

AGRICULTURE

FILED FEB 20 '01

SENATE FILE 254

BY KIBBIE, DEARDEN, FLYNN, SHEARER,
HARPER, FIEGEN, FINK, HORN,
DELUHERY, HAMMOND, FRAISE,
SOUKUP, McCOY, BLACK, BOLKCOM,
DVORSKY, CONNOLLY, and HANSEN

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing protections for contract producers of
2 agricultural commodities, providing for the administration and
3 enforcement of its provisions, providing penalties, and
4 including applicability and effective date provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

SF 254
AGRICULTURE

1 SUBCHAPTER 1

2 GENERAL PROVISIONS

3 Section 1. NEW SECTION. 202B.101 SHORT TITLE --
4 DECLARATION OF POLICY -- STATUTORY CONSTRUCTION.

5 1. This chapter shall be known and may be cited as the
6 "Agricultural Fair Contracting Act".

7 2. The general assembly finds and declares that the
8 traditional system of producing agricultural commodities for
9 sale in open markets is in the process of undergoing a rapid
10 transformation which has reduced the independence of
11 agricultural producers and created a vast disparity in their
12 bargaining power and access to market information when
13 executing contracts for the production and sale of commodities
14 with contractors of agricultural commodities. The purpose of
15 this chapter is to restore healthy competition in agriculture
16 for the benefit of both contract producers and consumers.
17 This chapter shall be liberally construed in order to
18 effectuate this purpose.

19 Sec. 2. NEW SECTION. 202B.102 DEFINITIONS.

20 As used in this chapter, unless the context otherwise
21 requires:

22 1. "Active contractor" means a person who owns a commodity
23 that is produced by a contract producer at the contract
24 producer's contract operation pursuant to a production
25 contract executed pursuant to section 202B.103.

26 2. "Agricultural contract" means a production contract or
27 a marketing contract.

28 3. "Agricultural contract document" means an agricultural
29 contract or a disclosure statement required to be attached to
30 an agricultural contract as provided in subchapter 2.

31 4. "Agricultural land" means land located in this state
32 which is used as part of an agricultural operation to produce
33 a commodity. "Agricultural land" includes any improvements or
34 fixtures associated with agricultural production that are
35 located on the land.

1 5. "Agricultural operation" means an enterprise where an
2 agricultural producer produces a commodity for sale in
3 commercial markets, and that involves maintaining a livestock
4 operation or crop operation. A livestock operation may keep
5 the livestock in a confinement building or other roofed
6 structure, open feedlot, or an area which is used for the
7 raising of crops or other vegetation, and upon which livestock
8 are allowed to feed or graze.

9 6. "Agricultural producer" means a person who produces a
10 commodity at the person's agricultural operation.

11 7. "Attorney general" means the office of attorney general
12 as established in chapter 13.

13 8. "Capital investment" means an investment associated
14 with an agricultural operation in which financing is provided
15 in order to do any of the following:

16 a. Construct, install, or expand a structure, such as a
17 building or other roofed area; fencing; a manure control
18 system; or a manure storage structure as defined in section
19 455B.171.

20 b. Acquire, including by purchase or lease, machinery or
21 equipment which has a useful life in excess of one year,
22 regardless of whether the machinery or equipment is motorized
23 or fixed to a structure, and includes but is not limited to an
24 implement of husbandry as defined in section 321.1; or a
25 device used to control temperature, odor, or pollution.

26 9. "Capital investment requirement" means a provision in a
27 production contract or arising from the performance of a
28 production contract that requires a contract producer to make
29 capital investments in an agricultural operation.

30 10. "Capital investment value" means the total dollar
31 amount that is required to be expended by the contract
32 producer in order to satisfy the capital investment
33 requirements provided in a production contract.

34 11. "Commodity" means the following:

35 a. For livestock: the animal, any part of the animal, or

1 items produced by the animal in unprocessed form.

2 b. For crops: the plant, any part of the plant, or items
3 produced by the plant having commercial value in an
4 unprocessed form.

5 12. "Contract crop operation" means an agricultural
6 operation where a crop is produced according to a production
7 contract executed pursuant to section 202B.103 by a contract
8 producer who holds a legal interest in the agricultural
9 operation, including the crop field.

10 13. "Contract input" means a commodity or an organic or
11 synthetic substance or compound that is used to produce a
12 commodity including but not limited to any of the following:

13 a. For livestock: animals; semen, embryos, or oocytes for
14 use in breeding; or materials or services used to provide for
15 the care and feeding of the livestock, including but not
16 limited to feed, nutritional supplements, medication, or
17 bedding.

18 b. For crops: seeds or plants; or a fertilizer or soil
19 conditioner as defined in section 200.3, or pesticide as
20 defined in section 206.2.

21 14. "Contract livestock operation" means an agricultural
22 operation where livestock are produced according to a
23 production contract executed pursuant to section 202B.103 by a
24 contract producer who holds a legal interest in the
25 agricultural operation.

26 15. "Contract operation" means an agricultural operation
27 which is a contract livestock operation or contract crop
28 operation.

29 16. "Contract producer" means a person who holds a legal
30 interest in a contract operation and who produces a commodity
31 according to an agricultural contract executed pursuant to
32 section 202B.103.

33 17. "Contractor" means any of the following:

34 a. An active contractor or a passive contractor who
35 executes a production contract as provided in section

1 202B.103.

2 b. A processor who executes a marketing contract as
3 provided in section 202B.103.

4 18. "Crop" means a seed or germinating or developing
5 plant, which is used for food, animal feed, fiber, oil,
6 alcohol, pharmaceuticals, or nutraceuticals. "Crop" includes
7 but is not limited to alfalfa, barley, buckwheat, corn, flax,
8 forage, millet, oats, popcorn, rye, sorghum, soybeans,
9 sunflowers, wheat, and grasses used for forage or silage.

10 19. "Livestock" means a gestating or born animal belonging
11 to the bovine, caprine, equine, ovine, or porcine species,
12 ostriches, rheas, emus; farm deer, as defined in section
13 481A.1; or poultry.

14 20. "Marketing contract" means an oral or written
15 agreement executed between a processor and a contract producer
16 pursuant to section 202B.103 in which the processor purchases
17 a commodity from a contract producer, if the commodity is
18 produced as part of the contract producer's agricultural
19 operation.

20 21. "Passive contractor" means a person who furnishes
21 management services to a contract producer, and who does not
22 own a commodity that is produced by the contract producer at
23 the contract producer's contract operation according to a
24 production contract executed pursuant to section 202B.103.

25 22. "Processing" means turning a commodity into a product
26 by physical or chemical modification, including but not
27 limited to slaughtering, cutting, canning, freezing, drying,
28 dehydrating, cooking, pressing, powdering, packaging,
29 repacking, baking, heating, mixing, grinding, churning,
30 separating, extracting, fermenting, eviscerating, preserving,
31 jarring, or brewing.

32 23. "Processor" means a person who is engaged in the
33 business of processing a commodity, if the products derived
34 from a commodity are directly or indirectly to be offered for
35 resale or for public consumption.

- 1 24. "Produce" means to do any of the following:
- 2 a. For a livestock operation, provide for the feed or care
- 3 of livestock on agricultural land, including but not limited
- 4 to providing for the handling, health, and security of
- 5 livestock maintained at the operation; and the storage and
- 6 disposal of manure originating from the operation. If the
- 7 livestock are dairy cattle or goats, "produce" includes
- 8 milking the dairy cattle or goats and storing raw milk at the
- 9 contract producer's livestock operation. If the livestock are
- 10 sheep, "produce" includes shearing the sheep and storing the
- 11 wool at the contract producer's livestock operation. If the
- 12 livestock are poultry, "produce" includes collecting and
- 13 storing eggs at the contract producer's livestock facility.
- 14 b. For a crop operation, provide for planting, raising,
- 15 harvesting, or storing a crop as part of the contract crop
- 16 operation on agricultural land. "Produce" includes preparing
- 17 the soil for planting and nurturing the crop on a crop field
- 18 by the application of fertilizers or soil conditioners as
- 19 defined in section 200.3, or pesticides as defined in section
- 20 206.2.
- 21 25. "Production contract" means an oral or written
- 22 agreement executed pursuant to section 202B.103 that provides
- 23 for the production of a commodity or the provision of
- 24 management services relating to the production of a commodity
- 25 by a contract producer.
- 26 26. "Termination action" means an action by a contractor
- 27 who is a party to a production contract based on an alleged
- 28 breach of contract by a contract producer who is also a party
- 29 to the contract, if the contractor does any of the following:
- 30 a. Ceases performance under the production contract in a
- 31 manner that would constitute a breach of the contract absent
- 32 the alleged breach of contract by the contract producer.
- 33 b. Initiates a civil proceeding seeking damages.
- 34 c. Seizes, levies, attaches, garnishes, or executes on
- 35 property of the contract producer or a contract input provided

1 under the agricultural contract.

2 Sec. 3. NEW SECTION. 202B.103 AGRICULTURAL CONTRACTS
3 GOVERNED BY THIS CHAPTER.

4 1. This chapter applies to an agricultural contract as
5 follows:

6 a. For a production contract, the contract must relate to
7 the production of a commodity owned by an active contractor
8 and produced by a contract producer at the contract producer's
9 contract operation, and one of the following must apply:

10 (1) A production contract must be executed by an active
11 contractor and a contract producer, and the active contractor
12 must have sold commodities produced under all production
13 contracts for an amount equal to or more than five hundred
14 thousand dollars during the active contractor's previous
15 fiscal year.

16 (2) A production contract must be executed by an active
17 contractor and a passive contractor and a contract producer
18 for the provision of management services to the contract
19 producer in the production of the commodity, and the active
20 contractor must have sold commodities produced under all
21 production contracts for an amount equal to or more than five
22 hundred thousand dollars during the active contractor's
23 previous fiscal year.

24 (3) A production contract must be executed by a passive
25 contractor and a contract producer, and all of the following
26 must apply:

27 (a) The production contract must provide for management
28 services furnished by the passive contractor to the contract
29 producer in the production of the commodity.

30 (b) The passive contractor must have a contractual
31 relationship with the active contractor involving the
32 production of the commodity.

33 (c) The active contractor must have sold commodities
34 produced under all production contracts for an amount equal to
35 or more than five hundred thousand dollars during the active

1 contractor's previous fiscal year.

2 b. For a marketing contract, the contract must relate to
3 the processor's purchase of a commodity owned by an
4 agricultural producer if the processor purchased commodities
5 under all marketing contracts for an amount equal to or more
6 than five hundred thousand dollars during the processor's
7 previous fiscal year.

8 2. This chapter does not apply to a contract involving any
9 of the following:

10 a. A professional service rendered by a person serving a
11 client who is an agricultural producer, such as a person
12 licensed as a veterinarian or a holder of a temporary permit
13 under chapter 169, a feed supplier, or a crop specialist.

14 b. Testing, developing, or producing seeds or plants for
15 sale or resale to agricultural producers as seed stock, if the
16 sale of the crops or grain which is not sold as seed stock is
17 incidental.

18 c. Research or experimental activities, if the sale of the
19 commodity produced from the agricultural operation is an
20 incidental part of the research or experimental activities.

21 Sec. 4. NEW SECTION. 202B.104 AGRICULTURAL CONTRACTS --
22 INTEGRATION.

23 An agreement executed between an active contractor and a
24 passive contractor and an agreement executed between a passive
25 contractor and a contract producer as provided in section
26 202B.103 shall be deemed to be part of the same agricultural
27 contract. To the extent that provisions remain in force,
28 provisions contained in multiple oral or written agreements or
29 amendments to agreements executed by the same parties shall be
30 deemed to be part of an integrated agricultural contract. All
31 related agricultural contract documents shall be deemed to be
32 part of the same agricultural contract.

33 Sec. 5. NEW SECTION. 202B.105 NOTICE REQUIREMENTS.

34 A notice required to be delivered under this chapter to a
35 party to an agricultural contract shall be delivered by

1 restricted certified mail or by hand with receipt of delivery,
2 unless the manner of delivery is otherwise specified in an
3 agricultural contract executed by the parties.

4 Sec. 6. NEW SECTION. 202B.106 OBLIGATION OF GOOD FAITH.

5 An obligation of good faith, as provided in section
6 554.1203 of the uniform commercial code, is imposed on all
7 parties to an agricultural contract with respect to the
8 performance and enforcement of its provisions.

9

SUBCHAPTER 2

10

AGRICULTURAL CONTRACT DOCUMENTS

11

Sec. 7. NEW SECTION. 202B.201 AGRICULTURAL CONTRACT
12 DOCUMENTS -- READABILITY REQUIREMENTS.

13

This section applies to an agricultural contract document
14 that is an agricultural contract executed by a contractor or a
15 disclosure statement required to be attached to the
16 agricultural contract, as provided in this subchapter.

17

1. An agricultural contract document shall be readable and
18 understandable. In order to comply with this subsection, the
19 agricultural contract shall be all of the following:

20

a. Printed in a legible font type in at least twelve point
21 type size.

22

b. Appropriately divided into captioned sections.

23

c. Written in a clear and coherent style.

24

2. An agricultural contract is not in violation of this
25 section because of any of the following:

26

a. The agricultural contract uses language, including
27 terms or phrases, punctuation, or grammar, that is any of the
28 following:

29

(1) Required, recommended, or endorsed by federal or state
30 law.

31

(2) Understandable by a person of average intelligence,
32 education, and experience in producing or marketing the same
33 type of commodity that is required to be produced or marketed
34 under the agricultural contract.

35

(3) Customarily used by agricultural producers who produce

1 or market the same type of commodity that is required to be
2 produced or marketed under the agricultural contract.

3 b. The agricultural contract is prepared in a form or
4 utilizes a style that is required, recommended, or endorsed by
5 federal or state law.

6 Sec. 8. NEW SECTION. 202B.202 DISCLOSURE STATEMENT
7 REQUIRED.

8 A contractor shall not execute a written agricultural
9 contract unless the agricultural contract as executed by an
10 agricultural producer contains a disclosure statement as
11 provided in this section.

12 1. The disclosure statement may contain one or more pages
13 and shall be attached to the front of the agricultural
14 contract.

15 2. The disclosure statement shall include all of the
16 following:

17 a. A general notice that shall read as follows:

18 ATTENTION

19 READ YOUR CONTRACT CAREFULLY BEFORE SIGNING

20 This disclosure statement is required under Iowa's
21 agricultural fair contracting Act (Iowa Code chapter 202B) and
22 provides only a brief summary of the provisions in your
23 contract. This disclosure statement is not the contract and
24 only the terms of the actual contract are legally binding.
25 The contract itself sets forth, in detail, the rights and
26 obligations of both you as a contract producer and the
27 contractor, including your right to review and cancel this
28 contract. If you have any questions or doubts, you are
29 advised to discuss them with your attorney prior to executing
30 this contract.

31 b. The name of the contractor who is a party to the
32 contract. If the agricultural contract is a production
33 contract, the disclosure statement shall include the name of
34 any active contractor to whom a passive contractor has
35 contracted in order to carry out the production contract.

1 c. A summary of the terms and conditions of the
2 agricultural contract, including a description of the material
3 risks that the agricultural producer assumes by executing the
4 agricultural contract, and provisions for renegotiating the
5 agricultural contract.

6 d. The duration of the agricultural contract, including
7 the date that the contract will commence and terminate.

8 e. The party responsible for addressing environmental
9 damages caused by the agricultural operation, including the
10 party responsible for bearing any civil or criminal penalty
11 imposed by the state or federal government.

12 f. All factors used to determine compensation paid to the
13 agricultural producer, including but not limited to any
14 formula used to calculate payment based on quality or quantity
15 of commodities produced or sold.

16 g. Any capital investment requirements.

17 h. The party who is responsible for obtaining and
18 complying with a permit or certification requirements by a
19 local government or the state or federal government, including
20 requirements imposed under chapter 206 or chapter 455B.

21 i. For a production contract, an explanation of the
22 contract producer's right to review and cancel the contract as
23 provided in section 202B.302.

24 Sec. 9. NEW SECTION. 202B.203 TERMS AND CONDITIONS.

25 A contractor shall not execute a written agricultural
26 contract unless the agricultural contract, as executed by the
27 contract producer, complies with this section.

28 1. The agricultural contract must include all of the
29 following major provisions:

30 a. The names of all parties to the contract.

31 b. Definitions for key words contained in the contract.

32 c. Provisions governing the termination, cancellation,
33 renewal, and amendment of the contract by any party.

34 d. The duties or obligations of each party to perform
35 under the contract.

- 1 e. Any provisions subject to change in the contract.
- 2 2. The agricultural contract shall not include any of the
- 3 following:
- 4 a. A provision that constitutes an unfair practice as
- 5 provided in section 202B.303.
- 6 b. A waiver of any right, obligation, or procedure
- 7 provided in this chapter, including but not limited to a
- 8 contract producer's right as provided in section 202B.302,
- 9 unless otherwise specifically allowed to be waived by law.
- 10 c. A requirement providing for any of the following:
- 11 (1) That a dispute must be settled by arbitration in lieu
- 12 of a judicial proceeding.
- 13 (2) That a legal cause of action must be commenced in a
- 14 jurisdiction outside this state.
- 15 (3) That the law of another state must be applied to an
- 16 issue or controversy.

17 Sec. 10. NEW SECTION. 202B.204 CAPITAL INVESTMENT

18 REQUIREMENTS.

19 A contractor shall not provide for a capital investment

20 requirement that obligates a contract producer to make new or

21 additional capital investments that have a value of twenty

22 thousand dollars or more during the period that the existing

23 production contract would be effective, unless the contractor

24 contributes to satisfying the capital investment requirement.

25 In order to make a contribution, the contractor may provide a

26 portion of the capital investment value or offset other

27 compensation or modifications to the terms of the production

28 contract. Each party to the contract must execute the

29 amendment providing a contribution that constitutes an

30 acceptable and satisfactory consideration for satisfying the

31 capital investment requirement.

32 Sec. 11. NEW SECTION. 202B.205 PROVISIONS VOID AND

33 UNENFORCEABLE.

34 A provision of an agricultural contract that contains a

35 provision in violation of this subchapter is void and

1 unenforceable. However, this section does not affect other
2 provisions of the agricultural contract, including any
3 agricultural contract document or any other related document,
4 policy, or agreement which can be given effect without the
5 voided provision.

6 SUBCHAPTER 3

7 CONTRACT PRODUCER RIGHTS

8 Sec. 12. NEW SECTION. 202B.301 CONTRACT PRODUCER RIGHTS
9 DEFINED.

10 As used in this subchapter, "contract producer right" means
11 a right of a contract producer to do any of the following:

- 12 1. Join or belong to, or to refrain from joining or
13 belonging to, an association of producers.
- 14 2. Enter into a membership agreement or marketing contract
15 with an association of agricultural producers, a processor, or
16 another agricultural producer, and the right of the contract
17 producer to exercise contractual rights under such a
18 membership agreement or marketing contract.
- 19 3. Make a statement or provide information, including to
20 the attorney general, another state agency, the United States
21 secretary of agriculture, or to a law enforcement agency
22 regarding alleged improper actions or violations of law by a
23 contractor. This subsection does not apply to a contract
24 producer making a statement or providing information in
25 violation of statute or court order. This subsection also
26 does not apply to a statement or information which is
27 slanderous or libelous, including as provided under chapter
28 659.
- 29 4. Disclose information contained in an agricultural
30 contract notwithstanding any provision requiring that the
31 information is confidential.
- 32 5. Create, perfect, continue, terminate, or enforce a
33 security interest, including but not limited to filing a
34 financing statement under chapter 554, or a lien under chapter
35 579B.

1 6. Review or cancel a production contract as provided in
2 section 202B.302.

3 7. Enforce any provision of this chapter or rule adopted
4 pursuant to this chapter that provides a right or grants a
5 protection to an agricultural producer.

6 Sec. 13. NEW SECTION. 202B.302 RIGHT TO REVIEW AND
7 CANCEL.

8 1. A contract producer may cancel a production contract by
9 delivering a written cancellation notice to the contractor who
10 is a party to the production contract. The contract producer
11 may deliver the cancellation notice after the day that the
12 contract producer executes the production contract but must
13 deliver it earlier than the following:

14 a. Within three business days after the production
15 contract is executed by the contract producer, or before a
16 later cancellation deadline if a later deadline is specified
17 in the production contract.

18 b. Before the time that the contract producer accepts a
19 contract input.

20 2. a. Following delivery of the cancellation notice, all
21 the following shall apply:

22 (1) Each party shall return any compensation made by a
23 party under the production contract and any negotiable
24 instrument executed by a party.

25 (2) Any security interest arising out of the production
26 contract is terminated upon the return of any compensation
27 made by the party taking the security interest. A party
28 filing a lien or financing statement shall terminate the lien
29 or financing statement.

30 b. The parties shall comply with the requirements of this
31 subsection within forty-five days following the contractor's
32 receipt of the cancellation notice, unless the production
33 contract specifies a shorter period of time.

34 3. This section does not apply to restrict the right of a
35 contract producer to terminate performance of a production

1 contract based on breach of contract by a contractor.

2 Sec. 14. NEW SECTION. 202B.303 CONTRACT PRODUCER RIGHTS
3 -- UNFAIR PRACTICES.

4 A contractor commits an unfair practice if the contractor
5 knowingly engages or permits any employee or agent of the
6 contractor to engage in any of the following:

7 1. Take any action in order to coerce, intimidate,
8 disadvantage, retaliate against, or discriminate against a
9 contract producer because the contract producer exercises, or
10 attempts to exercise, a contract producer's right, including
11 an action affecting any of the following:

12 a. The execution, termination, extension, or renewal of an
13 agricultural contract.

14 b. The treatment of a contract producer, which may include
15 providing discriminatory or preferential terms in an
16 agricultural contract or interpreting terms of an existing
17 agricultural contract in a discriminatory or preferential
18 manner. The terms may relate to the price paid for a
19 commodity; the quality or the quantity of a commodity
20 demanded; or financing, including but not limited to capital
21 investment requirements.

22 c. The grant of a reward or imposition of a penalty,
23 including the denial of a reward. The reward or penalty may
24 be in any form, including, but not limited to, financial
25 rewards or penalties. Financial rewards or penalties may
26 relate to loans, bonuses, or inducements.

27 d. Alter the quality, quantity, or delivery times of
28 contract inputs provided to the contract producer.

29 2. Provide false information to the contract producer,
30 which may include false information relating to any of the
31 following:

32 a. An agricultural producer with whom the contract
33 producer associates or an association of agricultural
34 producers or an agricultural organization with which the
35 contract producer is affiliated, including but not limited to

1 any of the following:

2 (1) The character of the agricultural producer.

3 (2) The condition of the finances or the management of the
4 association of agricultural producers or agricultural
5 organization.

6 b. A right of a contract producer provided under this
7 chapter or other provision of law, including but not limited
8 to chapter 579B.

9 3. Refuse, upon request of a contract producer, to provide
10 the contract producer statistical information and data used to
11 determine compensation paid to the contract producer under a
12 production contract, including, but not limited to, feed
13 conversion rates, feed analyses, origination and livestock
14 breeder history.

15 4. Refuse to allow a contract producer or the contract
16 producer's designated representative to observe, by actual
17 observation at the time of weighing, the weights and measures
18 used to determine the contract producer's compensation under a
19 production contract.

20 5. a. Use the performance of another agricultural
21 producer as a basis for compensating the contract producer or
22 for instituting a termination action under a production
23 contract for the production of livestock.

24 b. Refuse, upon request of a contract producer, to provide
25 the contract producer with all relevant information requested
26 regarding the performance of another agricultural producer
27 that is used as a basis for compensating the contract producer
28 or for instituting a termination action under a production
29 contract for the production of crops. The contract producer
30 shall not release information required under this paragraph
31 that is a trade secret if the contractor notifies the contract
32 producer that the information is a trade secret. The
33 contractor must identify specific information as a trade
34 secret at the time that the contractor delivers the
35 information. If a majority of the information identified as a

1 trade secret is not a trade secret, the contract producer is
2 not required to consider any of the information a trade
3 secret.

4 6. Institute a termination action in violation of section
5 202B.304.

6 Sec. 15. NEW SECTION. 202B.304 PRODUCTION CONTRACTS --
7 TERMINATION ACTIONS AND RIGHT TO CURE NOTICE.

8 1. Except as otherwise provided in this section, a
9 contractor who is a party to a production contract shall not
10 institute a termination action, unless the contractor provides
11 the contract producer who is also a party to the production
12 contract with a right to cure.

13 2. In order to provide a contract producer with a right to
14 cure as required in this section, all of the following must
15 apply:

16 a. The contractor must deliver a written notice of the
17 right to cure to the contract producer. The notice must
18 provide for all of the following:

19 (1) A statement that the contractor may initiate a
20 termination action based on the alleged breach of contract,
21 including an explanation of the termination action, and the
22 contractor's possible remedies.

23 (2) A list of complaints identifying all causes for the
24 alleged breach of contract. The list must specify each
25 complaint in detail sufficient to allow a reasonable contract
26 producer engaged in the same type of agricultural operation to
27 cure each complaint listed in the notice.

28 (3) The date by which the complaints must be cured in
29 order to avoid the termination action.

30 b. The contract producer must fail to cure each complaint
31 alleged to have caused the breach of contract as listed in the
32 notice within thirty days from the receipt of the notice or a
33 longer period if specified in the production contract or in
34 the notice.

35 3. The failure by a contract producer to cure a complaint

1 alleged to cause the breach of contract as listed in a notice
2 of cure shall not be construed as an admission of a breach of
3 contract in a civil cause of action.

4 4. A contractor is not required to provide for a right to
5 cure as otherwise required in this section, if any of the
6 following applies:

7 a. The production contract does not contain a capital
8 investment requirement or has a capital investment requirement
9 with a capital investment value of less than one hundred
10 thousand dollars.

11 b. The contract producer voluntarily abandons the
12 contractual relationship with the contractor. A complete
13 failure of the contract producer's performance under the
14 production contract shall be deemed to be abandonment.

15 c. The contract producer is convicted for an offense of
16 fraud or theft committed against the contractor on a date
17 after the date that the contractor executed the production
18 contract.

19 SUBCHAPTER 4

20 JUDICIAL REMEDIES

21 Sec. 16. NEW SECTION. 202B.401 CHAPTER NOT EXCLUSIVE.

22 This chapter does not limit the right of a contract
23 producer to raise a claim for relief or defense under common
24 law or statute that is otherwise available to the contract
25 producer and does not limit the authority of a court to
26 provide a remedy in law or equity available to a court, to the
27 extent that the claim, defense, or remedy is not based on a
28 provision of this chapter.

29 Sec. 17. NEW SECTION. 202B.402 PRIVATE CAUSE OF ACTIONS
30 COMMENCED UNDER THIS CHAPTER.

31 A contract producer who is a real party in interest may
32 commence a civil action or raise a claim for relief or defense
33 in another civil action, based on a violation of this chapter,
34 and may obtain appropriate legal and equitable relief,
35 including damages or injunctive relief, as provided in this

1 subchapter and the Iowa rules of civil procedure.

2 Sec. 18. NEW SECTION. 202B.403 INJUNCTIVE RELIEF.

3 In order to obtain injunctive relief, a contract producer
4 who commences a civil action as provided in section 202B.402
5 is not required to post a bond, prove the absence of an
6 adequate remedy at law, or show the existence of special
7 circumstances, unless the court for good cause otherwise
8 orders. The court may order any form of prohibitory or
9 mandatory relief that is appropriate under principles of
10 equity, including but not limited to issuing a temporary or
11 permanent restraining order.

12 Sec. 19. NEW SECTION. 202B.404 ATTORNEY FEES.

13 If in a civil action arising out of an agricultural
14 contract, in which the contract producer and the contractor
15 are parties, and the contract producer prevails, there shall
16 be provided in the judgment for the contract producer, and
17 entered and taxed as a part of the costs in the case, a
18 reasonable sum as compensation to the contract producer's
19 attorney, not exceeding the amount provided by law for
20 attorney fees as provided in section 625.22 together with the
21 costs of the case incurred by the contract producer.

22 Sec. 20. NEW SECTION. 202B.405 SPECIAL PROVISIONS FOR
23 ILLEGAL TERMINATION ACTIONS.

24 If a contractor who is a party to a production contract
25 institutes a termination action in violation of section
26 202B.304, the contract producer may treat the termination
27 action as a breach of contract. The contractor shall pay all
28 damages for the breach, including but not limited to damages
29 associated with maintaining a commodity produced under the
30 production contract. In addition to other damages, the
31 contractor shall be liable for an amount equal to the value of
32 the remaining useful life of the structures and machinery or
33 equipment which is part of the contract producer's
34 agricultural operation.

35

SUBCHAPTER 5

1 ADMINISTRATION, ENFORCEMENT, AND PENALTIES

2 Sec. 21. NEW SECTION. 202B.501 ADMINISTRATIVE RULES.

3 The attorney general shall adopt rules as provided in
4 chapter 17A necessary for the efficient administration of this
5 chapter.

6 Sec. 22. NEW SECTION. 202B.502 INVESTIGATIONS.

7 1. The attorney general may conduct an investigation to
8 determine if a contractor is complying with the requirements
9 of this chapter.

10 2. Any person may file a complaint with the attorney
11 general regarding a violation of this chapter according to
12 procedures adopted by the attorney general.

13 3. The attorney general may conduct investigations at
14 times and places and to an extent that the attorney general
15 determines are necessary in order to conclude whether a
16 violation of this chapter has occurred. The attorney general
17 may inspect records relating to agricultural contracts
18 executed by a contractor or contract producer under this
19 chapter. The attorney general may enter upon any public or
20 private premises during regular business hours in a manner
21 consistent with the laws of this state and the United States,
22 including Article I, section 8, of the Constitution of the
23 State of Iowa, or the fourth amendment to the Constitution of
24 the United States for purposes of carrying out an inspection.

25 Sec. 23. NEW SECTION. 202B.503 ENFORCEMENT.

26 1. The attorney general's office is the primary agency
27 responsible for enforcing this chapter.

28 2. In enforcing the provisions of this chapter, the
29 attorney general may do all of the following:

30 a. Apply to the district court for an injunction to do any
31 of the following:

32 (1) Restrain a contractor from engaging in conduct or
33 practices in violation of this chapter.

34 (2) Require a contractor to comply with a provision of
35 this chapter.

1 b. Apply to the district court for the issuance of a
2 subpoena to obtain a copy of an agricultural contract for
3 purposes of enforcing this chapter.

4 c. Establish, assess, and collect civil penalties for
5 violations of this chapter in accordance with section
6 202B.504, including by instituting a contested case proceeding
7 as provided in chapter 17A in order to assess civil penalties,
8 or bring an action in district court in order to assess and
9 collect civil penalties. Moneys collected from civil
10 penalties shall be deposited into the general fund of the
11 state.

12 d. Commence, file, and prosecute any action or information
13 based on an alleged commission by a contractor of a criminal
14 offense as provided in this chapter.

15 3. The attorney general may transmit evidence, proof, and
16 information pertaining to a criminal offense as provided in
17 this chapter to the county attorney of the county in which the
18 alleged offense occurred, and the county attorney may
19 commence, file, and prosecute the action or information.

20 4. This chapter does not do any of the following:

21 a. Limit the authority of the attorney general to seek
22 administrative, legal, or equitable relief as provided by
23 other statutes or at common law.

24 b. Require the attorney general to institute a proceeding
25 for a violation of this chapter, if the attorney general
26 concludes that the public interest will be best served by a
27 suitable notice of warning in writing.

28 Sec. 24. NEW SECTION. 202B.504 CIVIL PENALTIES.

29 A contractor who violates a provision of this chapter is
30 subject to a civil penalty of not more than ten thousand
31 dollars.

32 1. A contractor may be assessed a civil penalty for
33 committing different acts in violation of this chapter which
34 arise from an agricultural contract involving the same
35 agricultural operation, but the contractor shall not be

1 assessed an aggregate amount of more than the maximum amount
2 provided in this subsection.

3 2. A contractor shall not be assessed a civil penalty for
4 violating section 202B.202 to the extent that a contractor
5 made a good faith and reasonable effort to comply with the
6 section.

7 Sec. 25. NEW SECTION. 202B.505 CRIMINAL PENALTIES.

8 1. A contractor who executes a production contract that
9 includes a provision in violation of section 202B.204 is
10 guilty of a fraudulent practice as provided in section 714.8.

11 2. A contractor who commits an unfair practice as provided
12 in section 202B.303 is guilty of a simple misdemeanor.

13 Sec. 26. NEW SECTION. 614.28A AGRICULTURAL CONTRACTS.

14 An action based upon an agricultural contract in which a
15 claim arises out of the failure of a contractor to meet the
16 requirements regarding an agricultural contract as provided in
17 subchapter 2 shall not be maintained after six years from the
18 date that the agricultural producer knew or should have known
19 of the alleged violation by using due diligence.

20 Sec. 27. RULEMAKING PROCEDURES. In adopting rules in
21 order to implement this Act, the attorney general shall
22 consult with the department of agriculture and land
23 stewardship. The attorney general shall also consult with
24 organizations representing agricultural producers, including
25 contract producers, and contractors including active
26 contractors and passive contractors executing production
27 contracts and processors executing marketing contracts.

28 Sec. 28. APPLICABILITY.

29 1. Except as provided in subsection 2, this Act applies to
30 agricultural contracts in force on or after the date of
31 enactment of this Act, regardless of the date that the
32 agricultural contract is executed.

33 2. Notwithstanding subsection 1, the following provisions
34 shall apply to agricultural contracts executed or
35 substantially amended after the date of enactment of this Act:

- 1 a. Section 202B.201, relating to readability requirements
- 2 for agricultural contract documents.
- 3 b. Section 202B.202, relating to disclosure statements.
- 4 c. Section 202B.203, subsection 1, paragraph "c", relating
- 5 to the settlement of disputes.
- 6 d. Section 202B.302, relating to a contract producer's
- 7 right to review or cancel an agricultural contract.

8 Sec. 29. DIRECTIONS TO CODE EDITOR. The Code editor is
 9 directed to transfer section 202.3 to chapter 202B, subchapter
 10 2, as enacted in this Act, and renumber the section as
 11 202B.206 or another number consistent with this Act, and
 12 correct internal references as necessary.

13 Sec. 30. Sections 202.1, 202.2, 202.4, and 202.5, Code
 14 2001, are repealed.

15 Sec. 31. EFFECTIVE DATE. This Act, being deemed of
 16 immediate importance, takes effect upon enactment.

17 EXPLANATION

18 This bill creates a new Code chapter 202B, which replaces
 19 Code chapter 202 enacted by the Seventy-eighth General
 20 Assembly in 1999 (1999 Acts, chapter 169), providing a number
 21 of protections for contract producers of agricultural
 22 commodities. The bill rewrites a number of those provisions,
 23 creates a number of new provisions, and transfers one
 24 provision to the new Code chapter that has been organized into
 25 a number of subchapters.

26 GENERAL PROVISIONS. Subchapter 1 provides a number of
 27 general provisions with general applicability, including
 28 provisions relating to the new chapter's title and purpose,
 29 definitions, and applicability.

30 Code section 202B.101 provides the chapter's short title,
 31 the "Agricultural Fair Contracting Act", and provides findings
 32 and a declaration of purpose which is to restore healthy
 33 competition in agriculture for the benefit of both contract
 34 producers and consumers.

35 Code section 202B.102 provides a number of definitions,

1 many of them variations upon definitions provided in Code
2 chapter 202, and includes definitions for contract producers
3 and contractors. A contract producer is a person who holds a
4 legal interest in an agricultural operation that produces a
5 commodity according to a contract. A contractor is a person
6 who executes a contract for the production of the commodity.
7 The bill provides that a marketing contract is a contract in
8 which a processor agrees to purchase a commodity from the
9 contract producer. The commodity may be livestock or raw
10 products derived from the livestock such as milk or eggs, or a
11 crop including corn and soybeans.

12 Code section 202B.103 provides for the general
13 applicability of the chapter. Similar to Code chapter 202, it
14 provides for the regulation of a production contract executed
15 by a contract producer and a contractor (i.e., "active
16 contractor") or a contract producer and another person
17 ("passive contractor") who is under contract with the active
18 contractor.

19 It provides that the chapter governs agricultural contracts
20 (production or marketing contracts) upon meeting a threshold.
21 For a production contract, the bill's provisions apply if the
22 contractor sold commodities under all production contracts in
23 the last year of \$500,000 or more. For a marketing contract,
24 the bill's provisions apply if the contractor purchased
25 commodities under all marketing contracts in the last year of
26 \$500,000 or more. The bill makes a number of exceptions for
27 certain contracts such as contracts for professional services;
28 the testing, development, or production of seeds or plants for
29 sale or resale to producers as seed stock; and contracts
30 involving research or experimental activities, if the sale of
31 the commodity is incidental.

32 Code section 202B.104 provides for the integration of
33 agreements between active and passive contractors and contract
34 producers involving the production of a commodity. It
35 provides for the integration of multiple oral or written

1 agreements or amendments executed by the same parties, and for
2 the integration of all documents related to the same
3 agricultural contract.

4 Code section 202B.105 provides procedures for notice
5 between contract producers and contractors, including delivery
6 by certified mail.

7 Code section 202B.106 imposes an obligation of good faith
8 on parties to an agricultural contract in the same manner as
9 provided to merchants under the uniform commercial code, and
10 specifically Code section 554.1203.

11 AGRICULTURAL CONTRACT DOCUMENTS. Subchapter 2 provides for
12 the agricultural contract documents, including requirements
13 for a disclosure statement, and the contents of agricultural
14 contracts.

15 Code section 202B.201 provides that an agricultural
16 contract document (the agricultural contract or a disclosure
17 statement required to be attached to the agricultural
18 contract) must be readable and understandable. In order to
19 comply with this requirement, the bill provides that the
20 agricultural contract be in a legible type, appropriately
21 divided into captioned sections, and written in a clear and
22 coherent style.

23 Code section 202B.202 provides that a contractor is
24 prohibited from executing a written agricultural contract,
25 unless the agricultural contract as executed by the contract
26 producer contains a disclosure statement that must be attached
27 to the agricultural contract. The statement must include a
28 general notice to contract producers, the name of the
29 contractor, a summary of the contract's terms and conditions,
30 its duration, the party responsible for addressing
31 environmental damages caused by the agricultural operation,
32 factors used to determine compensation paid to the contract
33 producer, capital investment requirements, and the party who
34 is responsible for obtaining and complying with a permit or
35 certification requirements. In addition, for a production

1 contract, it must include an explanation of the contract
2 producer's right to review and cancel the contract.

3 The bill also provides that the disclosure statement must
4 be printed in a legible font type and point size, be
5 appropriately divided and captioned into sections, and must be
6 written in a clear and coherent style using words,
7 punctuation, and grammar that is understandable by an ordinary
8 agricultural producer producing or marketing the same type of
9 commodity.

10 Code section 202B.203 prohibits a contractor from executing
11 a written agricultural contract, unless it complies with
12 certain requirements. It must include the names of all
13 parties; key definitions; provisions governing termination,
14 cancellation, renewal, and amendment; the duties and
15 obligations of the parties; and provisions subject to change.
16 The section provides that an agricultural contract cannot
17 include a provision that constitutes an unfair practice as
18 provided in the bill; a waiver or a right, obligation, or
19 procedure contained in the bill; a requirement providing for
20 dispute resolution by arbitration; or a provision governing
21 choice of law or choice of forum.

22 Code section 202B.204 prohibits a contractor from executing
23 an amendment to a production contract that obligates a
24 contract producer to make new or additional capital
25 investments of \$20,000 or more under certain circumstances, if
26 the contractor does not contribute to satisfying the capital
27 investment requirement.

28 Code section 202B.205 provides that any provision of an
29 agricultural contract that contains a provision in violation
30 of the subchapter is void and unenforceable.

31 **CONTRACT PRODUCER RIGHTS.** Subchapter 3 provides for
32 contract producer rights, including a listing of those rights,
33 the right to review and cancel an agricultural contract, and
34 unfair practices by contractors.

35 Code section 202B.301 provides a list of contract producer

1 rights. The section includes the right to join or belong to
2 or to refrain from joining or belonging to an association of
3 producers, enter into membership agreements or marketing
4 contracts with associations of producers or a processor, make
5 statements or provide information to governmental officials
6 such as the attorney general's office, disclose information
7 contained in an agricultural contract notwithstanding any
8 provision requiring that the information is confidential,
9 create and enforce a security interest, review and cancel a
10 production contract as provided in the bill, and enforce a
11 provision of the bill.

12 Code section 202B.302 provides that a contract producer may
13 cancel the production contract by delivering a written
14 cancellation notice to the contractor who is a party to the
15 contract. Generally, the contract producer must deliver the
16 notice within three days following execution or before
17 accepting contract inputs, whichever occurs first. The bill
18 also provides for reversing actions taken by the parties if
19 the contract is cancelled.

20 Code section 202B.303 sets out unfair practices committed
21 by a contractor, including taking an action in order to coerce
22 or retaliate against a contract producer because the contract
23 producer exercises a right relating to the contract or the
24 treatment of the contract producer; the grant of a reward or
25 imposition of a penalty; or altering the quality, quantity, or
26 delivery times of a contract input. It prohibits a contractor
27 from providing false information to the contract producer,
28 which may include false information relating to an
29 agricultural contract, an agricultural producer, or the
30 contract operation. It prohibits a contractor from refusing a
31 request by a contract producer to provide statistical
32 information used to determine compensation levels or to
33 observe the weighing and measuring of a commodity. It
34 prohibits a contractor from using the performance of another
35 livestock producer as the basis for compensation or from

1 refusing a request to provide the contract producer
2 information regarding the performance of another agricultural
3 producer that is used as the basis for compensation.

4 Code section 202B.304 prohibits a contractor from
5 terminating a production contract, including by bringing a
6 legal action or enforcing a security interest against a
7 contract producer, unless the contractor provides the contract
8 producer with a right to cure. The contractor must provide a
9 notice of any breach of contract to the contract producer,
10 including a list of complaints causing the alleged breach, and
11 allow the contract producer at least 30 days in order to cure
12 the complaints. The bill provides that the right to cure does
13 not apply to a production contract that does not contain a
14 capital investment requirement or has such an investment
15 requirement with a capital investment value of less than
16 \$100,000. It also does not apply if the contract producer
17 voluntarily abandons the contractual relationship with the
18 contractor or is convicted of an offense of fraud or theft
19 committed against the contractor.

20 JUDICIAL REMEDIES. Subchapter 4 provides a number of
21 judicial remedies that supplement common law remedies,
22 including the right to injunctive relief, attorney fees, and
23 special damages.

24 Code section 202B.401 provides that the bill's new chapter
25 does not limit the right of a contract producer to raise a
26 claim for relief or defense under common law or statute that
27 is otherwise available.

28 Code section 202B.402 provides that a contract producer may
29 commence a civil action or raise a claim for relief or defense
30 in another civil action, based on a violation of the bill's
31 new chapter.

32 Code section 202B.403 provides that in order to obtain
33 injunctive relief, a contract producer who commences a civil
34 action is not required to post a bond, prove the absence of an
35 adequate remedy at law, or show the existence of special

1 circumstances.

2 Code section 202B.404 provides that a contract producer who
3 prevails in a civil action against a contractor is entitled to
4 receive attorney fees paid by the contractor.

5 Code section 202B.405 provides that if a contractor
6 institutes a termination action in violation of provisions
7 allowing contract producers a right to cure an alleged breach
8 of production contracts with capital investment requirements,
9 the contract producer may treat the termination action as a
10 breach of contract, the contractor is liable for damages, and
11 is liable for an amount equal to the value of the remaining
12 useful life of the structures and machinery or equipment which
13 is part of the contract producer's agricultural operation.

14 ADMINISTRATION, ENFORCEMENT, AND PENALTIES. Subchapter 5
15 provides for the administration and enforcement of the new
16 Code chapter by the attorney general, and provides both civil
17 and criminal penalties.

18 Code section 202B.501 provides that the attorney general
19 must adopt rules necessary for the efficient administration of
20 this bill's new chapter.

21 Code section 202B.502 provides that the attorney general
22 may conduct an investigation to determine if a contractor is
23 complying with the requirements of this chapter.

24 Code section 202B.503 provides that the attorney general's
25 office is the primary agency responsible for enforcing the
26 bill's new chapter. It provides that the attorney general's
27 office may apply to district court for injunctive relief or a
28 subpoena; establish, assess, and collect civil penalties for
29 violations of the chapter; and prosecute a case based on a
30 criminal violation of the chapter. The bill also provides
31 that the attorney general may transmit information to a county
32 attorney for prosecution.

33 Code section 202B.504 provides for civil penalties.
34 Generally, a contractor who violates a provision of the bill
35 is subject to a civil penalty of not more than \$10,000. The

1 bill provides that the civil penalty does not apply to a
2 violation involving a disclosure requirement, if the
3 contractor made a good faith and reasonable effort to comply
4 with the requirements.

5 Code section 202B.505 provides for criminal penalties
6 imposed upon a contractor who commits certain offenses
7 specified in the section. A contractor who commits an unfair
8 practice is guilty of a simple misdemeanor. A contractor who
9 imposes a confidentiality requirement in a production contract
10 in violation of Code section 202.3 as transferred into the new
11 Code chapter is guilty of a fraudulent practice (no change
12 from current law).

13 MISCELLANEOUS PROVISIONS. The bill provides a number of
14 related miscellaneous provisions, many appearing only in
15 session law.

16 The bill amends Code chapter 614 that provides for statutes
17 of limitations. The bill creates Code section 614.28A that
18 provides a six-year statute of limitations for civil actions
19 involving the failure of a contractor in meeting requirements
20 regarding the contents of agricultural contracts as provided
21 in subchapter 2.

22 The bill provides rulemaking authority to the attorney
23 general's office, by requiring the office to consult with the
24 department of agriculture and land stewardship and
25 organizations interested in agricultural contracting.

26 The bill provides for its applicability. With limited
27 exceptions, the bill applies to agricultural contracts in
28 force on or after the date of enactment of the bill. The
29 exceptions relate to provisions relating to the settlement of
30 disputes, requirements for readability and disclosure
31 statements, and the right of a contract producer to review and
32 cancel a contract.

33 The bill directs the Code editor to transfer Code section
34 202.3 to the new Code chapter, into subchapter 2. The bill
35 repeals the remaining sections in Code chapter 202.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

The bill takes effect upon enactment.