



## 1995 SENATE BILL 430

November 16, 1995 - Introduced by Senators A. LASEE and FITZGERALD, cosponsored by Representatives OTT, SERATTI, GARD and GROTHMAN. Referred to Committee on Transportation, Agriculture and Local Affairs.

1     **AN ACT to repeal** 100.03 (1) (n); **to amend** 20.115 (1) (gm), 97.29 (4), 100.03  
2           (title), 100.03 (1) (a) (intro.), 100.03 (1) (f), 100.03 (1) (v) to (wm), 100.03 (1) (zm),  
3           100.03 (3) (a) 2., 100.03 (3) (b), 100.03 (4) (a), 100.03 (4) (c), 100.03 (4) (f), 100.03  
4           (5) (c) 1. and 3., 100.03 (6) (b) 1., 100.03 (6) (b) 3., 100.03 (6) (b) 4., 100.03 (7) (c)  
5           1., 100.03 (8) (b) 6., 100.03 (8) (bm) 1. a., 100.03 (15) (title), 100.03 (15) (a)  
6           (intro.), 100.03 (15) (c), 100.03 (18) and 100.03 (19) (a) (intro.); and **to create**  
7           100.03 (1) (zs) of the statutes; **relating to:** fruit producer security.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the department of agriculture, trade and consumer protection (DATCP) administers a program regulating fruit and vegetable contractors, known as the fruit and vegetable producer security program. A fruit and vegetable contractor is a person who buys fruit or vegetables that are grown in this state for use in food processing or who contracts with a producer to grow fruit or vegetables in this state for use in food processing. The fruit and vegetable producer security program includes requirements concerning registration with DATCP, filing financial statements and providing security or meeting minimum financial standards.

This bill eliminates persons who buy or contract to buy fruit from regulation under the current fruit and vegetable security program.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 20.115 (1) (gm) of the statutes is amended to read:

2           20.115 (1) (gm) (title) *Dairy trade regulation; dairy ~~and farm product~~ and*  
3 *vegetable producer security*. The amounts in the schedule for the regulation of ~~farm~~  
4 ~~product~~ vegetable procurement under s. 100.03, of dairy plant financial condition  
5 under s. 100.06 and of dairy trade practices under s. 100.201. All moneys received  
6 under ss. 100.03 (3) (a) 3., 100.06 (9) and 100.201 (6) shall be credited to this  
7 appropriation, but any balance at the close of a fiscal biennium that exceeds 20% of  
8 the previous fiscal year's expenditures under this appropriation shall lapse to the  
9 general fund.

10           **SECTION 2.** 97.29 (4) of the statutes is amended to read:

11           97.29 (4) (title) **FOOD PROCESSING PLANTS BUYING ~~FARM PRODUCTS~~ VEGETABLES**  
12 **FROM PRODUCERS.** The department may not issue or renew a license to operate a food  
13 processing plant to any applicant who is a contractor, as defined in s. 100.03 (1) (f),  
14 unless the applicant has filed all financial information and any security that is  
15 required under s. 100.03. If an applicant has not filed all financial information and  
16 any security that is required under s. 100.03, the department may issue a conditional  
17 license under s. 93.06 (8) that prohibits the licensed operator from procuring ~~farm~~  
18 ~~products~~ vegetables from a producer or a producer's agent, but allows the operator  
19 to procure ~~farm products~~ vegetables from other sources.

20           **SECTION 3.** 100.03 (title) of the statutes is amended to read:

21           **100.03 (title) ~~Farm product~~ Vegetable procurement; financial security;**  
22 **grading and tare.**

23           **SECTION 4.** 100.03 (1) (a) (intro.) of the statutes is amended to read:

24           100.03 (1) (a) (intro.) "Affiliate" means any of the following persons or business  
25 entities that procures ~~farm products~~ vegetables for use by an operator:

1           **SECTION 5.** 100.03 (1) (f) of the statutes is amended to read:

2           100.03 (1) (f) “Contractor” means a person who buys farm products vegetables  
3 grown in this state from a producer, or who contracts with a producer to grow farm  
4 products vegetables in this state, regardless of whether the contractor is located in  
5 this state or is engaged in food processing. “Contractor” does not include any of the  
6 following:

7           1. A person who procures ~~fruits and~~ vegetables primarily for unprocessed fresh  
8 market use and is licensed under the federal perishable agricultural commodities  
9 act, 7 USC 499.

10          2. A restaurant or retail food establishment that procures ~~farm products~~  
11 vegetables solely for retail sale at the restaurant or retail food establishment.

12          **SECTION 6.** 100.03 (1) (n) of the statutes is repealed.

13          **SECTION 7.** 100.03 (1) (v) to (wm) of the statutes are amended to read:

14          100.03 (1) (v) “Payment on delivery” means cash payment of the full agreed  
15 price for a ~~farm product~~ vegetable when the ~~farm product~~ vegetable is tendered or  
16 delivered to a contractor, or cash payment of the full agreed price within 72 hours  
17 after delivery if the ~~farm product~~ vegetable is graded.

18          (vm) “Procurement contract” means an oral or written agreement between a  
19 contractor and a producer, under which the contractor buys a ~~farm product~~ vegetable  
20 grown in this state from the producer or contracts with the producer to grow a ~~farm~~  
21 ~~product~~ vegetable in this state.

22          (w) “Producer” means a person who produces and sells a ~~farm product~~  
23 vegetable, or who grows a ~~farm product~~ vegetable under contract.

24          (wm) “Producer claim” means a claim held by a producer for his or her ~~farm~~  
25 ~~products~~ vegetables.

1           **SECTION 8.** 100.03 (1) (zm) of the statutes is amended to read:

2           100.03 (1) (zm) “Subsidiary” means a corporation or business entity that is  
3 owned, controlled or operated by an operator, and that procures a ~~farm product~~  
4 vegetable for use by the operator.

5           **SECTION 9.** 100.03 (1) (zs) of the statutes is created to read:

6           100.03 (1) (zs) “Vegetable” means any vegetable that is grown or sold for use  
7 in food processing, whether or not that vegetable is actually processed as food.  
8 “Vegetable” includes sweet corn, but does not include grain.

9           **SECTION 10.** 100.03 (3) (a) 2. of the statutes is amended to read:

10           100.03 (3) (a) 2. Unless the department by rule establishes a different fee, a fee  
11 of one cent for each \$100 in the total contractual obligations reported under sub. (4)  
12 (a). The fee under this subdivision is not required if all ~~farm product~~ vegetable  
13 grading is performed or supervised by the department under contract with the  
14 contractor.

15           **SECTION 11.** 100.03 (3) (b) of the statutes is amended to read:

16           100.03 (3) (b) *Surcharge for operating without a registration certificate.* A  
17 contractor who applies for a registration certificate under sub. (2) shall pay a  
18 surcharge of \$500 if the department determines that, within 365 days before  
19 submitting the application, the contractor procured a ~~farm product~~ vegetable from  
20 a producer without a registration certificate in violation of sub. (2). Payment of the  
21 surcharge does not relieve the contractor of any other civil or criminal liability that  
22 results from the procurement of the ~~farm product~~ vegetable, but it does not constitute  
23 evidence of any law violation.

24           **SECTION 12.** 100.03 (4) (a) of the statutes is amended to read:

1           100.03 (4) (a) The contractor's total paid and unpaid contractual obligations to  
2 producers, for ~~farm products~~ vegetables tendered or delivered, that have accrued  
3 during the registration year immediately preceding the registration year for which  
4 application is made.

5           **SECTION 13.** 100.03 (4) (c) of the statutes is amended to read:

6           100.03 (4) (c) The contractor's anticipated maximum liability to producers  
7 during the registration year for which application is made. The application shall  
8 state if the contractor anticipates a maximum liability of zero. If so, the application  
9 also shall state whether the contractor anticipates a maximum liability of zero  
10 because the contractor plans to make cash payment on delivery under every  
11 procurement contract, or because the contractor plans to procure all ~~farm products~~  
12 vegetables from another contractor. A contractor shall immediately notify the  
13 department in writing if, at any time during the registration year, the contractor has  
14 reason to believe that the contractor's maximum liability will exceed the maximum  
15 liability previously anticipated and reported to the department.

16           **SECTION 14.** 100.03 (4) (f) of the statutes is amended to read:

17           100.03 (4) (f) Whether the contractor is a producer-owned cooperative or  
18 organization doing business on a cooperative pooling basis with its producer owners,  
19 and whether the producer-owned cooperative or organization procures any ~~farm~~  
20 ~~products~~ vegetables from producers who are not its producer owners.

21           **SECTION 15.** 100.03 (5) (c) 1. and 3. of the statutes are amended to read:

22           100.03 (5) (c) 1. A contractor who either plans to make payment on delivery for  
23 all ~~farm products~~ vegetables tendered or delivered by producers, or to procure all  
24 ~~farm products~~ vegetables from another contractor, and who submits a sworn and  
25 notarized statement to that effect under sub. (4) (c).

1           3. A producer-owned cooperative or organization that procures ~~farm products~~  
2 vegetables solely on a cooperative pooling basis from its producer owners, and that  
3 submits under sub. (4) a sworn and notarized statement to that effect.

4           **SECTION 16.** 100.03 (6) (b) 1. of the statutes is amended to read:

5           100.03 (6) (b) 1. If a procurement contract does not specify a payment date in  
6 writing, the contractor shall pay a liability to a producer by the 15th day of the month  
7 immediately following the month in which the producer tendered or delivered the  
8 ~~farm products~~ vegetables under the contract, or by an earlier date agreed upon  
9 between the parties.

10          **SECTION 17.** 100.03 (6) (b) 3. of the statutes is amended to read:

11          100.03 (6) (b) 3. By January 31 of each registration year, a contractor shall pay  
12 for all ~~farm products~~ vegetables that were delivered by producers on or before  
13 December 31 of that registration year. This requirement does not apply if a written  
14 contract specifying a later payment date was approved by a vote of producers who  
15 delivered ~~farm products~~ vegetables to the contractor during the preceding  
16 registration year. To obtain the approval of producers, a contractor shall give  
17 advance written notice to every eligible producer. The notice shall include a copy of  
18 the proposed contract and shall announce a meeting at which producers will be asked  
19 to vote on the proposed contract. The notice shall also include a mail ballot by which  
20 a producer may cast his or her vote without attending the meeting. Voting shall be  
21 by secret ballot. The proposed contract shall be approved by a majority of the  
22 producers who vote on the proposed contract. The contractor shall file a sworn  
23 statement with the department, on a form provided by the department, certifying the  
24 results of the balloting.

25          **SECTION 18.** 100.03 (6) (b) 4. of the statutes is amended to read:

1           100.03 (6) (b) 4. If a producer tenders or delivers ~~farm products~~ vegetables to  
2 a contractor after December 31 of any registration year, the contractor shall pay the  
3 producer for the ~~farm products~~ vegetables by the 15th day of the month following the  
4 month in which the ~~farm products~~ vegetables were tendered or delivered, or within  
5 30 days after tender or delivery.

6           **SECTION 19.** 100.03 (7) (c) 1. of the statutes is amended to read:

7           100.03 (7) (c) 1. The contractor makes payment on delivery for all ~~farm~~  
8 ~~products~~ vegetables obtained from producers.

9           **SECTION 20.** 100.03 (8) (b) 6. of the statutes is amended to read:

10          100.03 (8) (b) 6. If the contractor is an operator, a food processing plant  
11 trusteeship under which processed ~~farm products~~ vegetables equivalent to not less  
12 than 30% of the raw ~~farm products~~ vegetables received from producers are set aside  
13 in trust for the producers.

14          **SECTION 21.** 100.03 (8) (bm) 1. a. of the statutes is amended to read:

15          100.03 (8) (bm) 1. a. Provide that no portion of the set-aside ~~products~~ inventory  
16 may be released from trust unless an amount equivalent to the value of the released  
17 ~~products~~ inventory has been paid to producers or to the trustee for payment to  
18 producers. Payments under this subd. 1. a. shall be made to all producers to whom  
19 liabilities are owed, in proportionate amounts based on the size of the liability to each  
20 producer.

21          **SECTION 22.** 100.03 (15) (title) of the statutes is amended to read:

22          100.03 (15) (title) ~~FARM PRODUCT~~ VEGETABLE GRADING AND TARE.

23          **SECTION 23.** 100.03 (15) (a) (intro.) of the statutes is amended to read:

24          100.03 (15) (a) *Grading procedures and grade standards.* (intro.) If under a  
25 procurement contract the amount received by the producer depends on the grade of

1 the ~~farm products~~ vegetables, the ~~farm products~~ vegetables shall be graded in  
2 compliance with all of the following:

3 **SECTION 24.** 100.03 (15) (c) of the statutes is amended to read:

4 100.03 (15) (c) *Price-fixing not permitted.* This subsection does not fix or  
5 regulate the price paid for any ~~farm product~~ vegetable.

6 **SECTION 25.** 100.03 (18) of the statutes is amended to read:

7 100.03 (18) SUMMARY ORDER REQUIRING PAYMENT ON DELIVERY. If the department  
8 has reasonable grounds to believe that a contractor does not meet the minimum  
9 financial standards under sub. (7), and does not have adequate security on file under  
10 sub. (8), the department may issue a summary special order requiring the contractor  
11 to make payment on delivery for all ~~farm products~~ vegetables. A summary special  
12 order shall set forth the specific basis for the order. The order shall remain in effect  
13 until the contractor meets the financial standards under sub. (7) or files adequate  
14 security under sub. (8). A person adversely affected by a special order under this  
15 section shall be given a prompt hearing before the department upon request, under  
16 ch. 227.

17 **SECTION 26.** 100.03 (19) (a) (intro.) of the statutes is amended to read:

18 100.03 (19) (a) *Grounds.* (intro.) The department may summarily suspend the  
19 contractor's registration certificate when necessary to prevent clear and imminent  
20 harm to producers if the department has reasonable grounds to believe that a  
21 contractor has failed to make payment on delivery for ~~farm products~~ vegetables,  
22 procured from producers, contrary to any of the following:

23 (END)