

**SENATE BILL NO. 2145**

Introduced by

Agriculture Committee

(At the request of the Attorney General)

1 A BILL for an Act to regulate agricultural contracts between agricultural producers and  
2 contractors; to provide a penalty; and to provide for application.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

- 5 1. "Active contractor" means a person who owns a commodity that is produced by a  
6 contract producer at the contract producer's contract operation according to a  
7 production contract.
- 8 2. "Agricultural contract" means a marketing contract or a production contract.
- 9 3. "Animal feeding operation" means a lot, corral, building, or other area in which  
10 livestock is confined and fed. An animal feeding operation does not include a  
11 livestock market.
- 12 4. "Capital investment" means an investment in one of the following:  
13 a. A structure, such as a building or manure storage structure.  
14 b. Machinery or equipment associated with producing a commodity which has a  
15 useful life in excess of one year.
- 16 5. "Commodity" means livestock, raw milk, or a crop.
- 17 6. "Confinement feeding operation" means an animal feeding operation in which  
18 livestock is confined to areas that are totally roofed.
- 19 7. "Contract crop field" means farmland located in this state where a crop is produced  
20 according to a production contract by a contract producer who owns or leases the  
21 farmland.
- 22 8. "Contract livestock facility" means an animal feeding operation located in this state  
23 in which livestock or raw milk is produced according to a production contract by a  
24 contract producer who holds a legal interest in the animal feeding operation.

- 1 "Contract livestock facility" includes a confinement feeding operation, an open  
2 feedlot, or an area that is used for the raising of crops or other vegetation and upon  
3 which livestock is fed for slaughter or is allowed to graze or feed.
- 4 9. "Contract operation" means a contract livestock facility or a contract crop field.
- 5 10. "Contract producer" means a producer who holds a legal interest in a contract  
6 operation and who produces a commodity under a production contract.
- 7 11. "Contractor" means a person who is an active contractor or a passive contractor.
- 8 12. "Crop" means a plant used for food, animal feed, fiber, oil, pharmaceuticals,  
9 nutraceuticals, or seed, including alfalfa, barley, buckwheat, canola, corn, edible  
10 beans, flax, forage, millet, oats, popcorn, potatoes, rye, sorghum, soybeans, sugar  
11 beets, sunflowers, wheat, and grasses used for forage or silage.
- 12 13. "Farmland" means land that is suitable for use in producing crops or livestock.
- 13 14. "Investment requirement" means a provision in a contract which requires the  
14 contract producer to make capital investments associated with producing a  
15 commodity subject to a production contract. The provisions may be included as  
16 part of one or more oral or written agreements or contracts, and may be included  
17 as part of a production contract.
- 18 15. "Livestock" means beef cattle, bison, dairy cattle, poultry, sheep, and swine.
- 19 16. "Marketing contract" means an oral or written agreement between a processor and  
20 a producer for the purchase of commodities grown or raised by the producer in this  
21 state. A marketing contract is executed when it is signed or orally agreed to by  
22 each party or by a person authorized to act on the party's behalf.
- 23 17. "Open feedlot" means an unroofed or partially roofed animal feeding operation in  
24 which no crop, vegetation, or forage growth or residue cover is maintained during  
25 the period that livestock is confined in the operation.
- 26 18. "Passive contractor" means a person who furnishes management services to a  
27 contract producer, and who does not own a commodity that is produced by the  
28 contract producer at the contract producer's contract operation according to a  
29 production contract.
- 30 19. "Processor" means a person engaged in the business of manufacturing goods from  
31 commodities, including by slaughtering or processing livestock, processing raw

1 milk, or processing crops, that has annual gross revenues of more than five million  
2 dollars for that person's operations, or in conjunction with that person's parent  
3 company.

4 20. "Produce" means to do any of the following:

5 a. Provide feed or services relating to the care and feeding of livestock. If the  
6 livestock is dairy cattle, then "produce" includes milking the dairy cattle and  
7 storing raw milk.

8 b. Provide for planting, raising, harvesting, and storing a crop. "Produce"  
9 includes preparing the soil for planting and nurturing the crop by the  
10 application of fertilizers, soil conditioners, or pesticides.

11 21. "Producer" means a person who produces a commodity, including a contract  
12 producer. "Producer" does not include a commercial fertilizer or pesticide  
13 applicator, a feed supplier, or a veterinarian, when acting in such capacity.

14 22. "Production contract" means an oral or written agreement that provides for the  
15 production of a commodity or the provision of management services relating to the  
16 production of a commodity by a contract producer. A production contract is  
17 executed when it is signed or orally agreed to by each party to the contract or by a  
18 person authorized to act on the party's behalf.

19 **SECTION 2. Production contracts governed by this Act.** This Act applies to  
20 production contracts that relate to the production of a commodity owned by an active contractor  
21 and produced by a contract producer at the contract producer's contract operation, if one of the  
22 following applies:

23 1. Contract with active contractor. The production contract is executed by an active  
24 contractor and a contract producer for the production of the commodity.

25 2. Contract with active contractor and passive contractor. The production contract is  
26 executed by an active contractor and a passive contractor for the provision of  
27 management services to the contract producer in the production of the commodity.

28 3. Contract with passive contractor. The production contract is executed by a passive  
29 contractor and a contract producer, if all of the following apply:

30 a. The contract provides for management services furnished by the passive  
31 contractor to the contract producer in the production of the commodity.

- 1           b. The passive contractor has a contractual relationship with the active  
2           contractor involving the production of the commodity.

3           **SECTION 3. Implied obligation of good faith.** An agricultural contract imposes an  
4           obligation of good faith, as defined in section 41-01-11, on all parties with respect to the  
5           performance and enforcement of the agricultural contract.

6           **SECTION 4. Disclosure of risks and readability.**

- 7           1. Disclosure statement. An agricultural contract must be accompanied by a clear  
8           written disclosure statement setting forth the nature of the material risks faced by  
9           the producer if the producer enters into the contract. The statement must meet the  
10          readability requirements of subsection 2. The statement may be in the form of a  
11          written statement or checklist and may be developed in cooperation with producers  
12          or producer organizations. The statement must disclose the following:
- 13          a. In the case of production contracts, the producer's right to review as provided  
14             in section 5 of this Act;
  - 15          b. Contract duration;
  - 16          c. Contract termination;
  - 17          d. Renegotiation standards;
  - 18          e. Responsibility for environmental damage;
  - 19          f. Factors to be used in determining payment;
  - 20          g. Responsibility for obtaining and complying with local, state, and federal  
21             permits; and
  - 22          h. Any other contract term the attorney general determines appropriate for  
23             disclosure in accordance with rules adopted under chapter 28-32.
- 24          2. Readability of contracts.
- 25          a. Definition. As used in this subsection, "legible type" means a typeface at least  
26             as large as ten-point modern type, one-point leaded.
  - 27          b. Cover sheet requirements.
    - 28             (1) Mandatory cover page. An agricultural contract entered into, amended,  
29                 or renewed after the effective date of this Act must contain as the first  
30                 page, or first page of text if it is preceded by a title page or pages, a  
31                 cover sheet as provided in this section.

- 1                   (2) Requirements. The cover sheet or sheets must comply with  
2                   subdivision c and must contain all of the following:
- 3                   (a) A brief statement that the document is a legal contract between  
4                   the parties.
- 5                   (b) The statement "READ YOUR CONTRACT CAREFULLY. This  
6                   cover sheet provides only a brief summary of your contract. This  
7                   is not the contract and only the terms of the actual contract are  
8                   legally binding. The contract itself sets forth, in detail, the rights  
9                   and obligations of both you and the contractor or processor. IT  
10                  IS THEREFORE IMPORTANT THAT YOU READ YOUR  
11                  CONTRACT CAREFULLY."
- 12                  (c) The written disclosure of risks required by subsection 1.
- 13                  (d) A statement detailing, in plain language, the producer's right to  
14                  review the contract as described in section 5 of this Act.
- 15                  (e) An index of the major provisions of the contract and the pages on  
16                  which they are found, including all of the following:
- 17                         [1] The names of all parties to the contract.
- 18                         [2] The definition sections of the contract.
- 19                         [3] The provisions governing termination, cancellation,  
20                         renewal, and amendment of the contract by either party.
- 21                         [4] The duties or obligations of each party.
- 22                         [5] Any provisions subject to change in the contract.
- 23                  c. Contract format and plain language. An agricultural contract must be in  
24                  legible type, appropriately divided and captioned by its various sections, and  
25                  written in clear and coherent language using words and grammar that are  
26                  understandable by a person of average intelligence, education, and  
27                  experience within the industry. This subdivision does not apply to the  
28                  following terms in an agricultural contract:
- 29                         (1) Legally required. Particular words, phrases, provisions, or forms of  
30                         agreement specifically required, recommended, or endorsed by a state  
31                         or federal statute, rule, or regulation.

- 1                   (2) Customarily used terms. Technical terms used to describe the services  
2                   or property, which are the subject of the contract, if the terms are  
3                   customarily used by producers in the ordinary course of business in  
4                   connection with the services or property being described.
- 5           3. Review by attorney general.
- 6           a. Process of review. A contractor or processor may submit an agricultural  
7           contract to the attorney general for review as to whether it complies with this  
8           section. After reviewing the contract, the attorney general shall do one of the  
9           following:
- 10           (1) Certify that the contract complies with this section.  
11           (2) Decline to certify that the contract complies with this section and note  
12           objections.  
13           (3) Decline to review the contract because the contract's compliance with  
14           this section is subject to pending litigation.  
15           (4) Decline to review the contract because the contract is not subject to this  
16           section.
- 17           b. Factors in determining readability. In determining whether an agricultural  
18           contract or cover sheet is readable within the meaning of subsection 2, the  
19           attorney general shall consider at least the following factors:
- 20           (1) The simplicity of the sentence structure.  
21           (2) The extent to which commonly used and understood words are  
22           employed.  
23           (3) The extent to which esoteric legal terms are avoided.  
24           (4) The extent to which references to other sections or provisions of the  
25           contract are minimized.  
26           (5) The Flesch scale analysis readability score or any other recognized test  
27           of a similar nature.  
28           (6) The extent to which clear definitions are used in the text of the contract.  
29           (7) Additional factors relevant to the readability or understandability of the  
30           contract.

- 1 c. Process not reviewable. Actions of the attorney general under this subsection  
2 are not subject to judicial review.
- 3 d. Limited effect of certification. A contract certified under this subsection is  
4 deemed to comply with subsections 1 and 2. Certification of a contract under  
5 this subsection does not constitute an approval of the contract's legality or  
6 legal effect. If the attorney general certifies a contract or fails to respond  
7 within thirty days of receipt of the contract, then the contractor or processor  
8 will have complied with subsections 1 and 2 and the remedies stated in  
9 subdivision f and section 12 of this Act are not available.
- 10 e. Review not required. Failure to submit a contract to the attorney general for  
11 review under this subsection does not show a lack of good faith or raise a  
12 presumption that the contract violates this section.
- 13 f. Reformation by court.
- 14 (1) Change terms. In addition to the remedies provided in section 13 of  
15 this Act, a court reviewing an agricultural contract may change the  
16 terms of the contract or limit a provision to avoid an unfair result if the  
17 court finds all of the following:
- 18 (a) A material provision of the contract violates subsection 1 or 2.  
19 (b) The violation caused the producer to be substantially confused  
20 about any of the rights, obligations, or remedies of the contract.  
21 (c) The violation has caused or is likely to cause financial detriment  
22 to the producer.
- 23 (2) Avoid unjust enrichment. If the court reforms or limits a provision of an  
24 agricultural contract, the court shall also make orders necessary to  
25 avoid unjust enrichment. Bringing a claim for relief under this  
26 subdivision does not entitle a producer to withhold performance of an  
27 otherwise valid contractual obligation. Relief may not be granted under  
28 this subdivision unless the claim is brought before the obligations of the  
29 contract have been fully performed.
- 30 g. Limits on remedies.

- 1                   (1) Penalties. In a proceeding in which civil penalties are claimed from a  
2                   party for a violation of this section, it is a defense to the claim that the  
3                   party made a good-faith and reasonable effort to comply.
- 4                   (2) Attorney's fees. Notwithstanding section 13 of this Act, a party who has  
5                   made a good-faith and reasonable effort to comply with this section  
6                   may not be assessed attorney's fees or the costs of an investigation in  
7                   an action for violation of this section.
- 8                   h. Limits on producer actions. Violation of this section is not a defense to a  
9                   claim arising from a producer's breach of an agricultural contract. A producer  
10                  may recover actual damages caused by a violation of this section only if the  
11                  violation caused the producer to not understand the rights, obligations, or  
12                  remedies of the contract.
- 13                  i. Statute of limitations. A claim that an agricultural contract violates this section  
14                  must be raised within six years of the date the contract is executed by the  
15                  producer.

16                  **SECTION 5. Contract producer's three-day right to review.** A contract producer  
17                  may cancel a production contract by mailing a written cancellation notice to the contractor within  
18                  three business days after the contract is executed, or before a later cancellation deadline if a  
19                  later deadline is specified in the contract. The contract producer's right to cancel, the method  
20                  by which the contract producer may cancel, and the deadline for canceling the production  
21                  contract must be clearly disclosed in every production contract.

22                  **SECTION 6. Confidentiality provisions prohibited.**

- 23                  1. Prohibition. A contractor or processor may not, on or after the effective date of this  
24                  Act, enforce a provision in an agricultural contract if the provision provides that  
25                  information contained in the agricultural contract is confidential.
- 26                  2. Confidentiality provisions void. A provision that is part of an agricultural contract is  
27                  void if the provision states that information contained in the agricultural contract is  
28                  confidential. The confidentiality provision is void whether the confidentiality  
29                  provision is express or implied, oral or written, required or conditional, or contained  
30                  in the agricultural contract, another agricultural contract, or in a related document,  
31                  policy, or agreement. This section does not affect other provisions of an



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

5 **SECTION 7. Production contract lien.**

6 1. Applicability of section. A lien established under this section depends upon the  
7 execution of a production contract that provides for producing a commodity owned  
8 by a contractor by a contract producer at the contract producer's contract  
9 operation.

10 2. Establishment of lien and priority. A contract producer who is a party to a  
11 production contract has a lien as provided in this section. The amount of the lien is  
12 the amount owed to the contract producer pursuant to the terms of the production  
13 contract, which may be enforced as provided in subsection 4.

14 a. (1) Livestock and raw milk. If the production contract is for the production  
15 of livestock or raw milk, all of the following apply:

16 (a) Livestock. For livestock, the lien applies to all of the following:

17 [1] If the livestock is not sold or slaughtered by the contractor,  
18 the lien is on the livestock.

19 [2] If the livestock is sold by the contractor, the lien is on cash  
20 proceeds from the sale. For purposes of this item, cash  
21 held by the contractor is deemed to be cash proceeds from  
22 the sale regardless of whether it is identifiable cash  
23 proceeds.

24 [3] If the livestock is slaughtered by the contractor, the lien is  
25 on any property of the contractor that may be subject to a  
26 security interest as provided in chapter 41-09.

27 (b) Raw milk. For raw milk, the lien applies to all of the following:

28 [1] Milk not sold. If the raw milk is not sold or processed by  
29 the contractor, the lien is on the raw milk.

30 [2] Milk is sold. If the raw milk is sold by the contractor, the  
31 lien is on cash proceeds from the sale. For purposes of



- 1           3.   Preserving the lien and filing requirements.
- 2           a.   Filing lien statement. In order to preserve a lien created pursuant to this
- 3                 section, a contract producer must file in the office of the secretary of state a
- 4                 lien statement on a form prescribed by the secretary of state. If the lien arises
- 5                 out of producing livestock or raw milk, the contract producer must file the lien
- 6                 within forty-five days after the day that the livestock first arrives at the contract
- 7                 livestock facility. If the lien arises out of producing a crop, the contract
- 8                 producer must file the line within forty-five days after the day that the crop is
- 9                 first planted. The secretary of state shall charge a fee of not more than ten
- 10                dollars for filing the statement. The secretary of state may adopt rules
- 11                pursuant to chapter 28-32 for the electronic filing of the statements.
- 12           b.   Contents of lien statement. The statement must include all of the following:
- 13               (1)   An estimate of the amount owed pursuant to the production contract.
- 14               (2)   The date when the livestock arrives at the contract livestock facility or
- 15               the date when the crop was planted.
- 16               (3)   The estimated duration of the period when the commodity will be under
- 17               the authority of the contract producer.
- 18               (4)   The name of the party to the production contract whose commodity is
- 19               produced pursuant to the production contract.
- 20               (5)   The description of the location of the contract operation, by county and
- 21               township.
- 22               (6)   The printed name and signature of the person filing the form.
- 23           c.   Priority of lien. A lien created under this section until preserved and a lien
- 24               preserved under this section are superior to and have priority over a
- 25               conflicting lien or security interest in the commodity, including a lien or
- 26               security interest that was perfected prior to the creation of the lien under this
- 27               section.
- 28           4.   Enforcement. Before a commodity leaves the authority of the contract producer as
- 29               provided in subsection 2, the contract producer may foreclose a lien created in that
- 30               subsection in the manner provided for the foreclosure of secured transactions in
- 31               sections 41-09-50, 41-09-52, and 41-09-53. After the commodity is no longer

1 under the authority of the contract producer, the contract producer may enforce the  
2 lien in the manner provided in sections 41-09-47 through 41-09-53.

3 **SECTION 8. Production contracts involving investment requirements.**

- 4 1. Applicability. This section only applies to a production contract executed by a  
5 contract producer and a contractor, if the contract producer must make capital  
6 investments of one hundred thousand dollars or more according to investment  
7 requirements provided in all production contracts in which the contract producer  
8 and the contractor are parties. The value of the capital investments is deemed to  
9 be the total dollar amount spent by the contract producer in satisfying the  
10 investment requirements, if that amount is ascertainable.
- 11 2. Restrictions on contract termination. Except as provided in subsection 4, a  
12 contractor may not terminate, cancel, or fail to renew a production contract until the  
13 contractor has done the following:
- 14 a. Notice. The contractor has provided the contract producer written notice of  
15 the intention to terminate, cancel, or not renew at least ninety days before the  
16 effective date of the termination, cancellation, or nonrenewal.
- 17 b. Damages. The contract producer has been reimbursed for damages incurred  
18 due to the termination, cancellation, or failure to renew. Damages must be  
19 based on the value of the remaining useful life of the structures, machinery, or  
20 equipment involved.
- 21 3. Breach of investment requirements. Except as provided in subsection 4, if a  
22 contract producer materially breaches a production contract, including the  
23 investment requirements of a production contract, a contractor may not terminate,  
24 cancel, or fail to renew the production contract until the following have occurred:
- 25 a. Notice. The contractor has provided a written notice of termination,  
26 cancellation, or nonrenewal at least forty-five days before the effective date of  
27 the termination, cancellation, or nonrenewal. The notice must provide a list of  
28 complaints alleging causes for the breach.
- 29 b. Failure to remedy. The contract producer fails to remedy each cause of the  
30 breach as alleged in the list of complaints provided in the notice within thirty  
31 days following receipt of the notice. An effort by a contract producer to

1 remedy a cause of an alleged breach may not be construed as an admission  
2 of a breach in a civil cause of action.

3 4. Exceptions. A contractor may terminate, cancel, or fail to renew a production  
4 contract without notice or remedy as required in subsections 2 and 3 if the basis for  
5 the termination, cancellation, or nonrenewal is any of the following:

6 a. Abandonment. A voluntary abandonment of the contractual relationship by  
7 the contract producer. A complete failure of a contract producer's  
8 performance under a production contract is deemed to be abandonment.

9 b. Fraud conviction. The conviction of a contract producer of an offense of fraud  
10 or theft committed against the contractor.

11 5. Penalty. If a contractor terminates, cancels, or fails to renew a production contract  
12 other than provided in this section, the contractor shall pay the contract producer  
13 the value of the remaining useful life of the structures, machinery, or equipment  
14 involved.

15 **SECTION 9. Unfair practices.**

16 1. Definitions. As used in this section:

17 a. "Contract input" means a commodity or an organic or synthetic substance or  
18 compound that is used to produce a commodity including any of the following:

19 (1) Livestock or plants.

20 (2) Agricultural seeds.

21 (3) Semen or eggs for breeding livestock.

22 (4) A fertilizer or pesticide.

23 b. "Producer right" means one of the following legal rights and protections:

24 (1) Right to join association. The right of a producer to join or belong to, or  
25 to refrain from joining or belonging to, an association of producers.

26 (2) Right to contract. The right of a producer to enter into a membership  
27 agreement or marketing contract with an association of producers, a  
28 processor, or another producer and the right of the producer to exercise  
29 contractual rights under such a membership agreement or marketing  
30 contract.

- 1                   (3) Right to be a whistleblower. The right of a producer to lawfully provide  
2                   statements or information, including to the United States secretary of  
3                   agriculture or to a law enforcement agency, regarding alleged improper  
4                   actions or violations of law by a contractor or processor. This right does  
5                   not include the right to make statements or provide information if the  
6                   statements or information are determined to be libelous or slanderous.
- 7                   (4) Right to use contract producer lien. The right of a producer to file,  
8                   continue, terminate, or enforce a lien under section 7 of this Act.
- 9                   (5) Right to review production contracts. The right of a contract producer to  
10                  utilize protections to review production contracts under section 5 of this  
11                  Act.
- 12                  (6) Right to disclose contractual terms. The right of a producer to disclose  
13                  the terms of agricultural contracts under section 6 of this Act.
- 14                  (7) Right to exercise other protections. The right of a producer to enforce  
15                  other protections afforded by this Act or other laws or regulations.
- 16           2. Unfair practices. It is unlawful for a contractor or processor knowingly to engage or  
17           permit any employee or agent to engage in the following practices in connection  
18           with agricultural contracts:
- 19           a. Retaliation. To take actions to coerce, intimidate, disadvantage, retaliate  
20           against, or discriminate against a producer because the producer exercises,  
21           or attempts to exercise, a producer right, including actions affecting the  
22           following:
- 23           (1) The execution, termination, extension, or renewal of an agricultural  
24           contract.
- 25           (2) The treatment of a producer, which may include providing  
26           discriminatory or preferential terms in an agricultural contract or  
27           interpreting terms of an existing agricultural contract in a discriminatory  
28           or preferential manner. The terms may relate to the price paid for a  
29           commodity; the quality or the quantity of a commodity demanded; or  
30           financing, including investment requirements.

- 1                   (3)    The grant of a reward or imposition of a penalty, including the denial of  
2   a reward. The reward or penalty may be in any form, including but not  
3   limited to, financial rewards or penalties. Financial rewards or penalties  
4   may relate to loans, bonuses, or inducements.
- 5                   (4)    Alter the quality, quantity, or delivery times of contract inputs provided  
6   to the producer.
- 7                   b.    False information. To provide false information to the producer, which may  
8   include false information relating to any of the following:
- 9   (1)    A producer with whom the producer associates or an association of  
10   producers or an agricultural organization with which the producer is  
11   affiliated, including any of the following:
- 12   (a)    The character of the producer.
- 13   (b)    The condition of the finances or the management of the  
14    association of producers or agricultural organization.
- 15   (2)    Producer rights provided by this Act or other provisions of law.
- 16                   c.    Compensation information. To refuse to provide to a contract producer upon  
17   request the statistical information and data used to determine compensation  
18   paid to the contract producer under a production contract, including feed  
19   conversion rates, feed analyses, origination, and breeder history.
- 20                   d.    Observation of weighing. To refuse to allow a contract producer or the  
21   contract producer's designated representative to observe, by actual  
22   observation at the time of weighing, the weights and measures used to  
23   determine the contract producer's compensation under a production contract.
- 24                   e.    Tournament compensation. To use the performance of any other contract  
25   producer to determine the compensation of a contract producer under a  
26   production contract or as the basis of the termination, cancellation, or renewal  
27   of a production contract.
- 28                   f.    Additional capital investments. To require a contract producer to make new or  
29   additional capital investments in connection with, or to retain, continue, or  
30   renew, a production contract which are beyond the investment requirements  
31   of the production contract. It is not a violation of this section if the new or

1 additional capital investments are partially paid for by the contractor, or offset  
2 by other compensation or modifications to contract terms, in a manner the  
3 contract producer agrees to in writing as constituting acceptable and  
4 satisfactory consideration for the new capital investment.

5 g. Disclosure of risks and readability. To execute an agricultural contract in  
6 violation of the disclosure of risks and readability requirements of section 4 of  
7 this Act.

8 h. Confidentiality provisions. To execute an agricultural contract which includes  
9 a confidentiality provision in violation of section 6 of this Act.

10 i. Mediation provisions. To execute an agricultural contract without a mediation  
11 provision as required under section 12 of this Act.

12 j. Waivers. To execute an agricultural contract that includes a waiver of any  
13 producer right or any obligation of a contractor or processor established under  
14 this Act.

15 k. Choice of law. To execute an agricultural contract requiring the application of  
16 the law of another state, tribe, or nation in lieu of this Act.

17 **SECTION 10. Waivers unenforceable.** A provision of an agricultural contract which  
18 waives a producer right or an obligation of a contractor or processor established by this Act is  
19 void and unenforceable. This section does not affect other provisions of an agricultural  
20 contract, including an agricultural contract or related document, policy, or agreement that can  
21 be given effect without the voided provision.

22 **SECTION 11. Choice of law.** Any condition, stipulation, or provision requiring the  
23 application of the law of another state, tribe, or nation in lieu of this Act is void and  
24 unenforceable.

25 **SECTION 12. Mediation.** An agricultural contract must contain language providing for  
26 resolution of disputes concerning the contract by mediation. If there is a dispute involving an  
27 agricultural contract, either party may make a written request to the North Dakota agricultural  
28 mediation service, under section 6-09.10-04, for mediation services as specified in the contract,  
29 to facilitate resolution of the dispute. The parties must receive a release from the mediation  
30 service before the dispute can be heard by a court.

31 **SECTION 13. Penalties and enforcement.**



- 1           1. Civil penalties. A contractor or processor committing an unfair practice under  
2           section 9 of this Act is subject to a civil penalty of up to ten thousand dollars.
- 3           2. Criminal penalties. A contractor or processor committing an unfair practice under  
4           section 9 of this Act is guilty of a class B misdemeanor.
- 5           3. Private cause of action. A producer who suffers damages because of a  
6           contractor's or processor's violation of this Act may obtain appropriate legal and  
7           equitable relief, including damages, in a suit at common law in a North Dakota  
8           court having jurisdiction over the farmland relating to the contract.
  - 9           a. Attorney's fees. In such a civil action against the contractor or processor, the  
10           court shall award the producer who is the prevailing party reasonable  
11           attorney's fees and other litigation expenses.
  - 12           b. Injunctive relief. In order to obtain injunctive relief, the producer is not  
13           required to post a bond, prove the absence of an adequate remedy at law, or  
14           show the existence of special circumstances, unless the court for good cause  
15           otherwise orders. The court may order any form of prohibitory or mandatory  
16           relief that is appropriate under principles of equity, including issuing a  
17           temporary or permanent restraining order.
- 18           4. Enforcement by attorney general. The attorney general's office is the agency  
19           primarily responsible for enforcing this Act. In enforcing the provisions of this Act,  
20           the attorney general may do all of the following:
  - 21           a. Injunctions. Apply to the district court for an injunction to do any of the  
22           following:
    - 23           (1) Restrain a contractor or processor from engaging in conduct or  
24           practices in violation of this Act.
    - 25           (2) Require a contractor or processor to comply with a provision of this Act.
  - 26           b. Subpoenas. Apply to the district court for the issuance of a subpoena to  
27           obtain an agricultural contract for purposes of enforcing this chapter.
  - 28           c. Penalties. Bring an action in district court to enforce penalties provided in  
29           subsections 1 and 2.

30           **SECTION 14. Rulemaking.** The attorney general may adopt rules under chapter  
31 28-32 to implement this Act.

1           **SECTION 15. Applicability of Act.**

2           1.    General rule. Except as provided in subsection 2, this Act applies to agricultural  
3                   contracts in force on or after the date of the enactment of this Act, regardless of the  
4                   date the agricultural contract is executed.

5           2.    Exceptions. Section 4 of this Act, relating to disclosure of risks and readability,  
6                   section 5 of this Act, relating to contract producer's three-day right to review,  
7                   section 8 of this Act relating to production contracts involving investment  
8                   requirements, subdivision 3 of subsection 2 of section 9 of this Act, relating to the  
9                   use of tournament compensation, section 11 of this Act, relating to choice of law,  
10                  and section 12 of this Act, relating to mediation apply to agricultural contracts  
11                  executed or substantively amended after the date of the enactment of this Act.