

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

480H0092

HOUSE JOINT RESOLUTION NO. 1002

Introduced by: Representatives Adelstein and Van Etten and Senators Whiting, Apa, and Ham

1 A JOINT RESOLUTION, Proposing and submitting to the voters at the next general election
2 the repeal of certain sections of Article XVII of the Constitution of the State of South
3 Dakota relating to corporate or syndicate farming.

4 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 SOUTH DAKOTA, THE SENATE CONCURRING THEREIN:

6 Section 1. That at the next general election held in the state, the repeal of the following
7 provisions of Article XVII of the Constitution of the State of South Dakota, as set forth in
8 sections 2 to 5, inclusive, of this Joint Resolution, which is hereby agreed to, shall be submitted
9 to the electors of the state for approval.

10 Section 2. That Article XVII, section 21 of the Constitution, of the State of South Dakota,
11 be repealed.

12 ~~— § 21. No corporation or syndicate may acquire, or otherwise obtain an interest, whether~~
13 ~~legal, beneficial, or otherwise, in any real estate used for farming in this state, or engage in~~
14 ~~farming. The term, corporation, means any corporation organized under the laws of any state of~~
15 ~~the United States or any country. The term, syndicate, includes any limited partnership, limited~~



1 ~~liability partnership, business trust, or limited liability company organized under the laws of any~~
2 ~~state of the United States or any country. A syndicate does not include general partnerships,~~
3 ~~except general partnerships in which nonfamily farm syndicates or nonfamily farm corporations~~
4 ~~are partners. The term, farming, means the cultivation of land for the production of agricultural~~
5 ~~crops, fruit, or other horticultural products, or the ownership, keeping, or feeding of animals for~~
6 ~~the production of livestock or livestock products.~~

7 Section 3. That Article XVII, section 22 of the Constitution, of the State of South Dakota,
8 be repealed.

9 § 22. ~~The restrictions in § 21 of this Article do not apply to:~~

10 ~~—(1)— A family farm corporation or syndicate. A family farm corporation or syndicate is a~~
11 ~~corporation or syndicate engaged in farming or the ownership of agricultural land, in~~
12 ~~which a majority of the partnership interests, shares, stock, or other ownership~~
13 ~~interests are held by members of a family or a trust created for the benefit of a~~
14 ~~member of that family. The term, family, means natural persons related to one another~~
15 ~~within the fourth degree of kinship according to civil law, or their spouses. At least~~
16 ~~one of the family members in a family farm corporation or syndicate shall reside on~~
17 ~~or be actively engaged in the day-to-day labor and management of the farm.~~
18 ~~Day-to-day labor and management shall require both daily or routine substantial~~
19 ~~physical exertion and administration. None of the corporation's or syndicate's partners,~~
20 ~~members, or stockholders may be nonresident aliens, or other corporations or~~
21 ~~syndicates, unless all of the stockholders, members, or partners of such entities are~~
22 ~~persons related within the fourth degree of kinship to the majority of partners,~~
23 ~~members, or stockholders in the family farm corporation or syndicate;~~

24 ~~—(2)— Agricultural land acquired or leased, or livestock kept, fed or owned, by a cooperative~~

1 organized under the laws of any state, if a majority of the shares or other interests of
2 ownership in the cooperative are held by members in the cooperative who are natural
3 persons actively engaged in the day-to-day labor and management of a farm, or family
4 farm corporations or syndicates, and who either acquire from the cooperative,
5 through purchase or otherwise, such livestock, or crops produced on such land, or
6 deliver to the cooperative, through sale or otherwise, crops to be used in the keeping
7 or feeding of such livestock;

8 ~~— (3) — Nonprofit corporations organized under state nonprofit corporation law;~~

9 ~~— (4) — Agricultural land, which, as of the approval date of this amendment, is being farmed,
10 or which is owned or leased, or in which there is a legal or beneficial interest, directly
11 or indirectly owned, acquired, or obtained by a corporation or syndicate, if such land
12 or other interest is held in continuous ownership or under continuous lease by the
13 same such corporation or syndicate. For the purposes of this exemption, land
14 purchased on a contract signed as of the approval date of this amendment is
15 considered as owned on that date;~~

16 ~~— (5) — Livestock, which as of the approval date of this amendment, is owned by a
17 corporation or syndicate. For the purposes of this exemption, livestock to be
18 produced under contract for a corporation or syndicate are considered as owned, if
19 the contract is for the keeping or feeding of livestock and is signed as of the approval
20 date of this amendment, and if the contract remains in effect and is not terminated by
21 either party to the contract. This exemption does not extend beyond the term of any
22 contract signed as of the approval date of this amendment;~~

23 ~~— (6) — A farm operated for research or experimental purposes, if any commercial sales from
24 the farm are only incidental to the research or experimental objectives of the~~

- 1 corporation or syndicate;
- 2 ~~— (7) — Land leases by alfalfa processors for the production of alfalfa;~~
- 3 ~~— (8) — Agricultural land operated for the purpose of growing seed, nursery plants, or sod;~~
- 4 ~~— (9) — Mineral rights on agricultural land;~~
- 5 ~~— (10) — Agricultural land acquired or leased by a corporation or syndicate for immediate or~~
6 ~~potential nonfarming purposes, for a period of five years from the date of purchase.~~
7 ~~A corporation or syndicate may hold such agricultural land in such acreage as may be~~
8 ~~necessary to its nonfarm business operation, but pending the development of the~~
9 ~~agricultural land for nonfarm purposes, such land may not be used for farming except~~
10 ~~under lease to a family farm corporation or family farm syndicate or a non syndicate~~
11 ~~or noncorporate farm;~~
- 12 ~~— (11) — Agricultural lands or livestock acquired by a corporation or syndicate by process of~~
13 ~~law in the collection of debts, or by any procedures for the enforcement of a lien,~~
14 ~~encumbrance, or claim thereon, whether created by mortgage or otherwise. Any lands~~
15 ~~so acquired shall be disposed of within a period of five years and may not be used for~~
16 ~~farming before being disposed of, except under a lease to a family farm corporation~~
17 ~~or syndicate, or a nonsyndicate or noncorporate farm. Any livestock so acquired shall~~
18 ~~be disposed of within six months;~~
- 19 ~~— (12) — Agricultural lands held by a state or nationally chartered bank as trustee for a person,~~
20 ~~corporation or syndicate that is otherwise exempt from the provisions of §§ 21 to 24,~~
21 ~~inclusive, of Article XVII;~~
- 22 ~~— (13) — A bona fide encumbrance taken for purposes of security;~~
- 23 ~~— (14) — Custom spraying, fertilizing, or harvesting;~~
- 24 ~~— (15) — Livestock futures contracts, livestock purchased for slaughter within two weeks of~~

1 ~~the purchase date, or livestock purchased and resold within two weeks.~~

2 Section 4. That Article XVII, section 23 of the Constitution, of the State of South Dakota,
3 be repealed.

4 ~~§ 23. If a family farm corporation or family farm syndicate that has qualified under all the~~
5 ~~requirements of a family farm corporation or a family farm syndicate ceases to meet the defined~~
6 ~~criteria, it has twenty years, if the ownership of the majority of the stock of such corporation, or~~
7 ~~the majority of the ownership interest of such syndicate, continues to be held by persons related~~
8 ~~to one another within the fourth degree of kinship or their spouses, and their land holdings are~~
9 ~~not increased, to either requalify as a family farm corporation or family farm syndicate or dissolve~~
10 ~~and return to personal ownership.~~

11 Section 5. That Article XVII, section 24 of the Constitution, of the State of South Dakota,
12 be repealed.

13 ~~§ 24. Any corporation or syndicate that owns agricultural land or engages in farming is~~
14 ~~required to report information necessary for the enforcement of §§ 21 to 24, inclusive, of Article~~
15 ~~XVII to the secretary of state on an annual basis, under rules promulgated by the secretary~~
16 ~~pursuant to state law. The secretary of state shall monitor such reports and notify the attorney~~
17 ~~general of any possible violations, and any resident of the state may also notify the attorney~~
18 ~~general of any possible violations. If a corporation or syndicate violates any provision of §§ 21~~
19 ~~to 24, inclusive, of Article XVII, the attorney general shall commence an action in circuit court~~
20 ~~to enjoin any pending illegal purchase of land or livestock, or to force divestiture of land or~~
21 ~~livestock held in violation of §§ 21 to 24, inclusive, of Article XVII. The court shall order any~~
22 ~~land held in violation of §§ 21 to 24 of Article XVII to be divested within two years and any~~
23 ~~livestock to be divested within six months. If land so ordered by the court has not been divested~~
24 ~~within two years, the court shall declare the land escheated to the state. If the attorney general~~

- 1 ~~fails to bring an action in circuit court to enforce §§ 21 to 24, inclusive, of Article XVII, any~~
- 2 ~~resident of the state has standing in circuit court to sue for enforcement.~~