

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2145

2001 SENATE AGRICULTURE

SB 2145

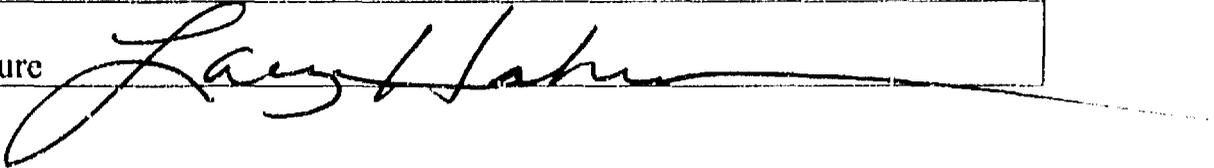
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2145

Senate Agriculture Committee

Conference Committee

Hearing Date February 2, 2001

| Tape Number                                                                                                   | Side A | Side B | Meter #    |
|---------------------------------------------------------------------------------------------------------------|--------|--------|------------|
| Feb. 2 1                                                                                                      | X      |        | 20.0 - End |
|                                                                                                               |        | X      | 0.0 - 15.0 |
| Feb. 15 2                                                                                                     | X      |        | 0.0 - 3.2  |
| Committee Clerk Signature  |        |        |            |

Minutes:

SANDY TABOR; Attorney General Designee, introduced the bill.

This bill will provide protection for producers not only in the production contract area but also in the marketing contract area.

BRIAN KRAMER; ND Farm Bureau, testified in support concept of this bill. However we do have questions and concerns of the language of this bill.

ROGER JOHNSON; Agriculture Commissioner, testified in support of the concept of this bill.

See attached testimony.

SENATOR NICHOLS; Have you dealt with a lot of problems concerning these contracts, in the past few years?

ROGER JOHNSON; refereed question to Paul Germolus.

PAUL GERMOLUS; Attorney Generals Office, Because our office is charged with enforcing the law, those are the problems that we see.

CHARLES MC CAY; Farm Credit Services, supports the concept of this bill. Concerns with Section 7.

KARL LIMVERE; ND Conference Of Churches, testified in support of this bill. See attached testimony.

SENATOR WANZEK; I think the intent of this bill is to find a minimum level of right that make it fair and extend protections for our producers.

CHRISTOPER DAWSON; ND Catholic Conference, testified in support of the concept of the bill. People have natural rights that need to be protected in a contract and the state has an obligation to protect them.

SENATOR KLEIN; By singling out North Dakota from the rest of the nation aren't we going to hurt North Dakotan's?

CHRISTOPHER DAWSON; The decisions should be made at the local level, unless there is the higher level needs to step in. The rights can't be fully protected at the local level. There are efforts at the federal level.

SENATOR WANZEK; I am concerned about going too far to the point that we might limit opportunity for family farmers.

KARL LIMVERE; In contract law, state law is the primary regulator of contracts not federal.

SENATOR KLEIN; What has happened is that these powerful groups have said to the federal government, have gotten Congress to look into this.

KARL LIMVERE; I think these things need to done concurrently.

MICHEAL DIAMOND; Monsanto, testified in opposition of this bill. To understand where we are going, we need to know where we have been. To my understanding this legislation is a

reaction to what was going on in the hog and poultry industries in an attempt to need more of the need of agriculture. There are more flawed concepts that could do more harm than good.

SENATOR WANZEK; As a state we have the responsibility of protecting the constitutional rights, the minimum level of right for our people and our producers and not being unfairly treated.

MICHEAL DIAMOND; I think there probably are a minimum guarantees that should be out there for anyone doing business. This may hurt a hard working producer by not allowing him to get the benefits that could be available to him.

SENATOR WANZEK; I think there should be equal expectations on either party regardless if we are talking about the producers or the contractor. We should have a level playing field, some minimum perimeters.

MICHEAL DIAMOND; I think there is plenty to talk in those areas.

CALVIN ROLFSON; American Crop Protection Association, testified in opposition to this bill. As this bill is drafted the ACPA is opposed to it. As the bill is drafted now it is significantly flawed. I would offer to be involved.

SENATOR WANZEK; I think this is a very important piece of legislation. We are going to put extra work into this bill.

The hearing was closed.

The committee reconvened later that afternoon (Tape 2).

SENATOR NICHOLS; I feel that this still isn't something that we are ready to go to at this time. There are too many things in here that we need to spend more time on.

SENATOR WANZEK; There needs to be some kind of language that will protect farmers to a degree when they make large investments based on a contracts.

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Senate Agriculture Committee

Bill/Resolution Number SB 2145

Hearing Date February 2, 2001

SENATOR NICHOLS moved for a DO NOT PASS on this bill.

SENATOR ERBELE seconded the motion.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR WANZEK will carry the bill.



**REPORT OF STANDING COMMITTEE (410)**  
February 15, 2001 4:25 p.m.

**Module No: SR-28-3586**  
**Carrier: Wanzek**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2145: Agriculture Committee (Sen. Wanzek, Chairman) recommends DO NOT PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2145 was placed on the  
Eleventh order on the calendar.

2001 TESTIMONY

SB 2145

COMMISSIONER OF AGRICULTURE  
ROGER JOHNSON



PHONE (701) 328-2231  
(800) 242-7535  
FAX (701) 328-4567

DEPARTMENT OF AGRICULTURE  
State of North Dakota  
600 E. Boulevard Ave. Dept. 602  
Bismarck, ND 58505-0020

**Testimony of Roger Johnson  
Agriculture Commissioner  
Senate Bill 2145  
Senate Agriculture Committee  
Roosevelt Park Room  
February 2, 2001**

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Chairman Wanzek and members of the Senate Agriculture Committee, I am Agriculture Commissioner Roger Johnson. I am here today in support of SB 2145, which relates to the regulation of agricultural contracts between agricultural producers and contractors.

A handful of multinational corporations have major market control over the agricultural input, processing, marketing and retail sectors. The consolidation of these sectors is negatively affecting agricultural producers.

Production and marketing contracts between agricultural producers and contractors have been on the rise in recent years and the trend is expected to continue and industry is exercising more control over agricultural producers via agricultural contracts. As Drake University Law Professor Neil Hamilton aptly stated, "Why own the farm when you can own the farmer (and the crop)?" [73 Nebraska Law Review Article 48, 1994]

Agricultural contracts are here to stay. What is at issue is the diminishing bargaining power of individual farmers and ranchers and their burden of risk. Some companies are offering complicated contracts to growers on a "take it or leave it" basis. At a minimum, adequate time must be given for contract reviews (See Section 5). Also, many farmers and ranchers entering into contracts are also assuming greater risk, especially when required to make significant capital investments. Protections should be put in place that diminish the ability of contractors to simply walk away from contracts that require significant capital investments. Section 8 of SB 2145 deals with this issue.

A third issue is confidentiality. Many agricultural contracts have strict confidentiality components, which not only limit market transparency, but limit the ability of farmers and ranchers to negotiate the best deal possible. Section 6 of this bill prohibits confidentiality provisions in agricultural contracts.

As you know, SB 2145 was drafted based on "model legislation" that was endorsed by more than a dozen Attorneys General last year. The Attorneys General made it clear that they supported the purpose and components of the model legislation and acknowledged that individual states may need to modify specific parts of the legislation.

Mr. Chairman and committee members, I support the purpose and components of this bill; however, I recognize that there are others here today who may have difficulty with specific sections of the proposed legislation. I hope it is possible to address the concerns surrounding this bill, while putting in place a law that affords adequate protections for agricultural producers entering into agricultural contracts.

Chairman Wanzek and committee members, I ask for your favorable consideration of SB 2145.

I would be happy to answer any questions you may have.

SENATE AGRICULTURE COMMITTEE:

HEARING ON SB 2145 -  
FEBRUARY 2, 2001

My name is Karl Limvere. I am the pastor of the Zion United Church of Christ of Medina. I serve as the chairperson of the Rural Life Committee of the North Dakota Conference of Churches and am representing the Conference and the committee today.

The Rural Life Committee of the North Dakota Conference of Churches was established in 1986, and is the successor to other efforts by the Conference of Churches dating back to 1974. We have the responsibility of developing proactive, ecumenical responses to rural life issues in the state. This past year we have given particular emphasis to economic justice issues facing rural America.

We are deeply concerned about the industrialization and corporatization of our agricultural production systems. I want to emphasize that the industrialization of agriculture does not mean the utilization or application of new technologies. Instead, industrialization means those changes in the structure of agriculture which move farm ownership, control, and/or management off the farm and out of the hands of the resident farm operator. Industrialization is the process of moving that control into the hands of off-farm interests. Typically these interests seek to vertically and horizontally integrate farm production into their control.

Contracting of farm production or marketing is a primary tool by which such industrialization takes place. We only have to look at the poultry industry to see how quickly such industrialization can take place, and how it can change an entire production and marketing system from a widely-dispersed system of independent producers to a closed fully-integrated system.

The North Dakota Conference of Churches and its Rural Life Committee believe that contract production or farming must be strictly regulated or limited to ensure that producers do not become economic serfs upon their own farm units. We believe that contracting producers must have equity rights and protected avenues of recourse for seeking the redress of grievances.

We believe that SB 2145 provides a critically important beginning step in providing producers some legal rights and protections to counterbalance the power of the contractor.

Let's start with a basic fact. Contracts are not written by or for the producer. They are written by the contractor to serve the interests of the contractor.

These contractors have entire legal departments to develop their contracts so that they will have all the recourses that they need to achieve their economic goals.

SB 2145 establishes a standard for these contracts to ensure some level of protection and legal recourse for producers. When this legislation becomes law it will become part of every legal contract between a contractor and the producer. The contract must adhere to the provisions of this law, and the contractor cannot abridge the rights of a producer, nor can a producer waive their rights.

In effect, the Attorney General becomes the legal research and review department for producers. That doesn't mean that a producer will be able to have the Attorney General represent them in a court case, but it does mean that if a contract does not meet the standards of this law that the Attorney General becomes a party to the contract and can take appropriate legal action to enforce the standards or protect the rights of the producer.

I have previously shared examples with this committee of the disproportionate power between individual producers and the businesses to which they sell their production. I want to remind you that even in our so-called open-market structures, there is sufficient concentration of market power in the hands of the buyers for them to affect the price of the commodities they buy.

The act of contracting creates a closed-market system in which the producer and the contractor are bound by contract in their production and/or marketing relationship. As the open market loses strength, we lose the mechanisms of price discovery, and those market prices no longer accurately reflect true supply and demand conditions.

Today, we no longer have an open market in poultry production. As we move further into contract production systems, the open market becomes a residual market, rather a primary market. We have seen this in both hog and beef production in recent years.

This legislation is a beginning step in providing some contractual rights in a system that overwhelmingly has favored the contractors. It is an excellent beginning. We are already very late in developing and moving forward with such legislation. It is needed now. It should not be delayed.

Thank you.