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Sixty-fifth
Legislative Assembly
of North Dakota

FIRST DRAFT:
Prepared by the Legislative Council staff for the
Agriculture and Natural Resources Committee
April 2016

Introduced by

A BILL for an Act

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

**SECTION 1. AMENDMENT.** Section 4-11.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**~~4-11.1-01~~4.1-48-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Buyer" means ~~a person~~an individual, group of ~~persons~~individuals, organization, or entity that in the ordinary course of business buys potatoes or ~~potato~~ byproducts of potatoes grown in this state or ~~who~~that contracts with a potato producer to grow potatoes in this state.
2. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
3. "Potatoes" means potatoes or ~~potato~~ byproducts of potatoes produced for use in or as food, seed, feed, or other byproducts of the farm for the same or similar use.

~~3.~~4. "Producer" means ~~a person~~an individual, group of individuals, organization, or entity that produces or causes to be produced potatoes by contracting with a buyer or processor to provide management, labor, machinery, facilities, or any production input for the production of potatoes.

**NOTE:** The reference to the Section 41-01-09 definition of "good faith" in Section 4.1-48-04 is eliminated and that definition is moved to this section for easier reference.

**SECTION 2. AMENDMENT.** Section 4-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**~~4-11.1-02~~4.1-48-02. Unfair acts and practices prohibited.**

~~A buyer may not engage in any of the following~~The following prohibited acts or practices, ~~defined as unfair acts or practices~~when engaged in by a buyer in connection with a potato production contract or purchase involving potatoes constitute unfair acts or practices for purposes of this chapter. A buyer may not:

1. Use ~~of~~ coercion, intimidation, the threat of retaliation or the threat of contract termination, cancellation, or nonrenewal to impose, demand, compel, or dictate terms, payment or manner of payment, or the signing of a contract by a potato producer.
2. Use ~~of~~ coercion, intimidation, the threat of retaliation, or the threat of contract termination, cancellation, or nonrenewal ~~in order~~ to require a producer to make capital improvements such as buildings or equipment.
3. ~~To interfere~~Interfere with, restrain, or coerce a producer in the exercise of the right to join, form, or assist a producer bargaining cooperative or association.
4. ~~To refuse~~Refuse to deal with a producer because of the exercise of the right to join and belong to a producer bargaining cooperative or association.
5. ~~To refuse~~Refuse to provide to the producer, upon request, the statistical information and the data used to determine compensation paid to the producer for settlement.
6. ~~To refuse~~Refuse to allow a producer or the producer's designated representative to observe, by actual observation at the time of weighing, the weights and measures used to determine the producer's compensation at settlement.
7. ~~To use~~Use the performance of any other producer to determine the settlement of a producer.
8. ~~To refuse~~Refuse to bargain with an established producer bargaining cooperative or association formed for the purpose of negotiating contracts and agreements.

**SECTION 3. AMENDMENT.** Section 4-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**~~4-11.1-03~~4.1-48-03. Civil liability for damages from ~~violation~~an unfair act or practice.**

A person who engages in conduct that constitutes an unfair act or practice ~~as defined in this chapter~~under section 4.1-48-02 is liable to a producer for all damages caused to the producer by the unfair act or practice.

**SECTION 4. AMENDMENT.** Section 4-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**~~4-11.1-04~~4.1-48-04. Good faith - Damages for violation - Penalty.**

There is an implied promise of good faith~~, as defined in section 41-01-09,~~ by all parties to a potato production contract. In an action to recover damages, if the court or a jury finds that there has been a ~~violation of this provision~~breach of the implied promise of good faith, in addition to other damages authorized by law, attorney's fees and court costs may be awarded.

**NOTE:** The reference to the definition of "good faith" is eliminated and that definition is moved to Section 4.1-48-01 for easier reference.

**SECTION 5. AMENDMENT.** Section 4-11.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**~~4-11.1-05~~4.1-48-05. Recapture of capital investment required by a potato production contract.**

1. A contractor may not terminate or cancel a contract that requires a producer to make a capital investment in buildings or equipment that cost one hundred thousand dollars or more and have a useful life of five or more years until:
   a. The producer has been given written notice of the intention to terminate or cancel the contract at least one hundred eighty days before the effective date of the termination or cancellation, or as provided in subsection 3; and
   b. The producer has been reimbursed for damages incurred by an investment in buildings or equipment that was made for the purpose of meeting minimum requirements of the contract.
2. Except as provided in subsection 3, if a producer fails to comply with the provisions of a contract that requires a capital investment subject to subsection 1, a contractor may not terminate or cancel that contract until:
   a. The contractor has given written notice with all the reasons for the termination or cancellation at least ninety days before termination or cancellation, or as provided in subsection 3; and
   b. The recipient of the notice fails to correct the reasons stated for termination or cancellation in the notice within sixty days of receipt of the notice.
3. The one hundred eighty-day notice period under subsection 1, and the ninety-day notice period and the sixty-day notice period under subsection 2, are waived and the

contract may be canceled or terminated immediately if the alleged grounds for termination or cancellation are:

a. Voluntary abandonment of the contract relationship by the producer; or

b. Conviction of the producer of an offense directly related to the business conducted under the contract.