

1987 Assembly Bill 323

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1987 Wisconsin Act **89**

AN ACT *to create* 100.23 of the statutes, *relating to* certain agricultural marketing contracts.

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

SECTION 1. 100.23 of the statutes is created to read:

100.23 Contract to market agricultural products; interference prohibited. (1) DEFINITION. In this section:

(a) "Agricultural product" includes, but is not limited to, any agricultural commodity, as defined in s. 94.67 (2).

(b) "Association" means an association of persons engaged in the production of agricultural products under 7 USC 291.

(c) "Contract" means an agreement between a producer and an association, which agreement provides that all or a specified part of the person's production of one or more agricultural products by the person will be exclusively sold or marketed through or by the association or any facility furnished by it.

(d) "Producer" means a person who produces agricultural products.

(2) TERMS. No contract may have a term in excess of 5 years. A contract may be made self-renewing for periods not exceeding 5 years each, except that either party may terminate at the end of any term by giving written notice to the other party at least 30 days before the end of the term.

(3) DAMAGES. A contract may require liquidated damages to be paid by the producer in the event of a breach of contract with the association. Liquidated damages may be either a percentage of the value of the products which are the subject of the breach, or a specified sum, but may not be more than 30% of the value of those products. If a specified sum is provided as liquidated damages, but such sum exceeds 30% of the value of the products which are the subject of the breach, the contract shall be construed to provide liquidated damages equal to 30% of the value of the products which are the subject of the breach.

(4) BREACH OF CONTRACT. (a) No person may breach, repudiate, interfere with, induce or attempt to induce or aid the breach of a contract.

(b) If any person who has notice of the contract violates or threatens to violate par. (a), the association which is a party to the contract is entitled to all of the following remedies against that person, except as provided under sub. (5):

1. An injunction, including a temporary restraining order, to prevent or terminate any conduct which is prohibited under par. (a).

2. A decree of specific performance.

3. Damages.

(c) If an association files a verified complaint showing a violation or threatened violation of par. (a), and a sufficient bond, the association is entitled to a temporary restraining order against any person violating par. (a).

(d) The county in which an association has its registered agent or its principal office in this state is a proper venue for an action under this subsection by or against that association.

(5) QUALIFICATIONS. No association is entitled to the remedies under sub. (4) (b) unless the association:

(a) Is governed by the following procedures:

1. No person other than an association member may vote at any member meeting of the association.

2. At any member meeting of the association, each association member entitled to vote shall have one vote, except that the articles or bylaws may permit either or both:

a. A member association to cast additional votes not exceeding a number equal to its membership.

b. An association whose member-patrons include other associations to base voting in whole or in part on a patronage basis.

3. Voting by proxy shall not be allowed in any association.

4. The bylaws of the association may provide for representation of members at any member meeting by delegates apportioned territorially or by other districts or units.

5. An annual member meeting shall be held by the association at the time and place fixed in or pursuant to the bylaws of the association. In the absence of a bylaw provision, such meeting shall be held within 6 months after the close of the association's fiscal year at the call of the president or board.

6. Written notice, stating the place, day and hour of the association's annual member meeting shall be given not less than 7 days nor more than 60 days before the annual meeting at the direction of the person calling the meeting. Notice need be given only to members entitled to vote. Notice shall be given to members having limited voting rights if they have or may have the right to vote at the meeting.

7. At any annual member meeting at which members are to be represented by delegates, notice to such members may be given by notifying such delegates and their alternates. Notice may consist of a notice to all members or may be in the form of an announcement at the meeting at which such delegates or alternates were elected.

8. The association shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of meetings of its members, board and executive committee. The association shall keep at its principal office records of the names and addresses of all members and stockholders with the amount of stock held by each, and of ownership of equity interests. At any reasonable time, any association member or stockholder, or his or her agent or attorney, upon written notice stating the purposes thereof, delivered or sent to the association at least one week in advance, may examine for a proper purpose any books or records pertinent to the purpose specified in the notice. The board may deny a request to examine books and records if the board determines that the purpose is not directly related to the business or affairs of the association and is contrary to the best interests of the association.

(b) Has a current annual report on file with the secretary of state which satisfies all of the following requirements:

1. Is signed by a principal officer or the general manager of the association.
2. Is on a form furnished to the association by the secretary of state using information given as of the date of the execution of the report.
3. Sets forth:
 - a. The association's name and complete address.
 - b. The names and addresses of the association's directors and principal officers.
 - c. A statement, by class and par value, of the amount of stock which the association has authority to issue, and the amount of stock issued.
 - d. A statement as to the general type of business in which the association was engaged during the 12 months preceding the date of the report.
4. Is filed with the secretary of state in each year following the year in which the association first filed the annual report required under this paragraph, during the calendar year quarter in which the anniversary of the filing occurs.

(6) SECRETARY OF STATE DUTIES. The secretary of state shall:

- (a) Provide forms for the report required under sub. (5) (b) to an association upon the request of that association.
- (b) Send by 1st class mail a form for the report required under sub. (5) (b) to each association which filed that report in the previous year, no later than 60 days prior to the end of the calendar year quarter in which that association first filed its report.
- (c) Upon receipt of a report required under sub. (5) (b), determine if the report satisfies the requirements of sub. (5) (b). If the secretary of state determines that the report does not satisfy all of those requirements, the secretary of state shall return the report to the association which filed it, along with a notice of any correction required. If the association files a corrected report within 30 days after the association receives that notice, the report shall be deemed timely filed for purposes of sub. (5) (b) 4.

SECTION 1m. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
14. 361	none	100. 23 (6)

SECTION 2. Initial applicability. This act applies retroactively to any contract, as defined under section 100.23 (1) (c) of the statutes, as created by this act.

