

Sixtieth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2117

Introduced by

Senator Wanzek

(At the request of the North Dakota Potato Council)

1 A BILL for an Act to provide for fair practices in potato production contracting; and to provide a
2 penalty.

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

4 **SECTION 1. Definitions.** In this chapter, unless the context or subject matter
5 otherwise requires:

- 6 1. "Buyer" means a person, group of persons, organization, or entity that in the
7 ordinary course of business buys potatoes or potato byproducts grown in this state
8 or who contracts with a potato producer to grow potatoes in this state.
9 2. "Potatoes" means potatoes or potato byproducts produced for use in or as food,
10 seed, feed, or other byproducts of the farm for the same or similar use.
11 3. "Producer" means a person that produces or causes to be produced potatoes by
12 contracting with a buyer or processor to provide management, labor, machinery,
13 facilities, or any production input for the production of potatoes.

14 **SECTION 2. Unfair acts and practices prohibited.** A buyer may not engage in any of
15 the following acts or practices, defined as unfair acts or practices in connection with a potato
16 production contract or purchase involving potatoes:

- 17 1. Use of coercion, intimidation, the threat of retaliation or the threat of contract
18 termination, cancellation, or nonrenewal to impose, demand, compel, or dictate
19 terms, payment or manner of payment, or the signing of a contract by a potato
20 producer.
21 2. Use of coercion, intimidation, the threat of retaliation, or the threat of contract
22 termination, cancellation, or nonrenewal in order to require a producer to make
23 capital improvements such as buildings or equipment.

- 1 3. To interfere, restrain, or coerce a producer in the exercise of the right to join, form,
2 or assist a producer bargaining cooperative or association.
- 3 4. To refuse to deal with a producer because of the exercise of the right to join and
4 belong to a producer bargaining cooperative or association.
- 5 5. To refuse to provide to the producer, upon request, the statistical information and
6 the data used to determine compensation paid to the producer for settlement.
- 7 6. To refuse to allow a producer or the producer's designated representative to
8 observe, by actual observation at the time of weighing, the weights and measures
9 used to determine the producer's compensation at settlement.
- 10 7. To use the performance of any other producer to determine the settlement of a
11 producer.
- 12 8. To refuse to bargain with an established producer bargaining cooperative or
13 association formed for the purpose of negotiating contracts and agreements.

14 **SECTION 3. Civil liability for damages from violation.** A person who engages in an
15 unfair act or practice as defined in this Act, is liable to a producer for all damages caused to the
16 producer by the unfair act or practice.

17 **SECTION 4. Good faith - Damages for violation - Penalty.** There is an implied
18 promise of good faith as defined in subsection 19 of section 41-09-11, by all parties to a potato
19 production contract. In an action to recover damages, if the court or a jury finds that there has
20 been a violation of this provision, in addition to other damages authorized by law, attorney fees
21 and court costs may be awarded.

22 **SECTION 5. Recapture of capital investment required by a potato production**
23 **contract.**

- 24 1. A contractor may not terminate or cancel a contract that requires a producer to
25 make a capital investment in buildings or equipment that cost one hundred
26 thousand dollars or more and have a useful life of five or more years until:
 - 27 a. The producer has been given written notice of the intention to terminate or
28 cancel the contract at least one hundred eighty days before the effective date
29 of the termination or cancellation, or as provided in subsection 3; and

- 1 b. The producer has been reimbursed for damages incurred by an investment in
2 buildings or equipment that was made for the purpose of meeting minimum
3 requirements of the contract.
- 4 2. Except as provided in subsection 3, if a producer fails to comply with the provisions
5 of a contract that requires a capital investment subject to subsection 1, a contractor
6 may not terminate or cancel that contract until:
- 7 a. The contractor has given written notice with all the reasons for the termination
8 or cancellation at least ninety days before termination or cancellation, or as
9 provided in subsection 3; and
- 10 b. The recipient of the notice fails to correct the reasons stated for termination or
11 cancellation in the notice within sixty days of receipt of the notice.
- 12 3. The one hundred eighty-day notice period under subsection 1, and the ninety-day
13 notice period and the sixty-day notice period under subsection 2, are waived and
14 the contract may be cancelled or terminated immediately if the alleged grounds for
15 termination or cancellation are:
- 16 a. Voluntary abandonment of the contract relationship by the producer; or
17 b. Conviction of the producer of an offense directly related to the business
18 conducted under the contract.