

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1071

Introduced by Dierks, 40

Read first time January 7, 2000

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend section 2-4808,
2 Reissue Revised Statutes of Nebraska; to adopt the
3 Agricultural Production Contract Act; to harmonize
4 provisions; and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known
2 and may be cited as the Agricultural Production Contract Act.

3 Sec. 2. The Legislature finds production and marketing
4 of agricultural commodities is increasingly undertaken through
5 contractual agreements with processors and marketers of
6 agricultural commodities. While production contracts can provide
7 mutual benefits to both producer and contractor, producers are
8 often limited in the choices of contract opportunities and are at a
9 disadvantage in both economic means and legal sophistication when
10 negotiating contract terms. The Legislature determines it to be in
11 the public interest that agricultural production contracts adhere
12 to minimal standards to guard producers' legal and economic
13 interest under contract production arrangements.

14 Sec. 3. For purposes of the Agricultural Production
15 Contract Act:

16 (a) Agricultural commodity means livestock or harvested
17 crops raised for use in or as food, feed, seed, or fiber or as raw
18 material from which useful products may be derived or extracted;

19 (b) Agricultural production contract means any
20 contractual agreement between a producer of agricultural
21 commodities and a contractor for the care, production, or delivery
22 of agricultural commodities whether the nature of the producer's
23 relationship to the contractor under the agreement is one of
24 supplier, bailee, independent contractor, lessor, or service
25 provider;

26 (c) Contractor means a person who in the ordinary course
27 of business buys agricultural commodities grown or raised in this
28 state or who contracts with a producer to grow or raise

1 agricultural commodities in this state and shall include
2 individuals, firms, associations, limited liability companies, and
3 corporations and officers or members thereof;

4 (d) Director means the Director of Agriculture;

5 (e) Producer means a person who produces or causes an
6 agricultural commodity to be produced or provides management,
7 labor, machinery, facilities, or any other production input for the
8 production of agricultural commodities; and

9 (f) Significant capital investment means any investment
10 in buildings or equipment, or a combination of buildings and
11 equipment, in excess of one hundred thousand dollars and having a
12 useful life of at least five years.

13 Sec. 4. An agricultural production contract shall
14 contain language providing for resolution of contract disputes by
15 either mediation or arbitration. If there is a contract dispute
16 and the contract specifies arbitration, either party may make a
17 written request to the director for arbitration services. If there
18 is a contract dispute and the contract specifies mediation, either
19 party may request mediation under the Farm Mediation Act.

20 Sec. 5. Except as provided in section 8 of this act, a
21 contractor may not terminate or cancel an agricultural production
22 contract that requires a producer to make a significant capital
23 investment unless:

24 (1) The producer has been given written notice of the
25 intention to terminate or cancel the contract at least one hundred
26 eighty days before the effective date of the termination; and

27 (2) The producer has been reimbursed for damages incurred
28 by making such investment for the purpose of meeting minimum

1 requirements of the contract.

2 Sec. 6. Except as provided in section 8 of this act, if
3 a producer fails to comply with an agricultural production contract
4 that requires a significant capital investment, a contractor may
5 not terminate or cancel that contract unless:

6 (1) The contractor has given written notice with all the
7 reasons for the termination or cancellation at least ninety days
8 before termination or cancellation; and

9 (2) The producer fails to correct the reasons stated for
10 termination or cancellation in the notices within sixty days after
11 the receipt of the notice.

12 Sec. 7. It is unlawful for any contractor to require
13 waiver of a producer's rights under sections 5 and 6 of this act as
14 a condition of entering into an agricultural production contract,
15 as a condition of any benefits to producer under the terms of the
16 contract, or as a condition of contractor's performance under the
17 contract. Any contract that is in violation of this section or any
18 other provision of the Agricultural Production Contract Act is
19 voidable by the producer. Any person acting in violation of this
20 section or any other provision of the act shall be guilty of a
21 Class IV misdemeanor and shall be fined five hundred dollars per
22 violation.

23 Sec. 8. Sections 6 and 7 of this act are waived upon the
24 following conditions:

25 (1) Voluntary abandonment of the contract relationship by
26 the producer;

27 (2) Conviction of the producer of an offense directly
28 related to the business contracted under the contract;

1 (3) Material breach of the contract by the producer; or

2 (4) Bankruptcy or insolvency of the producer.

3 Sec. 9. If a contractor is a subsidiary of another
4 corporation, partnership, or association, the parent corporation,
5 partnership, or association is liable to a producer for the amount
6 of any unpaid claim or contract performance claim if the contractor
7 fails to pay or perform according to the terms of the contract.

8 Sec. 10. There is an implied promise of good faith, as
9 that term is defined in section 1-201, Uniform Commercial Code, by
10 all parties in agricultural production contracts. If a court finds
11 that there was a lack of good faith in an action to recover damages
12 by a party to such a contract, the damages, court costs, and
13 attorney's fees may be recovered against such party.

14 Sec. 11. Section 2-4808, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 2-4808. Any borrower or creditor may request mediation
17 of any indebtedness incurred in relation to an agricultural loan by
18 applying to the farm mediation service. Any party involved in an
19 adverse decision from a United States Department of Agriculture
20 agency or any party involved in a dispute arising under a contract
21 governed by the Agricultural Production Contract Act may request
22 mediation by applying to the farm mediation service. The farm
23 mediation service shall notify all the parties and, upon their
24 consent, schedule a meeting with a mediator. The parties shall not
25 be required to attend any mediation meetings under this section,
26 and failure to attend any mediation meetings or to participate in
27 mediation under this section shall not affect the rights of any
28 party in any manner. Participation in mediation under this section

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1 shall not be a prerequisite or a bar to the institution of or
2 prosecution of legal proceedings by any party.

3 Sec. 12. Original section 2-4808, Reissue Revised
4 Statutes of Nebraska, is repealed.