

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1086
Commerce Committee Substitute Adopted 4/25/01

Short Title: Farm Contracts/Fair Practices.

(Public)

Sponsors:

Referred to:

April 5, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE FAIRNESS IN AGRICULTURAL CONTRACTS.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. The title of Article 44 of Chapter 106 reads as rewritten:
5 "Article 44.

6 Unfair Practices by Handlers of ~~Fruits and Vegetables~~Fruits,
7 Vegetables, and Other Crops."

8 SECTION 2. G.S. 106-496 reads as rewritten:

9 "§ 106-496. Protection against unfair trade practices.

10 (a) The Board of Agriculture is ~~hereby~~ authorized to ~~make such~~ adopt rules and
11 ~~regulations~~ as it deems necessary to protect producers of ~~fruits and vegetables~~fruits,
12 vegetables, and other crops from loss caused by financial irresponsibility and unfair,
13 harmful or unethical trade practices of handlers who incur financial liability for the
14 purchase or production of fruits and vegetables.

15 (b) As used in this Article:

16 (1) A ~~"handler," as used herein, is~~ 'Handler' means a person, firm,
17 corporation or other legal entity or his agent or employee who enters
18 into a written contract for the purchase from or production by a
19 producer of ~~fruits and vegetables~~fruits, vegetables, and other crops.

20 (2) 'Other crops' means any plant, other than a fruit or vegetable, used for
21 food, fiber, oil, pharmaceuticals, or nutraceuticals, including tobacco
22 but excluding forestry products."

23 SECTION 3. G.S. 106-498 reads as rewritten:

24 "§ 106-498. Bond required.

25 No permit shall be issued to a handler of fruits or vegetables until such handler has
26 furnished the Commissioner of Agriculture a bond satisfactory to the Commissioner in
27 an amount of not less than ten thousand dollars (\$10,000). The Commissioner may
28 require a new bond or he may require the amount of any bond to be increased if he finds
29 it necessary for the protection of the producer. Such bond shall be payable to the State

1 and shall be conditioned upon the fulfilling of all financial obligations incurred by the
2 handler with all producers with whom the handler contracts. Any producer alleging any
3 injury by the fraud, deceit, willful injury or failure to comply with the terms of any
4 written contract by a handler may bring suit on the bond against the principal and his
5 surety in any court of competent jurisdiction and may recover the damages found to be
6 caused by such acts complained of."

7 **SECTION 4.** G.S. 106-499 reads as rewritten:

8 "**§ 106-499. Contracts between handlers of fruits and vegetables and producers;**
9 **approval of Commissioner.**

10 All contracts for the purchase or production of fruits and vegetables filed with the
11 Commissioner by an applicant shall be approved by the Commissioner before a permit
12 is issued. The Commissioner may withhold his approval in his discretion if he is of the
13 opinion that the contract is illegal or unfair to the producer, or that the contractor is
14 insolvent or financially irresponsible, or if for any other cause it reasonably appears to
15 him that the contract in question might defeat the purpose of this Article."

16 **SECTION 5.** Article 44 of Chapter 106 of the General Statutes is amended
17 by adding a new section to read:

18 "**§ 106-499.1. Contract requirements.**

19 (a) No contract for the purchase or production of fruits, vegetables, or other crops
20 shall be binding unless:

21 (1) The contract is written in plain English; and

22 (2) The contract contains a provision that the producer may cancel the
23 contract by mailing a written cancellation notice to the handler within
24 three business days after the contract is executed, or before a later
25 cancellation deadline if a later deadline is specified in the contract. The
26 producer's right to cancel, the method by which the producer may
27 cancel, and the deadline for cancellation shall be clearly and
28 prominently disclosed in every contract subject to this Article.

29 (b) All contracts for the purchase or production of fruits, vegetables, or other
30 crops shall impose an obligation of good faith as defined in G.S. 25-1-201 on all parties
31 with respect to the performance and enforcement of a contract.

32 (c) Contracts for the purchase of tobacco grown in this State shall not contain
33 exclusivity provisions that restrict the right of producers to enter into contracts for the
34 purchase of their tobacco by other handlers or to sell their tobacco at auction. Provided,
35 however, that contracts for the purchase of tobacco grown in this State may require a
36 producer to sell the entire crop grown on a farm identified as a separate farm with an
37 identifiable farm number and/or tract number designated by the Farm Service Agency.

38 (d) Producers who sell tobacco pursuant to a contract subject to this Article shall
39 be entitled to have a certified public grader present at the receiving station at the time
40 their tobacco is weighed and graded.

41 (e) Violation of the provisions of this section shall constitute an unfair trade
42 practice pursuant to Article 1 of Chapter 75 of the General Statutes."

1 **SECTION 6.** G.S. 106-500 reads as rewritten:

2 "**§ 106-500. Additional powers of Commissioner to enforce Article.**

3 In order to enforce this Article, the Commissioner of Agriculture, upon his own
4 motion or upon the verified complaint of any ~~producer,~~producer of fruits and
5 vegetables, shall have the following additional powers:

- 6 (1) To inspect or investigate transactions for the sale or delivery of fruits
7 and vegetables to persons acting as handlers; to require verified reports
8 and accounts of all authorized handlers of fruits and vegetables; to
9 examine books, accounts, memoranda, equipment, warehouses,
10 storage, transportation and other facilities, fruits and vegetables and
11 other articles connected with the business of the handlers of fruits and
12 vegetables; to inquire into failure or refusal of any handlers of fruits
13 and vegetables to accept produce under his contracts and to pay for it
14 as agreed;
- 15 (2) In matters pertaining to fruits and vegetables, to ~~To~~-hold hearings after
16 due notice to interested parties and opportunity to all to be heard; to
17 administer oaths, take testimony and issue subpoenas; to require
18 witnesses to bring with them relevant books, papers, and other
19 evidence; to compel testimony; to make written findings of fact and on
20 the basis of these findings to issue orders in controversies before him,
21 and to revoke the permits of persons disobeying the terms of this
22 Article or of rules, regulations, and orders made by the Board or the
23 Commissioner. Any party disobeying any order or subpoena of the
24 Commissioner shall be guilty of contempt, and shall be certified to the
25 superior court for punishment. Any party may appeal to the superior
26 court from any final order of the Commissioner;
- 27 (3) ~~To issue all such rules and regulations, with the approval of the Board,~~
28 ~~and to appoint necessary agents and to do all other lawful things~~
29 ~~necessary to carry out the purposes of this Article.~~
- 30 (4) This Article will not apply to peanuts and corn grown under contract
31 for seed purposes."

32 **SECTION 7.** Article 44 of Chapter 106 of the General Statutes is amended
33 by adding a new section to read:

34 "**§ 106-500.1. Adoption of rules.**

35 The Board shall have the authority to adopt rules to carry out the purposes of this
36 Article. The Commissioner may appoint necessary agents and do all other lawful things
37 necessary to implement and enforce the provisions of this Article and the rules adopted
38 by the Board."

39 **SECTION 8.** This act is effective when it becomes law and applies to
40 contracts for the purchase of production of fruits, vegetables, or other crops entered into,
41 amended, or renewed on or after that date.