contractor that may be subject to a security interest as provided in § 57A-9-102.

20 Section 11. A lien on livestock or raw milk under this Act is created at the time the livestock  
21 first arrives at the contract facility and continues for one year after the livestock leaves the  
22 contract facility.

23 Section 12. If the production contract is for crops, the lien established pursuant to section  
24 of this Act applies as follows:

- 1 (1) If the crop is not sold or processed by the contractor, the lien is on the crop;
- 2 (2) If the crop is sold by the contractor, the lien is on cash sale proceeds.;
- 3 (3) If the crop is processed by the contractor, the lien is on any property of the contractor  
4 that may be subject to a security interest as provided in § 57A-9-102.;
- 5 (4) A lien on a crop is created at the time the crop is first planted and continues for one  
6 year after the crop, or grain from the crop, is no longer under the custody or control  
7 of the contract producer.

8 Section 13. In order to preserve a lien created pursuant to section 8 if this Act, a contract  
9 producer shall file a lien statement with the secretary of state on a form prescribed by the  
10 secretary of state. A lien statement covering the production of livestock or raw milk, must be  
11 filed within forty-five days after the livestock first arrives at the contract livestock facility. A lien  
12 statement covering crops must be filed within forty-five days after the crop is first planted. The  
13 secretary of state may charge a fee in accordance with the provisions of § 57A-9-525 for filing  
14 the statement. The secretary of state may adopt rules pursuant to chapter 1-26 for the filing and  
15 release of lien statements, fees, and electronic filings.

16 Section 14. The lien statement filed pursuant to section 13 of this Act shall include:

- 17 (1) The name and address of the contract producer;
- 18 (2) The name of the active contractor whose commodity is produced pursuant to the  
19 production contract; and
- 20 (3) The location of the contract operation, by county and township.

21 Section 15. A lien statement filed pursuant to section 13 of this Act shall be released by the  
22 contract producer upon payment of the amount owed pursuant to the production contract. A  
23 release shall be filed with the secretary of state, on a form prescribed by the secretary, within  
24 thirty days after payment.

1 Section 16. A contract producer may foreclose a lien created under section 8 of this Act in  
2 the manner provided for the foreclosure of secured transactions in chapter 57A-9.

3 Section 17. A lien created pursuant to this Act has priority over all other liens and  
4 encumbrances if filed within forty-five days after the livestock first arrives at the contract facility  
5 or within forty-five days after the crop is first planted.

6 Section 18. Sections 19 to 22, 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 19. Except as provided in section 21 of this Act, a contractor may not terminate or  
14 cancel a production contract until providing the contract producer written notice at least ninety  
15 days before the effective date of the termination or cancellation, and the contract producer has  
16 been reimbursed for damages incurred due to the termination or cancellation. Damages shall be  
17 based on the value of the remaining useful life of the structures, machinery, or equipment  
18 involved.

19 Section 20. Except as provided in section 21 of this Act, a contractor may not terminate or  
20 cancel a production contract that has been materially breached by a contract producer until 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. An effort by a contract producer to remedy an alleged breach may not be construed as



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

2 Section 21. A contractor may terminate or cancel a production contract without notice or  
3 remedy as required in sections 19 and 20 of this Act if the basis for the termination or  
4 cancellation is voluntary abandonment of the contractual relationship by the contract producer  
5 by a failure of a contract producer to perform the obligations of a production contract, or the  
6 conviction of a contract producer of fraud or theft committed against the contractor.

7 Section 22. If a contractor terminates or cancels a production contract other than provided  
8 in sections 19 to 21, inclusive, of this Act, the contractor shall pay the contract producer the  
9 value of the remaining useful life of the structures, machinery, or equipment involved.

10 Section 23. 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 24. For purposes of this Act, the term, producer right, means one 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;

2 (4) The right of a contract producer to file, terminate, or enforce a lien as provided by  
3 sections 8 to 17, inclusive, of this Act;

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

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

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

10 Section 25. No contractor or processor may knowingly engage, or permit any employee or  
11 agent to engage, in any of the following actions to coerce, intimidate, disadvantage, retaliate  
12 against, or discriminate against any producer because the producer exercises, or attempts to  
13 exercise, any producer right. Such actions include:

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

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

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

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

24 Section 26. No contractor or processor may knowingly do, or permit any employee or agent

1 to do, any of the following:

2 (1) Provide false information to the producer, including that related to the character,  
3 financial condition, or management practices of a producer with whom the producer  
4 associates, or an association of producers, or an agricultural organization with which  
5 the producer is affiliated, or producer rights provide by this Act or other provisions  
6 of law;

7 (2) Refuse to provide to a contract producer statistical information and data used to  
8 determine the compensation paid under a production contract, including feed  
9 conversion rates, feed analyses, or origination and breeder history;

10 (3) Refuse to allow a contract producer or a designated representative to observe at the  
11 time of weighing, the weights and measures used to determine the contract producer's  
12 compensation under a production contract;

13 (4) Use a contract producer's performance, also known as "tournament compensation"  
14 to determine the compensation due another contract producer under a production  
15 contract, or to use that performance as the basis of the termination, cancellation, or  
16 renewal of a production contract;

17 (5) Require a contract producer to make new or additional capital investments in  
18 connection with, or to retain, continue, or renew, a production contract. It is not be  
19 a violation of this section if such new or additional capital investments are partially  
20 paid for by the contractor, or are offset by other compensation or modifications to the  
21 original contract agreed to in writing as consideration for the new capital investment;

22 (6) Execute an agricultural contract in violation of the disclosure of risks and readability  
23 requirements of sections 3 to 5, inclusive, of this Act;

24 (7) Execute an agricultural contract that includes a confidentiality provision in violation

1 of section 7 of this Act;

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

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

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

7 Section 27. Any provision of an agricultural contract that waives a producer right or a  
8 contractor or processor obligation established by this Act is void and unenforceable. No such  
9 provision affects other provisions of an agricultural contract, related document, policy, or  
10 agreement, that can be given effect without the voided provision.

11 Section 28. 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 29. An agricultural contract shall contain language providing for resolution of  
14 disputes by mediation.

15 Section 30. A contractor or processor committing an unfair practice under sections 23 to 26,  
16 inclusive, of this Act is subject to a civil penalty of up to ten thousand dollars per violation.

17 Section 31. A 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. A producer is not 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 32. 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 33. 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 34. Notwithstanding section 31 of this Act, a 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 35. 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 36. A claim that an agricultural contract violates sections 3 to 5, inclusive, of this Act  
22 must be raised within six years of the date the contract is executed by the producer.

23 Section 37. 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 38. The attorney general or state's attorney may also bring an action in circuit court  
8 for recovery of civil penalties provided in section 30 of this Act.

9 Section 39. 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, 2002.