

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S

1

SENATE BILL 1009

Short Title: Agricultural Contracts Fairness Act.

(Public)

Sponsors: Senators Kinnaird; Lee and Lucas.

Referred to: Commerce.

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO ENSURE FAIR DEALING BETWEEN PRODUCERS OF
AGRICULTURAL COMMODITIES AND THE CONTRACTORS FOR THESE
COMMODITIES WHEN ENTERING INTO MARKETING OR PRODUCTION
CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 106 is amended by adding a new Article to read:

"Article 70.

"Fair Dealing in Agricultural Contracts.

§ 106-826. Definitions.

As used in this Article, unless the context otherwise requires:

- (1) 'Active contractor' means a person who owns a commodity that is produced by a contract producer at the contract producer's contract operation according to a production contract.
- (2) 'Agricultural contract' means a marketing contract or a production contract.
- (3) 'Animal feeding operation' means a lot, corral, building, or other area in which livestock is confined and fed. An animal feeding operation does not include a livestock market.
- (4) 'Capital investment' means an investment in one or more of the following:
 - a. A structure, such as a building or manure storage structure.
 - b. Machinery or equipment associated with producing a commodity that has a useful life in excess of one year.
- (5) 'Commodity' means livestock, raw milk, or a crop.
- (6) 'Confinement feeding operation' means an animal feeding operation in which livestock is confined to areas that are totally roofed.

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

- 1 (19) 'Processor' means a person engaged in the business of manufacturing
2 goods from commodities, including by slaughtering or processing
3 livestock, processing raw milk, or processing crops.
- 4 (20) 'Produce' means to do any of the following:
5 a. Provide feed or service relating to the care and feeding of
6 livestock. Produce includes to milk the dairy cattle and to store
7 the raw milk, when the livestock is dairy cattle.
8 b. Provide for planting, raising, harvesting, and storing a crop.
9 'Produce' includes preparing the soil for planting and nurturing
10 the crop by the application of fertilizer materials, as defined in
11 G.S. 106-657; soil additives, as defined in G.S. 106-50.30;
12 pesticides as defined in G.S. 106-65.24; or herbicides, as
13 defined in G.S. 143-460.
- 14 (21) 'Producer' means a person who produces a commodity, including but
15 not limited to, a contract producer. Producer does not include a
16 commercial fertilizer or pesticide applicator, a feed supplier, or a
17 veterinarian, when acting in such capacity.
- 18 (22) 'Production contract' means an oral or written agreement that provides
19 for the production of a commodity or the provision of management
20 service relating to the production of a commodity by a contract
21 producer. A production contract is executed when it is signed or orally
22 agreed to by each party to the contract or by a person authorized to act
23 on the party's behalf.

24 **"§ 106-827. Production contracts governed by this Article.**

25 This Article applies to production contracts that relate to the production of a
26 commodity owned by an active contractor and produced by a contract producer at the
27 contract producer's contract operation, when any one of the following applies:

- 28 (1) Contract with active contractor. – The production contract is executed
29 by an active contractor and a contract producer for the production of
30 the commodity.
- 31 (2) Contract with active contractor and passive contractor. – The
32 production contract is executed by an active contractor and a passive
33 contractor for the provision of management services to the contract
34 producer in the production of the commodity.
- 35 (3) Contract with passive contractor. – The production contract is
36 executed by a passive contractor and a contract producer, if all of the
37 following apply:
38 a. The contract provides for management services furnished by the
39 passive contractor to the contract producer in the production of
40 the commodity.
41 b. The passive contractor has a contractual relationship with the
42 active contractor involving the production of the commodity.

43 **"§ 106-828. Implied obligation of good faith.**

1 An agricultural contract imposes an obligation of good faith, as defined in G.S. 25-1-
2 201, on all parties with respect to the performance and enforcement of the agricultural
3 contract.

4 **"§ 106-829. Disclosure of risks and readability.**

5 (a) Disclosure Statement. – An agricultural contract shall be accompanied by a
6 clear written disclosure statement setting forth the nature of the material risks faced by
7 the producer if the producer enters into the contract. The statement shall meet the
8 readability requirements of subsection (b) of this section. The statement may be in the
9 form of a written statement or checklist and may be developed in cooperation with
10 producers or producer organizations. The statement shall disclose all of the following:

- 11 (1) In the case of production contracts, the producer's right to review as
12 provided in G.S. 106-830.
- 13 (2) Contract duration.
- 14 (3) Contract termination.
- 15 (4) Renegotiation standards.
- 16 (5) Responsibility for environmental damage.
- 17 (6) Factors to be used in determining payment.
- 18 (7) Responsibility for obtaining and complying with local, State, and
19 federal permits.
- 20 (8) Any other contract term that the Attorney General determines is
21 appropriate for disclosure.

22 (b) Readability of Contract. —

- 23 (1) Definition. – As used in this subsection, 'legible type' means a typeface
24 at least as large as ten-point modern type, one-point leaded.
- 25 (2) Cover sheet requirements.
 - 26 a. Mandatory cover page. – An agricultural contract shall contain
27 as the first page, or first page of text if it is preceded by a title
28 page or pages, a cover sheet as provided in this section.
 - 29 b. Requirements. – The cover sheet or sheets shall comply with
30 G.S. 106-828 and shall contain all of the following:
 - 31 1. A brief statement that the document is a legal contract
32 between the parties.
 - 33 2. The statement 'READ YOUR CONTRACT
34 CAREFULLY. This cover sheet provides only a brief
35 summary of your contract. This is not the contract and
36 only the terms of the actual contract are legally binding.
37 The contract itself sets forth, in detail, the rights and
38 obligations of both you and the contractor or processor.
39 IT IS THEREFORE IMPORTANT THAT YOU READ
40 YOUR CONTRACT CAREFULLY.'
 - 41 3. The written disclosure of risks required by subsection (a)
42 of this section.
 - 43 4. A statement detailing in plain language, the producer's
44 right to review the contract as described in G.S. 106-830.

- 1 5. An index of the major provisions of the contract and the
2 pages on which they are found, including all of the
3 following:
4 I. The names of all parties to the contract.
5 II. The definition sections of the contract.
6 III. The provisions governing termination,
7 cancellation, renewal, and amendment of the
8 contract by either party.
9 IV. The duties or obligations of each party.
10 V. Any provisions in the contract subject to change.
11 (3) Contract format and plain language. – An agricultural contract shall be
12 in legible type, appropriately divided and captioned by its various
13 sections, and written in clear and coherent language using words and
14 grammar that are understandable by a person of average intelligence,
15 education, and experience within the industry. This paragraph does not
16 apply to the following terms in an agricultural contract:
17 a. Legally required. – Particular words, phrases, provisions, or
18 forms of agreement specifically required, recommended, or
19 endorsed by a State or federal statute, rule, or regulation.
20 b. Customarily used terms. – Technical terms used to describe the
21 services or property that are the subject of the contract, if the
22 terms are customarily used by producers in the ordinary course
23 of business in connection with the services or property being
24 described.
25 (c) Review by Attorney General. —
26 (1) Process of review. – A contractor or processor may submit an
27 agricultural contract to the Attorney General for review as to whether
28 it complies with this section. After reviewing the contract, the
29 Attorney General shall do one of the following:
30 a. Certify that the contract complies with this section.
31 b. Decline to certify that the contract complies with this section
32 and note objections.
33 c. Decline to review the contract because the contract's
34 compliance with this section is subject to pending litigation.
35 d. Decline to review the contract because the contract is not
36 subject to this section.
37 (2) Factors in determining readability. – In determining whether an
38 agricultural contract or cover sheet is readable within the meaning of
39 subsection (b) of this section, the Attorney General shall consider at
40 least the following factors:
41 a. The simplicity of the sentence structure.
42 b. The extent to which commonly used and understood words are
43 employed.
44 c. The extent to which esoteric legal terms are avoided.

- 1 d. The extent to which references to other sections or provisions of
2 the contract are minimized.
- 3 e. The Flesch scale analysis readability score, as defined in the
4 context of readable insurance policies in G.S. 58-38-15 and as
5 determined under G.S. 58-38-25.
- 6 f. The extent to which clear definitions are used in the text of the
7 contract.
- 8 g. Additional factors relevant to the readability or
9 understandability of the contract.
- 10 (3) Process not reviewable. – Actions of the Attorney General under this
11 subsection are not subject to judicial review.
- 12 (4) Limited effect of certification. – A contract certified under this
13 subsection is deemed to comply with subsections (a) and (b) of this
14 section. Certification of a contract under this subsection does not
15 constitute an approval of the contract's legality or legal effect. If the
16 Attorney General certifies a contract or fails to respond within 30 days
17 of receipt of the contract, then the contractor or processor will be
18 deemed to have complied with subsections (a) and (b) of this section,
19 and the remedies stated in subdivision (6) of this subsection and G.S.
20 106-838 are not available.
- 21 (5) Review not required. – Failure to submit a contract to the Attorney
22 General for review under this subsection does not show a lack of good
23 faith or raise a presumption that the contract violates this section.
- 24 (6) Reformation by court. —
- 25 a. Change terms. – In addition to the remedies provided in G.S.
26 106-838, a court reviewing an agricultural contract may change
27 the terms of the contract or limit a provision to avoid an unfair
28 result if the court finds all of the following:
- 29 1. A material provision of the contract violates subsection
30 (a) or (b) of this section.
- 31 2. The violation caused the producer to be substantially
32 confused about any of the rights, obligations, or
33 remedies of the contract.
- 34 3. The violation has caused or is likely to cause financial
35 detriment to the producer.
- 36 b. Avoid unjust enrichment. – If the court reforms or limits a
37 provision of an agricultural contract, the court shall also make
38 orders necessary to avoid unjust enrichment. Bringing a claim
39 for relief under this paragraph does not entitle a producer to
40 withhold performance of an otherwise valid contractual
41 obligation. No relief may be granted under this sub-subdivision
42 unless the claim is brought before the obligations of the contract
43 have been fully performed.
- 44 (7) Limits on remedies.—

1 a. Penalties. – In a proceeding in which civil penalties are claimed
2 from a party for a violation of this section, it is a defense to the
3 claim that the party made a good faith and reasonable effort to
4 comply.

5 b. Attorneys' fees. – Notwithstanding G.S. 106-838, a party who
6 has made a good faith and reasonable effort to comply with this
7 section may not be assessed attorneys' fees or costs of
8 investigation in an action for violating this section.

9 (8) Limits on producer actions. – Violation of this section is not a defense
10 to a claim arising from a producer's breach of an agricultural contract.
11 A producer may recover actual damages caused by a violation of this
12 section only if the violation caused the producer to not understand the
13 rights, obligations, or remedies of the contract.

14 (9) Statute of limitations. – A claim that an agricultural contract violates
15 this section must be raised within six years of the date the contract is
16 executed by the producer.

17 **"§ 106-830. Contract producer's three day right to review.**

18 A contract producer may cancel a production contract by mailing a written
19 cancellation notice to the contractor within three business days after the contract is
20 executed, or before a later cancellation deadline if a later deadline is specified in the
21 contract. The contract producer's right to cancel, the method by which the contract
22 producer may cancel, and the deadline for canceling the production contract shall be
23 clearly disclosed in every production contract.

24 **"§ 106-831. Confidentiality provisions prohibited.**

25 (a) Prohibition. – A contractor or processor shall not enforce a provision in an
26 agricultural contract if the provision provides that information contained in the
27 agricultural contract is confidential.

28 (b) Confidentiality Provision Void. – A provision that is part of an agricultural
29 contract is void if the provision states that information contained in the agricultural
30 contract is confidential. The confidentiality provision is void whether the confidentiality
31 provision is expressed or implied; oral or written; required or conditional; contained in
32 the agricultural contract, another agricultural contract or in a related document, policy,
33 or agreement. This section does not affect other provisions of an agricultural contract or
34 a related document, policy, or agreement that can be given effect without the voided
35 provision. This section does not require a party to an agricultural contract to divulge
36 information in the agricultural contract to another person.

37 **"§ 106-832. Production contract lien.**

38 (a) Applicability of Section. – A lien established under this section depends upon
39 the execution of a production contract that provides for producing a commodity owned
40 by a contractor by a contract producer at the contract producer's contract operation.

41 (b) Establishment of Lien-Priority. – A contract producer who is a party to a
42 production contract shall have a lien as provided in this section. The amount of the lien
43 shall be the amount owed to the contract producer pursuant to the terms of the

1 production contract, which may be enforced as provided in subsection (d) of this
2 section.

3 (1) Livestock and raw milk. – If the production contract is for the
4 production of livestock or raw milk, all of the following shall apply:

5 a. Livestock. – For livestock, the lien shall apply to all of the
6 following:

7 1. If the livestock is not sold or slaughtered by the
8 contractor, the lien shall be on the livestock.

9 2. If the livestock is sold by the contractor, the lien shall be
10 on cash proceeds from the sale. For purposes of this
11 subparagraph, cash held by the contractor shall be
12 deemed to be cash proceeds from the sale regardless of
13 whether it is identifiable cash proceeds.

14 3. If the livestock is slaughtered by the contractor, the lien
15 shall be on any property of the contractor that may be
16 subject to a security interest as provided in G.S. 25-9-
17 102.

18 b. Raw milk. – For raw milk, the lien shall apply to all of the
19 following:

20 1. Milk not sold. – If the raw milk is not sold or processed
21 by the contractor, the lien shall be on the raw milk.

22 2. Milk is sold. – If the raw milk is sold by the contractor,
23 the lien shall be on cash proceeds from the sale. For
24 purposes of this subparagraph, cash held by the
25 contractor shall be deemed to be cash proceeds from the
26 sale regardless of whether it is identifiable cash
27 proceeds.

28 3. Milk processed. – If the raw milk is processed by the
29 contractor, the lien shall be on any property of the
30 contractor that may be subject to a security interest as
31 provided in G.S. 25-9-102.

32 c. Duration of lien. – The lien on livestock or raw milk is created
33 at the time the livestock arrives at the contract livestock facility
34 and continues for one year after the livestock is no longer under
35 the authority of the contract producer. For the purposes of this
36 subdivision, livestock is no longer under the authority of the
37 contract producer when the livestock leaves the contract
38 livestock facility.

39 (2) Crops. – If the production contract is for the production of crops, all of
40 the following shall apply:

41 a. Crop not sold. – If the crop is not sold or processed by the
42 contractor, the lien shall be on the crop.

43 b. Crop sold. – If the crop is sold by the contractor, the lien shall
44 be on cash proceeds from the sale. For purposes of this sub-

1 subdivision, cash held by the contractor shall be deemed to be
2 cash proceeds from the sale regardless of whether it is
3 identifiable cash proceeds.

4 c. Crop processed. – If the crop is processed by the contractor, the
5 lien shall be on any property of the contractor that may be
6 subject to a security interest as provided in G.S. 25-9-102.

7 d. Duration of lien. – The lien on a crop is created at the time the
8 crop is planted and continues for one year after the crop is no
9 longer under the authority of the contract producer. For
10 purposes of this subdivision, a crop is no longer under the
11 authority of the contract producer when the crop or a warehouse
12 receipt issued by a grain dealer licensed under Article 53 of
13 Chapter 106 of the General Statutes, for grain from the crop is
14 no longer under the custody or control of the contract producer.

15 (c) Preserving the Lien. — Filing Requirements.

16 (1) Filing lien statement. – In order to preserve a lien created pursuant to
17 this section, a contract producer must file in the office of the Secretary
18 of State a lien statement on a form prescribed by the Secretary of State.
19 If the lien arises out of producing livestock or raw milk, the contract
20 producer must file the lien within 45 days after the day that the
21 livestock first arrives at the contract livestock facility. If the lien arises
22 out of producing a crop, the contract producer must file the lien within
23 45 days after the day that the crop is first planted. The Secretary of
24 State shall charge a fee of not more than ten dollars (\$10.00) for filing
25 the statement. The Secretary of State may adopt rules pursuant to
26 Chapter 150B of the General Statutes for the electronic filing of the
27 statements.

28 (2) Contents of lien statement. – The statement shall include all of the
29 following:

30 a. An estimate of the amount owed pursuant to the production
31 contract.

32 b. The date when the livestock arrives at the contract livestock
33 facility or the date when the crop was planted.

34 c. The estimated duration of the period when the commodity will
35 be under the authority of the contract producer.

36 d. The name of the party to the production contract whose
37 commodity is produced pursuant to the production contract.

38 e. The description of the location of the contract operation, by the
39 county and township.

40 f. The printed name and signature of the person filing the form.

41 (3) Priority of lien. – A lien created under this section until preserved and
42 a lien preserved under this section are superior to and shall have
43 priority over a conflicting lien or security interest in the commodity,

1 including a lien or security interest that was perfected prior to the
2 creation of the lien under this section.

3 (d) Enforcement. – Before a commodity leaves the authority of the contract
4 producer as provided in subsection (b) of this section, the contract producer may
5 foreclose a lien created in that subsection in the manner provided for the foreclosure of
6 secured transactions in G.S. 25-9-504, G.S. 25-9-506, and G.S. 25-9-507. After the
7 commodity is no longer under the authority of the contract producer, the contract
8 producer may enforce the lien in the manner provided in Part 5 of Article 9 of Chapter
9 25 of the General Statutes.

10 **"§ 106-833. Production contracts involving investment requirements.**

11 (a) Applicability. – This section only applies to a production contract executed
12 by a contract producer and a contractor, when, according to the investment requirements
13 provided in the production contract, the contract producer is required to make capital
14 investments of one hundred thousand dollars (\$100,000) or more. The value of the
15 capital investments is the total dollar amount spent by the contract producer in
16 satisfying the investment requirements, when that amount is ascertainable.

17 (b) Restrictions on Contract Termination. – Except as provided in subsection (d)
18 of this section, a contractor shall not terminate, cancel, or fail to renew a production
19 contract until the contractor has done all of the following:

20 (1) Notice. – The contractor has provided the contract producer written
21 notice of the intention to terminate, cancel, or not renew at least 90
22 days before the effective date of the termination, cancellation, or
23 nonrenewal.

24 (2) Damages. – The contract producer has been reimbursed for damages
25 incurred due to the termination, cancellation, or failure to renew.
26 Damages shall be calculated based on the value of the remaining
27 useful life of the structures, machinery, or equipment involved.

28 (c) Breach of Investment Requirements. – Except as provided in subsection (d)
29 of this section, if a contract producer materially breaches a production contract,
30 including the investment requirements of a production contract, a contractor shall not
31 terminate, cancel, or fail to renew the production contract until all of the following have
32 occurred:

33 (1) Notice. – The contractor has provided a written notice of termination,
34 cancellation, or nonrenewal at least 45 days before the effective date of
35 such termination, cancellation, or nonrenewal. The notice shall provide
36 a list of complaints alleging causes for the breach.

37 (2) Failure to remedy. – The contract producer fails to remedy each cause
38 of the breach as alleged in the list of complaints provided in the notice
39 within 30 days following receipt of the notice. An effort by a contract
40 producer to remedy a cause of an alleged breach shall not be construed
41 as an admission of a breach in a civil action.

42 (d) Exceptions. – A contractor may terminate, cancel, or fail to renew a
43 production contract without notice or remedy as required in subsections (b) and (c) of

1 this section if the basis for the termination, cancellation, or nonrenewal is any of the
2 following:

3 (1) Abandonment. – The contract producer voluntarily abandons the
4 contractual relationship. Within the meaning of this subdivision,
5 abandonment is a complete failure of a contract producer's
6 performance under a production contract.

7 (2) Fraud conviction. – The contract producer is convicted of an offense of
8 fraud or theft committed against the contractor.

9 (e) Penalty. – If a contractor terminates, cancels, or fails to renew a production
10 contract other than as provided in this section, the contractor shall pay the contract
11 producer the value of the remaining useful life of the structures, machinery, or
12 equipment involved.

13 **"§ 106-834. Unfair practices.**

14 (a) Definitions. – As used in this section:

15 (1) 'Contract input' means a commodity or an organic or synthetic
16 substance or compound that is used to produce a commodity, including
17 but not limited to, any or the following:

18 a. Livestock or plants.

19 b. Agricultural seeds, as defined in G.S. 106-277.2.

20 c. Semen or eggs for breeding livestock.

21 d. Fertilizer materials, as defined in G.S. 106-657; soil additives,
22 as defined in G.S. 106-50.30; pesticides as defined in G.S. 106-
23 65.24; or herbicides, as defined in G.S. 143-460.

24 (2) 'Producer right' means one of the following legal rights and
25 protections:

26 a. Right to join association. – The right of a producer to join or
27 belong to, or to refrain from joining or belonging to, an
28 association of producers.

29 b. Right to contract. – The right of a producer to enter into a
30 membership agreement or marketing contract with an
31 association of producers, a processor, or another producer, and
32 the right of the producer to exercise contractual rights under
33 such a membership agreement or marketing contract.

34 c. Right to be a whistleblower. – The right of a producer to
35 lawfully provide statements or information, including
36 statements or information to the United States Secretary of
37 Agriculture or to a law enforcement agency, regarding alleged
38 improper actions or violations of law by a contractor or
39 processor. This right does not include the right to make
40 statements or provide information if the statements or
41 information are determined to be libelous or slanderous.

42 d. Right to use contract producer lien. – The right of a producer to
43 file, continue, terminate, or enforce a lien under G.S. 106-832.

- 1 e. Right to review production contracts. – The right of a contract
2 producer to review a production contract under G.S. 106-830.
3 f. Right to disclose contractual terms. – The right of a producer to
4 disclose the terms of agricultural contracts under G.S. 106-829.
5 g. Right to exercise other protections. – The right of a producer to
6 enforce other protections afforded by this Article or other laws
7 or regulations.

8 (b) Unfair Practices. – It shall be unlawful for any contractor or processor
9 knowingly to engage or permit any employee or agent to engage in any of the following
10 practices in connection with agricultural contracts:

11 (1) Retaliation. – To take actions to coerce, intimidate, disadvantage,
12 retaliate against, or discriminate against any producer because the
13 producer exercises, or attempts to exercise, any producer right,
14 including actions affecting any one or more of the following:

- 15 a. The execution, termination, extension, or renewal of an
16 agricultural contract.
17 b. The treatment of a producer, which may include providing
18 discriminatory or preferential terms in an agricultural contract
19 or interpreting terms of an existing agricultural contract in a
20 discriminatory or preferential manner. These terms may relate
21 to the price paid for a commodity; the quality or the quantity of
22 a commodity demanded; or financing, including investment
23 requirements.
24 c. The grant of a reward or imposition of a penalty, including the
25 denial of a reward. The reward or penalty may be in any form,
26 including but not limited to, financial rewards or penalties.
27 Financial rewards or penalties may relate to loans, bonuses, or
28 inducements.
29 d. Alter the quality, quantity, or delivery times of contract inputs
30 provided to the producer.

31 (2) False information. – To provide false information to the producer,
32 which may include false information relating to any of the following.

- 33 a. A producer with whom the producer associates or an
34 association of producers or an agricultural organization with
35 which the producer is affiliated, including but not limited to any
36 of the following:
37 1. The character of the producer.
38 2. The condition of the finances or the management of the
39 association of producers or agricultural organization.
40 b. Producer rights provided by this Article or other provision of
41 law.

42 (3) Compensation information. – To refuse to provide to a contract
43 producer upon request the statistical information and data used to
44 determine compensation paid to the contract producer under a

1 production contract, including but not limited to, feed conversion rates,
2 feed analyses, origination, and breeder history.

3 (4) Observation of weighing. – To refuse to allow a contract producer or
4 the contract producer's designated representative to observe, by actual
5 observation at the time of weighing, the weights and measures used to
6 determine the contract producer's compensation under a production
7 contract.

8 (5) 'Tournament' compensation. – To use the performance of any other
9 contract producer to determine the compensation of a contract
10 producer under a production contract or as the basis of the termination,
11 cancellation, or renewal of a production contract.

12 (6) Additional capital investments. – To require a contract producer to
13 make new or additional capital investments in connection with, or to
14 retain, continue, or renew, a production contract which capital
15 investments are beyond the investment requirements of such
16 production contract. It is not a violation of this section if such new or
17 additional capital investments are partially paid for by the contractor,
18 or offset by other compensation or modifications to contract terms, in a
19 manner the contract producer agrees to in writing as constituting
20 acceptable and satisfactory consideration for the new capital
21 investment.

22 (7) Disclosure of risks and readability. – To execute an agricultural
23 contract in violation of the disclosure of risks and readability
24 requirements of G.S. 106-829.

25 (8) Confidentiality provisions. – To execute an agricultural contract that
26 includes a confidentiality provision in violation of G.S. 106-831.

27 (9) Waivers. – To execute an agricultural contract that includes a waiver
28 of any producer right or any obligation of a contractor or processor
29 established under this Article.

30 (10) Choice of law. – To execute an agricultural contract requiring the
31 application of the law of another state in lieu of this Article.

32 **"§ 106-835. Waivers unenforceable.**

33 A provision of an agricultural contract that waives a producer right or an obligation
34 of a contractor or processor established by this Article is void and unenforceable. This
35 section does not affect other provisions of an agricultural contract, including an
36 agricultural contract or related document, policy, or agreement that can be given effect
37 without the voided provision.

38 **"§ 106-836. Choice of law.**

39 Any condition, stipulation, or provision requiring the application of the law of
40 another state in lieu of this Article is void and unenforceable.

41 **"§ 106-837. Arbitration requirement prohibited.**

42 An agricultural contract shall not contain any provision that requires disputes
43 concerning the contract to be submitted to arbitration. Any such provision in an

1 agricultural contract is void, but the remaining provisions are not void under this
2 section.

3 **"§ 106-838. Penalties and enforcement.**

4 (a) Civil Penalties. – A contractor or processor committing an unfair practice
5 under G.S. 106-834 is subject to a civil penalty not to exceed ten thousand dollars
6 (\$10,000) per violation.

7 (b) Criminal Penalties. – A contractor or processor committing an unfair practice
8 under G.S. 106-834 is guilty of a Class A1 misdemeanor.

9 (c) Private Cause of Action. – A producer who suffers damages because of a
10 contractor's violation of this Article may bring a civil action in the General Court of
11 Justice seeking appropriate legal and equitable relief, including damages.

12 (1) Attorneys' fees. – In such a civil action against the contractor or
13 processor, the court shall award the producer who is the prevailing
14 party reasonable attorneys' fees and other litigation expenses.

15 (2) Injunctive relief. – In order to obtain injunctive relief, the producer is
16 not required to post a bond, prove the absence of an adequate remedy
17 at law, or show the existence of special circumstances, unless the court
18 for good cause otherwise orders. The court may order any form of
19 prohibitory or mandatory relief that is appropriate under principles of
20 equity, including but not limited to, issuing a temporary or permanent
21 restraining order.

22 (d) Enforcement by Attorney General. – The Attorney General has primary
23 responsibility for enforcing this Article. In enforcing the provisions of this Article, the
24 Attorney General may do all of the following:

25 (1) Injunctions. – Apply to the district court for an injunction to do any of
26 the following:

27 a. Restrain a contractor or processor from engaging in conduct or
28 practices in violation of this Article.

29 b. Require a contractor or processor to comply with a provision of
30 this Article.

31 (2) Subpoenas. – Apply to district court for the issuance of a subpoena to
32 obtain an agricultural contract for purposes of enforcing this Article.

33 (3) Penalties. – Bring an action in district court to enforce penalties
34 provided in subsections (a) and (b) of this section.

35 **"§ 106-839. Rule making.**

36 The Attorney General may adopt rules under Chapter 150B of the General Statutes
37 to implement this Article."

38 **SECTION 2.** This act is effective when it becomes law and applies to
39 agricultural contracts, as defined in G.S. 106-826, as enacted by Section 1 of this act,
40 entered into, amended, or renewed on or after that date.