

By: Senator(s) Williamson, Dawkins

To: Agriculture

SENATE BILL NO. 2865

1 AN ACT TO PROTECT THE PRODUCERS OF AGRICULTURAL CROPS AND
2 LIVESTOCK; TO REQUIRE AGRICULTURAL CONTRACTS TO MEET CERTAIN
3 STANDARDS; TO IMPOSE THE OBLIGATION OF GOOD FAITH ON AGRICULTURAL
4 CONTRACTS; TO PROVIDE ADEQUATE REMEDIES FOR VIOLATIONS OF THIS
5 ACT; TO PROHIBIT CERTAIN UNFAIR PRACTICES; TO PROVIDE FOR THE
6 REVIEW OF SUCH CONTRACTS; TO REQUIRE MEDIATION PROVISIONS IN SUCH
7 CONTRACTS; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 SECTION 1. As used in this act, unless the context otherwise
10 requires:

11 (a) "Active contractor" means a person who owns a
12 commodity that is produced by a contract producer at the contract
13 producer's contract operation according to a production contract.

14 (b) "Agricultural contract" means a marketing contract
15 or a production contract.

16 (c) "Animal feeding operation" means a lot, corral,
17 building, or other area in which livestock is confined and fed.
18 An animal feeding operation does not include a livestock market.

19 (d) "Capital investment" means an investment in one (1)
20 of the following:

21 (i) A structure, such as a building or manure
22 storage structure.

23 (ii) Machinery or equipment associated with
24 producing a commodity which has a useful life in excess of one (1)
25 year.

26 (e) "Commodity" means livestock, raw milk or a crop.

27 (f) "Confinement feeding operation" means an animal
28 feeding operation in which livestock is confined to areas which
29 are totally roofed.

30 (g) "Contract crop field" means farmland located in
31 this state where a crop is produced according to a production
32 contract by a contract producer who owns or leases the farmland.

33 (h) "Contract livestock facility" means an animal
34 feeding operation located in this state in which livestock or raw
35 milk is produced according to a production contract by a contract
36 producer who holds a legal interest in the animal feeding
37 operation. "Contract livestock facility" includes a confinement
38 feeding operation, an open feedlot, or an area which is used for
39 the raising of crops or other vegetation and upon which livestock
40 is fed for slaughter or is allowed to graze or feed.

41 (i) "Contract operation" means a contract livestock
42 facility or a contract crop field.

43 (j) "Contract producer" means a producer who holds a
44 legal interest in a contract operation and who produces a
45 commodity under a production contract.

46 (k) "Contractor" means a person who is an active
47 contractor or a passive contractor.

48 (l) "Crop" means a plant used for food, animal feed,
49 fiber, oil or nutraceuticals, including, but not limited to,
50 alfalfa, barley, buckwheat, corn, flax, forage, millet, oats,
51 popcorn, rye, sorghum, soybeans, sunflowers, tobacco, wheat, and
52 grasses used for forage or silage, but not timber or timber
53 products.

54 (m) "Farmland" means agricultural land that is suitable
55 for use in farming.

56 (n) "Investment requirement" means a provision in a
57 contract which requires the contract producer to make capital
58 investments associated with producing a commodity subject to a
59 production contract. The provisions may be included as part of

60 one or more oral or written agreements or contracts, and may be
61 included as part of a production contract.

62 (o) "Livestock" means beef cattle, dairy cattle,
63 poultry, sheep, or swine.

64 (p) "Marketing contract" means an oral or written
65 agreement between a processor and a producer for the purchase of
66 commodities grown or raised by the producer in this state. A
67 marketing contract is executed when it is signed or orally agreed
68 to by each party or by a person authorized to act on the party's
69 behalf.

70 (q) "Open feedlot" means an unroofed or partially
71 roofed animal feeding operation in which no crop, vegetation, or
72 forage growth or residue cover is maintained during the period
73 that livestock is confined in the operation.

74 (r) "Passive contractor" means a person who furnishes
75 management services to a contract producer, and who does not own a
76 commodity that is produced by the contract producer at the
77 contract producer's contract operation according to a production
78 contract.

79 (s) "Processor" means a person engaged in the business
80 of manufacturing goods from commodities, including by slaughtering
81 or processing livestock, processing raw milk, or processing crops.

82 (t) "Produce" means to do any of the following:

83 (i) Provide feed or services relating to the care
84 and feeding of livestock. If the livestock is dairy cattle, then
85 "produce" includes milking the dairy cattle and storing raw milk.

86 (ii) Provide for planting, raising, harvesting,
87 and storing a crop. "Produce" includes preparing the soil for
88 planting and nurturing the crop by the application of fertilizers
89 or soil conditioners or pesticides.

90 (u) "Producer" means a person who produces a commodity,
91 including, but not limited to, a contract producer. "Producer"

92 does not include a commercial fertilizer or pesticide applicator,
93 a feed supplier or a veterinarian, when acting in such capacity.

94 (v) "Production contract" means an oral or written
95 agreement that provides for the production of a commodity or the
96 provision of management services relating to the production of a
97 commodity by a contract producer. A production contract is
98 executed when it is signed or orally agreed to by each party to
99 the contract or by a person authorized to act on the party's
100 behalf.

101 SECTION 2. This act applies to production contracts that
102 relate to the production of a commodity owned by an active
103 contractor and produced by a contract producer at the contract
104 producer's contract operation, if one (1) of the following
105 applies:

106 (a) The production contract is executed by an active
107 contractor and a contract producer for the production of the
108 commodity.

109 (b) The production contract is executed by an active
110 contractor and a passive contractor for the provision of
111 management services to the contract producer in the production of
112 the commodity.

113 (c) The production contract is executed by a passive
114 contractor and a contract producer, if all of the following apply:

115 (i) The contract provides for management services
116 furnished by the passive contractor to the contract producer in
117 the production of the commodity.

118 (ii) The passive contractor has a contractual
119 relationship with the active contractor involving the production
120 of the commodity.

121 SECTION 3. An agricultural contract imposes an obligation of
122 good faith, as defined in Section 75-1-201, on all parties with
123 respect to the performance and enforcement of the agricultural
124 contract.

125 SECTION 4. (1) An agricultural contract must be accompanied
126 by a clear written disclosure statement setting forth the nature
127 of the material risks faced by the producer if the producer enters
128 into the contract. The statement must meet the readability
129 requirements of subsection (2). The statement may be in the form
130 of a written statement or checklist and may be developed in
131 cooperation with producers or producer organizations. The
132 statement shall disclose the following:

133 (a) In the case of production contracts, the producer's
134 right to review as provided in Section 5 of this act.

135 (b) Contract duration;

136 (c) Contract termination;

137 (d) Renegotiation standards;

138 (e) Responsibility for environmental damage;

139 (f) Factors to be used in determining payment;

140 (g) Responsibility for obtaining and complying with
141 local, state, federal permits;

142 (h) Any other contract term which the Attorney General
143 determines is appropriate for disclosure.

144 (2) (a) As used in this subsection, "legible type" means a
145 typeface at least as large as ten-point modern type, one-point
146 leaded. An agricultural contract entered into, amended, or
147 renewed after the effective date of this Act must contain as the
148 first page, or first page of text if it is preceded by a title
149 page or pages, a cover sheet as provided in this section. The
150 cover sheet or sheets must comply with paragraph (b) and must
151 contain all of the following:

152 (i) A brief statement that the document is a legal
153 contract between the parties.

154 (ii) The statement "READ YOUR CONTRACT CAREFULLY.
155 This cover sheet provides only a brief summary of your contract.
156 This is not the contract and only the terms of the actual contract
157 are legally binding. The contract itself sets forth, in detail,

158 the rights and obligations of both you and the contractor or
159 processor. IT IS THEREFORE IMPORTANT THAT YOU READ YOUR CONTRACT
160 CAREFULLY."

161 (iii) The written disclosure of risks required by
162 subsection (1).

163 (iv) A statement detailing, in plain language, the
164 producer's right to review the contract as described in Section 5
165 of this act.

166 (v) An index of the major provisions of the
167 contract and the pages on which they are found, including all of
168 the following:

- 169 1. The names of all parties to the contract.
- 170 2. The definition sections of the contract.
- 171 3. The provisions governing termination,
172 cancellation, renewal, and amendment of the contract by either
173 party.
- 174 4. The duties or obligations of each party.
- 175 5. Any provisions subject to change in the
176 contract.

177 (b) An agricultural contract must be in legible type,
178 appropriately divided and captioned by its various sections, and
179 written in clear and coherent language using words and grammar
180 that are understandable by a person of average intelligence,
181 education, and experience within the industry. This paragraph
182 does not apply to the following terms in an agricultural contract:

183 (i) Particular words, phrases, provisions, or
184 forms of agreement specifically required, recommended, or endorsed
185 by a state or federal statute, rule or regulation.

186 (ii) Technical terms used to describe the services
187 or property which are the subject of the contract, if the terms
188 are customarily used by producers in the ordinary course of
189 business in connection with the services or property being
190 described.

191 (3) A contractor or processor may submit an agricultural
192 contract to the Attorney General for review as to whether it
193 complies with this section. After reviewing the contract, the
194 Attorney General shall do one (1) of the following:

195 (a) Certify that the contract complies with this
196 section.

197 (b) Decline to certify that the contract complies with
198 this section and note objections.

199 (c) Decline to review the contract because the
200 contract's compliance with this section is subject to pending
201 litigation.

202 (d) Decline to review the contract because the contract
203 is not subject to this section.

204 (4) In determining whether an agricultural contract or cover
205 sheet is readable within the meaning of subsection (2), the
206 Attorney General shall consider at least the following factors:

207 (a) The simplicity of the sentence structure.

208 (b) The extent to which commonly used and understood
209 words are employed.

210 (c) The extent to which esoteric legal terms are
211 avoided.

212 (d) The extent to which references to other sections or
213 provisions of the contract are minimized.

214 (e) The extent to which clear definitions are used in
215 the text of the contract.

216 (f) Additional factors relevant to the readability or
217 understandability of the contract.

218 (5) Actions of the Attorney General under this section are
219 not subject to judicial review.

220 (6) A contract certified under this subsection is deemed to
221 comply with subsections (1) and (2). Certification of a contract
222 under this subsection does not constitute an approval of the
223 contract's legality or legal effect. If the Attorney General

224 certifies a contract or fails to respond within thirty (30) days
225 of receipt of the contract, then the contractor or processor will
226 have complied with this subsections (1) and (2) and the remedies
227 stated in subsection (8) of this section and Section 12 of this
228 act are not available.

229 (7) Failure to submit a contract to the Attorney General for
230 review under this section does not show a lack of good faith or
231 raise a presumption that the contract violates this section.

232 (8) In addition to the remedies provided in Section 12 of
233 this act, a court reviewing an agricultural contract may change
234 the terms of the contract or limit a provision to avoid an unfair
235 result if the court finds all of the following:

236 (a) A material provision of the contract violates
237 subsection (1) or (2).

238 (b) The violation caused the producer to be
239 substantially confused about any of the rights, obligations, or
240 remedies of the contract.

241 (c) The violation has caused or is likely to cause
242 financial detriment to the producer.

243 (9) If the court reforms or limits a provision of an
244 agricultural contract, the court shall also make orders necessary
245 to avoid unjust enrichment. Bringing a claim for relief under
246 this paragraph does not entitle a producer to withhold performance
247 of an otherwise valid contractual obligation. No relief may be
248 granted under this subsection unless the claim is brought before
249 the obligations of the contract have been fully performed.

250 (10) (a) In a proceeding in which civil penalties are
251 claimed from a party for a violation of this section, it is a
252 defense to the claim that the party made a good faith and
253 reasonable effort to comply.

254 (b) Notwithstanding Section 12 of this act, a party who
255 has made a good faith and reasonable effort to comply with this

256 section may not be assessed attorney's fees or costs of
257 investigation in an action for violating this section.

258 (11) Violations of this section is not a defense to a claim
259 arising from a producer's breach of an agricultural contract. A
260 producer may recover actual damages caused by a violation of this
261 section only if the violation caused the producer to not
262 understand the rights, obligations or remedies of the contract.

263 (12) A claim that an agricultural contract violates this
264 section must be raised within six (6) years of the date the
265 contract is executed by the producer.

266 SECTION 5. A contract producer may cancel a production
267 contract by mailing a written cancellation notice to the
268 contractor within three (3) business days after the contract is
269 executed, or before a later cancellation deadline if a later
270 deadline is specified in the contract. The contract producer's
271 right to cancel, the method by which the contract producer may
272 cancel, and the deadline for canceling the production contract
273 shall be clearly disclosed in every production contract.

274 SECTION 6. (1) A contractor or processor shall not on or
275 after the effective date of this act, enforce a provision in an
276 agricultural contract if the provision provides that information
277 contained in the agricultural contract is confidential.

278 (2) A provision which is part of an agricultural contract is
279 void if the provision states that information contained in the
280 agricultural contract is confidential. The confidentiality
281 provision is void whether the confidentiality provision is express
282 or implied; oral or written; required or conditional; contained in
283 the agricultural contract, another agricultural contract, or in a
284 related document, policy, or agreement. This section does not
285 affect other provisions of an agricultural contract or a related
286 document, policy, or agreement which can be given effect without
287 the voided provision. This section does not require a party to an

288 agricultural contract to divulge information in the agricultural
289 contract to another person.

290 SECTION 7. (1) A lien established under this section
291 depends upon the execution of a production contract that provides
292 for producing a commodity owned by a contractor by a contract
293 producer at the contract producer's contract operation.

294 (2) A contract producer who is a party to a production
295 contract shall have a lien as provided in this section. The
296 amount of the lien shall be the amount owed to the contract
297 producer pursuant to the terms of the production contract, which
298 may be enforced as provided in subsection (6). If the production
299 contract is for the production of livestock or raw milk, all of
300 the following shall apply:

301 (a) For livestock, the lien shall apply to all of the
302 following:

303 (i) If the livestock is not sold or slaughtered by
304 the contractor, the lien shall be on the livestock.

305 (ii) If the livestock is sold by the contractor,
306 the lien shall be on cash proceeds from the sale. For purposes of
307 this subparagraph, cash held by the contractor shall be deemed to
308 be cash proceeds from the sale regardless of whether it is
309 identifiable cash proceeds.

310 (iii) If the livestock is slaughtered by the
311 contractor, the lien shall be on any property of the contractor
312 that may be subject to a security interest as provided in Section
313 75-9-102.

314 (b) For raw milk, the lien shall apply to all of the
315 following:

316 (i) If the raw milk is not sold or processed by
317 the contractor, the lien shall be on the raw milk.

318 (ii) If the raw milk is sold by the contractor,
319 the lien shall be on cash proceeds from the sale. For purposes of
320 this subparagraph, cash held by the contractor shall be deemed to

321 be cash proceeds from the sale regardless of whether it is
322 identifiable cash proceeds.

323 (iii) If the raw milk is processed by the
324 contractor, the lien shall be on any property of the contractor
325 that may be subject to a security interest as provided in Section
326 75-9-102.

327 (3) The lien on livestock or raw milk is created at the time
328 the livestock arrives at the contract livestock facility and
329 continues for one (1) year after the livestock is no longer under
330 the authority of the contract producer. For the purposes of this
331 section, livestock is no longer under the authority of the
332 contract producer when the livestock leaves the contract livestock
333 facility.

334 (4) (a) If the production contract is for the production of
335 crops, all of the following shall apply:

336 (i) If the crop is not sold or processed by the
337 contractor, the lien shall be on the crop.

338 (ii) If the crop is sold by the contractor, the
339 lien shall be on cash proceeds from the sale. For purposes of
340 this subparagraph, cash held by the contractor shall be deemed to
341 be cash proceeds from the sale regardless of whether it is
342 identifiable cash proceeds.

343 (iii) If the crop is processed by the contractor,
344 the lien shall be on any property of the contractor that may be
345 subject to a security interest as provided in Section 75-9-102.

346 (b) The lien on a crop is created at the time the crop
347 is planted and continues for one (1) year after the crop is no
348 longer under the authority of the contract producer. For purposes
349 of this section, a crop is no longer under the authority of the
350 contract producer when the crop or a warehouse receipt issued by a
351 warehouse operator licensed under state law for grain from the
352 crop is no longer under the custody or control of the contract
353 producer.

354 (5) (a) In order to preserve a lien created pursuant to
355 this section, a contract producer must file in the Office of the
356 Secretary of State a lien statement on a form prescribed by the
357 Secretary of State. If the lien arises out of producing livestock
358 or raw milk, the contract producer must file the lien within
359 forty-five (45) days after the day that the livestock first
360 arrives at the contract livestock facility. If the lien arises
361 out of producing a crop, the contract producer must file the lien
362 within forty-five (45) days after the day that the crop is first
363 planted. The Secretary of State shall charge a fee of not more
364 than Ten Dollars (\$10.00) for filing the statement. The Secretary
365 of State may adopt rules for the electronic filing of the
366 statements.

367 (b) The statement must include all of the following:

368 (i) An estimate of the amount owed pursuant to the
369 production contract.

370 (ii) The date when the livestock arrives at the
371 contract livestock facility or the date when the crop was planted.

372 (iii) The estimated duration of the period when
373 the commodity will be under the authority of the contract
374 producer.

375 (iv) The name of the party to the production
376 contract whose commodity is produced pursuant to the production
377 contract.

378 (v) The description of the location of the
379 contract operation, by county and township.

380 (vi) The printed name and signature of the person
381 filing the form.

382 (c) A lien created under this section until preserved
383 and a lien preserved under this section are superior to and shall
384 have priority over a conflicting lien or security interest in the
385 commodity, including a lien or security interest that was
386 perfected prior to the creation of the lien under this section.

387 (6) Before a commodity leaves the authority of the contract
388 producer, the contract producer may foreclose a lien created in
389 that subsection in the manner provided for the foreclosure of
390 secured transactions in Sections 75-9-504, 75-9-506 and 75-9-507.
391 After the commodity is no longer under the authority of the
392 contract producer, the contract producer may enforce the lien in
393 the manner provided in Title 75, Chapter 9, Part 5 of the
394 Mississippi Code.

395 SECTION 8. (1) This section only applies to a production
396 contract executed by a contract producer and a contractor, if the
397 contract producer must make capital investments of One Hundred
398 Thousand Dollars (\$100,000.00) or more according to investment
399 requirements provided in all production contracts in which the
400 contract producer and the contractor are parties. The value of
401 the capital investments shall be deemed to be the total dollar
402 amount spent by the contract producer in satisfying the investment
403 requirements, if that amount is ascertainable.

404 (2) Except as provided in subsection (4), a contractor shall
405 not terminate, cancel, or fail to renew a production contract
406 until the contractor has done the following:

407 (a) The contractor has provided the contract producer
408 written notice of the intention to terminate, cancel, or not renew
409 at least ninety (90) days before the effective date of the
410 termination, cancellation or nonrenewal.

411 (b) The contract producer has been reimbursed for
412 damages incurred due to the termination, cancellation, or failure
413 to renew. Damages shall be based on the value of the remaining
414 useful life of the structures, machinery or equipment involved.

415 (3) Except as provided in subsection (4), if a contract
416 producer materially breaches a production contract, including the
417 investment requirements of a production contract, a contractor may
418 not terminate, cancel, or fail to renew the production contract
419 until the following have occurred:

420 (a) The contractor has provided a written notice of
421 termination, cancellation or nonrenewal at least forty-five (45)
422 days before the effective date of such termination, cancellation,
423 or nonrenewal. The notice must provide a list of complaints
424 alleging causes for the breach.

425 (b) The contract producer fails to remedy each cause of
426 the breach as alleged in the list of complaints provided in the
427 notice within thirty (30) days following receipt of the notice.
428 An effort by a contract producer to remedy a cause of an alleged
429 breach shall not be construed as an admission of a breach in a
430 civil cause of action.

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

435 (a) A voluntary abandonment of the contractual
436 relationship by the contract producer. A complete failure of a
437 contract producer's performance under a production contract shall
438 be deemed to be abandonment.

439 (b) The conviction of a contract producer of an offense
440 of fraud or theft committed against the contractor.

441 (5) If a contractor terminates, cancels, or fails to renew a
442 production contract other than provided in this section, the
443 contractor shall pay the contract producer the value of the
444 remaining useful life of the structures, machinery, or equipment
445 involved.

446 SECTION 9. (1) As used in this section:

447 (a) "Contract input" means a commodity or an organic or
448 synthetic substance or compound that is used to produce a
449 commodity including, but not limited to, any or the following:

450 (i) Livestock or plants.

451 (ii) Agricultural seeds.

452 (iii) Semen or eggs for breeding livestock

453 (iv) A fertilizer or pesticide.

454 (b) "Producer right" means one (1) of the following
455 legal rights and protections:

456 (i) The right of a producer to join or belong to,
457 or to refrain from joining or belonging to, an association of
458 producers.

459 (ii) The right of a producer to enter into a
460 membership agreement or marketing contract with an association of
461 producers, a processor, or another producer and the right of the
462 producer to exercise contractual rights under such a membership
463 agreement or marketing contract.

464 (iii) The right of a producer to lawfully provide
465 statements or information regarding alleged improper actions or
466 violations of law by a contractor or processor. This right does
467 not include the right to make statements or provide information if
468 the statements or information are determined to be libelous or
469 slanderous.

470 (iv) The right of a producer to file, continue,
471 terminate or enforce a lien under Section 7 of this act.

472 (v) The right of a contract producer to utilize
473 protections to review production contracts under Section 5 of this
474 act.

475 (vi) The right of a producer to disclose the terms
476 of agricultural contracts under Section 6 of this act.

477 (vii) The right of a producer to enforce other
478 protections afforded by this act or other laws or regulations.

479 (2) It shall be unlawful for any contractor or processor
480 knowingly to engage or permit any employee or agent to engage in
481 the following practices in connection with agricultural contracts:

482 (a) To take actions to coerce, intimidate,
483 disadvantage, retaliate against or discriminate against any
484 producer because the producer exercises, or attempts to exercise,
485 any producer right, including actions affecting the following:

486 (i) The execution, termination, extension or
487 renewal of an agricultural contract.

488 (ii) The treatment of a producer, which may
489 include providing discriminatory or preferential terms in an
490 agricultural contract or interpreting terms of an existing
491 agricultural contract in a discriminatory or preferential manner.
492 The terms may relate to the price paid for a commodity; the
493 quality or the quantity of a commodity demanded; or financing,
494 including investment requirements.

495 (iii) The grant of a reward or imposition of a
496 penalty, including the denial of a reward. The reward or penalty
497 may be in any form, including, but not limited to, financial
498 rewards or penalties. Financial rewards or penalties may relate
499 to loans, bonuses or inducements.

500 (iv) Alter the quality, quantity or delivery times
501 of contract inputs provided to the producer.

502 (b) To provide false information to the producer, which
503 may include false information relating to any of the following.

504 (i) A producer with whom the producer associates
505 or an association of producers or an agricultural organization
506 with which the producer is affiliated, including, but not limited
507 to any of the following:

508 1. The character of the producer.

509 2. The condition of the finances or the
510 management of the association of producers or agricultural
511 organization.

512 (ii) Producer rights provided by this act or other
513 provisions of law.

514 (c) To refuse to provide to a contract producer upon
515 request the statistical information and data used to determine
516 compensation paid to the contract producer under a production
517 contract, including, but not limited to, feed conversion rates,
518 feed analyses, origination and breeder history

519 (d) To refuse to allow a contract producer or the
520 contract producer's designated representative to observe, by
521 actual observation at the time of weighing, the weights and
522 measures used to determine the contract producer's compensation
523 under a production contract.

524 (e) To use the performance of any other contract
525 producer to determine the compensation of a contract producer
526 under a production contract or as the basis of the termination,
527 cancellation or renewal of a production contract.

528 (f) To require a contract producer to make new or
529 additional capital investments in connection with, or to retain,
530 continue, or renew, a production contract which are beyond the
531 investment requirements of such production contract. It shall not
532 be a violation of this section if such new or additional capital
533 investments are partially paid for by the contractor, or offset by
534 other compensation or modifications to contract terms, in a manner
535 the contract producer agrees to in writing as constituting
536 acceptable and satisfactory consideration for the new capital
537 investment.

538 (g) To execute an agricultural contract in violation of
539 the disclosure of risks and readability requirements of Section 4
540 of this act.

541 (h) To execute an agricultural contract which includes
542 a confidentiality provision in violation of Section 6 of this act.

543 (i) To execute an agricultural contract without a
544 mediation provision as required under Section 13 of this act.

545 (j) To execute an agricultural contract which includes
546 a waiver of any producer right or any obligation of a contractor
547 or processor established under this act.

548 (k) To execute an agricultural contract requiring the
549 application of the law of another state in lieu of this act.

550 SECTION 10. Any provision of an agricultural contract which
551 waives a producer right or an obligation of a contractor or

552 processor established by this act is void and unenforceable. This
553 section does not affect other provisions of an agricultural
554 contract, including an agricultural contract or related document,
555 policy or agreement which can be given effect without the voided
556 provision.

557 SECTION 11. Any condition, stipulation, or provision
558 requiring the application of the law of another state in lieu of
559 this act is void and unenforceable.

560 SECTION 12. An agricultural contract must contain language
561 providing for resolution of disputes concerning the contract by
562 mediation. If there is a dispute involving an agricultural
563 contract, either party may make a written request for mediation
564 services as specified in the contract, to facilitate resolution of
565 the dispute. The parties must receive a release from the mediator
566 before the dispute can be heard by a court.

567 SECTION 13. (1) A contractor or processor committing an
568 unfair practice under Section 9 of this act shall be subject to a
569 civil penalty of up to Ten Thousand Dollars (\$10,000.00).

570 (2) A contractor or processor committing an unfair practice
571 under Section 9 of this act shall be guilty of a simple
572 misdemeanor and shall be fined One Thousand Dollars (\$1,000.00).

573 (3) (a) A producer who suffers damages because of a
574 contractor's or processor's violation of this act may obtain
575 appropriate legal and equitable relief, including damages.

576 (b) In such a civil action against the contractor or
577 processor, the court shall award the producer who is the
578 prevailing party reasonable attorney fees and other litigation
579 expenses.

580 (c) In order to obtain injunctive relief, the producer
581 is not required to post a bond, prove the absence of an adequate
582 remedy at law, or show the existence of special circumstances,
583 unless the court for good cause otherwise orders. The court may
584 order any form of prohibitory or mandatory relief that is

585 appropriate under principles of equity, including, but not limited
586 to issuing a temporary or permanent restraining order.

587 (4) The Attorney General's Office is the agency primarily
588 responsible for enforcing this act. In enforcing the provisions
589 of this act, the Attorney General may do all of the following:

590 (a) Apply to the district court for an injunction to do
591 any of the following:

592 (i) Restrain a contractor or processor from
593 engaging in conduct or practices in violation of this act.

594 (ii) Require a contractor or processor to comply
595 with a provision of this act.

596 (b) Apply to district court for the issuance of a
597 subpoena to obtain an agricultural contract for purposes of
598 enforcing this act.

599 (c) Bring an action in district court to enforce
600 penalties provided in subsections (1) and (2).

601 SECTION 14. The Attorney General may adopt rules to
602 implement this act.

603 SECTION 15. (1) Except as provided in subsection (2), this
604 act applies to agricultural contracts in force on or after the
605 date of the enactment of this act, regardless of the date the
606 agricultural contract is executed.

607 (2) Section 4 (relating to disclosure of risks and
608 readability), Section 5 (relating to contract producer's three-day
609 right to review), Section 8 (relating to production contracts
610 involving investment requirements), Section 9 (relating to the use
611 of "tournament compensation"), Section 11 (relating to choice of
612 law), and Section 12 (relating to mediation) of this act shall
613 apply to agricultural contracts executed or substantively amended
614 after the date of the enactment of this act.

615 SECTION 16. This act shall take effect and be in force from
616 and after July 1, 2001.