

State of Wisconsin



1995 Assembly Bill 630

Date of enactment: **June 27, 1996**
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1995 WISCONSIN ACT 460

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

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

SECTION 1. 20.115 (1) (gm) of the statutes, as affected by 1995 Wisconsin Act 27, is amended to read:

20.115 (1) (gm) (title) *Dairy trade regulation; dairy and farm product and vegetable producer security.* The amounts in the schedule for the regulation of farm product and vegetable procurement under s. 100.03, of dairy plant financial condition under s. 100.06 and of dairy trade practices under s. 100.201. All moneys received under ss. 100.03 (3) (a) 3., 100.06 (9) and 100.201 (6) shall be credited to this appropriation.

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

97.29 (4) (title) **FOOD PROCESSING PLANTS BUYING FARM PRODUCTS VEGETABLES FROM PRODUCERS.** The department may not issue or renew a license to operate a food processing plant to any applicant who is a contractor, as defined in s. 100.03 (1) (f), unless the applicant has filed all financial information and any security that is required under s. 100.03. If an applicant has not filed all

financial information and any security that is required under s. 100.03, the department may issue a conditional license under s. 93.06 (8) that prohibits the licensed operator from procuring farm products vegetables from a producer or a producer's agent, but allows the operator to procure farm products vegetables from other sources.

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

100.03 (title) Farm-product Vegetable procurement; financial security; grading and tare.

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

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

SECTION 5. 100.03 (1) (e) of the statutes is renumbered 100.03 (1) (bm) and amended to read:

100.03 (1) (bm) "**Certified Audited** financial statement" means a financial statement that, in the accompanying opinion of an independent certified public accountant or a public accountant holding a certificate of authority under ch. 442, fairly and in all material respects

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

represents the financial position of the contractor, the results of the contractor's operations and the contractor's cash flows in conformity with generally accepted accounting principles.

SECTION 6. 100.03 (1) (f) of the statutes is amended to read:

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

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

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

SECTION 7. 100.03 (1) (n) of the statutes is repealed.

SECTION 8. 100.03 (1) (v) to (wm) of the statutes are amended to read:

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

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

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

(wm) "Producer claim" means a claim held by a producer for his or her ~~farm products~~ vegetables.

SECTION 9. 100.03 (1) (ym) of the statutes is created to read:

100.03 (1) (ym) "Reviewed financial statement" means a financial statement, other than an audited financial statement, that is all of the following:

1. Sworn and notarized by the contractor.
2. Reviewed according to generally accepted accounting principles by an independent certified public accountant or a public accountant holding a certificate of authority under ch. 442.

SECTION 10. 100.03 (1) (zm) of the statutes is amended to read:

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

SECTION 11. 100.03 (1) (zp) of the statutes is repealed.

SECTION 12. 100.03 (1) (zs) of the statutes is created to read:

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

SECTION 13. 100.03 (2) (a) of the statutes is amended to read:

100.03 (2) (a) *Requirement.* No contractor may enter into a procurement contract with a producer unless the contractor holds a registration certificate from the department. A registration certificate expires on ~~March~~ January 31 annually and is not transferable.

SECTION 14. 100.03 (3) (a) 2. of the statutes is amended to read:

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

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

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

SECTION 16. 100.03 (4) (a) of the statutes is amended to read:

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

SECTION 17. 100.03 (4) (c) of the statutes is amended to read:

100.03 (4) (c) The contractor's anticipated maximum liability to producers during the registration year for which application is made. The application shall state if the contractor anticipates a maximum liability of zero. If so, the application also shall state whether the contractor anticipates a maximum liability of zero because the contractor plans to make cash payment on delivery under every procurement contract, or because the contractor plans to procure all ~~farm products~~ vegetables from another con-

tractor. A contractor shall immediately notify the department in writing if, at any time during the registration year, the contractor has reason to believe that the contractor's maximum liability will exceed the maximum liability previously anticipated and reported to the department.

SECTION 18. 100.03 (4) (f) of the statutes is amended to read:

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

SECTION 19. 100.03 (4m) of the statutes is created to read:

100.03 (4m) RESIDUAL PAYMENT LIABILITY. As part of or in addition to the statement required by sub. (4), the contractor or officer of the contractor shall submit a sworn and notarized statement indicating whether the contractor has failed to pay any liability to a producer that became due and payable during the registration year ending January 31. The statement shall be submitted before February 5. The statement may not be submitted before February 1, except that the statement may be submitted at such earlier time as the contractor has paid all liabilities to producers that are due and payable on or before January 31.

SECTION 20. 100.03 (5) (a) 2. of the statutes is amended to read:

100.03 (5) (a) 2. Except as provided under par. (c), a contractor shall file an annual financial statement with the department as a condition to the renewal or continuation of the contractor's registration certificate under sub. (2). An annual financial statement shall be filed by the 15th day of the 4th month commencing after the close of the contractor's fiscal year, except that the department may, for cause, extend the deadline for filing the annual financial statement for up to 30 days.

SECTION 21. 100.03 (5) (am) of the statutes is created to read:

100.03 (5) (am) *Interim statement.* Except as provided in par. (c), a contractor shall file an interim statement as of the quarter that ends closest to November 30 with each application for renewal.

SECTION 22. 100.03 (5) (b) of the statutes is amended to read:

100.03 (5) (b) (title) *Additional ~~or interim~~ financial statement.* Notwithstanding par. (c), the department may require a contractor to file ~~a~~ an annual financial statement or interim statement at any time. The department may require that a financial statement required under this paragraph be an audited financial statement or a reviewed financial statement.

SECTION 23. 100.03 (5) (c) of the statutes is amended to read:

100.03 (5) (c) *Exemptions.* ~~Paragraph (a) does Paragraphs (a) and (am) do~~ not apply to any of the following:

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

2. A contractor who files security with the department under sub. (8), except for a contractor who files security under sub. (8) (cm).

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

SECTION 24. 100.03 (5) (e) of the statutes is amended to read:

100.03 (5) (e) (title) *~~Certified or verified~~ Audited or reviewed financial statement.* A financial statement under ~~this subsection may par. (a) shall be a certified or verified an audited financial statement or a reviewed~~ financial statement, except that if during the year to which that financial statement pertains a contractor incurred total contractual obligations to producers, as reported under sub. (4) (a), of more than \$250,000, the financial statement under par. (a) shall be certified an audited financial statement.

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

100.03 (6) (a) *Full payment required.* Except as provided under par. (c) or (d), the department may not issue or renew a registration certificate under sub. (2) unless the contractor has submitted a statement under sub. (4m) that shows that the contractor has paid all liabilities to producers that are due and payable before the date of application, as indicated by a sworn and notarized statement under sub. (4) (d) January 31. Notwithstanding par. (b), a contractor shall make payment on delivery unless the contractor meets the minimum financial standards under sub. (7) or files security with the department under sub. (8).

SECTION 26. 100.03 (6) (b) 1. of the statutes is amended to read:

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

SECTION 27. 100.03 (6) (b) 3. of the statutes is amended to read:

100.03 (6) (b) 3. By January 31 of each registration year, a contractor shall pay for all ~~farm products~~ vegeta-

bles that were delivered by producers on or before December 31 of that registration year. This requirement does not apply if a written contract specifying a later payment date was approved by a vote of producers who delivered farm products vegetables to the contractor during the preceding registration year. To obtain the approval of producers, a contractor shall give advance written notice to every eligible producer. The notice shall include a copy of the proposed contract and shall announce a meeting at which producers will be asked to vote on the proposed contract. The notice shall also include a mail ballot by which a producer may cast his or her vote without attending the meeting. Voting shall be by secret ballot. The proposed contract shall be approved by a majority of the producers who vote on the proposed contract. The contractor shall file a sworn statement with the department, on a form provided by the department, certifying the results of the balloting.

SECTION 28. 100.03 (6) (b) 4. of the statutes is amended to read:

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

SECTION 29. 100.03 (7) (a) 1. of the statutes is amended to read:

100.03 (7) (a) 1. ~~The contractor's~~ A minimum ratio of current assets to current liabilities ~~shall be at least of 1.2 to 1.0 on its annual financial statement.~~

SECTION 30. 100.03 (7) (a) 2. of the statutes is repealed and recreated to read:

100.03 (7) (a) 2. A minimum ratio of current assets to current liabilities of 1.0 to 1.0 at all times of the year other than the end of the contractor's fiscal year.

SECTION 31. 100.03 (7) (a) 3. of the statutes is created to read:

100.03 (7) (a) 3. Equity equal to at least 20% of total assets on its annual financial statement and at least 10% at all other times.

SECTION 32. 100.03 (7) (c) (intro.) of the statutes is amended to read:

100.03 (7) (c) *Exemptions.* (intro.) ~~A Paragraph (a) does not apply to a contractor is not required to meet the financial standards under par. (a) if any of the following applies:~~

SECTION 33. 100.03 (7) (c) 1. of the statutes is amended to read:

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

SECTION 34. 100.03 (8) (b) 6. of the statutes is repealed.

SECTION 35. 100.03 (8) (bm) of the statutes is repealed.

SECTION 36. 100.03 (8) (cm) of the statutes is created to read:

100.03 (8) (cm) *Transitional security amounts.* Notwithstanding par. (c), a contractor who does not meet the financial standards under sub. (7) but who does have a ratio of current assets to current liabilities of at least 1.2 to 1.0 on its annual financial statement and whose total assets exceed total liabilities shall file security in at least the following amounts for the license years indicated:

1. For the first license year beginning after the effective date of this subdivision [revisor inserts date], 25% of the contractor's anticipated maximum liability to growers of vegetables.

2. For the 2nd license year beginning after the effective date of this subdivision [revisor inserts date], 50% of the contractor's anticipated maximum liability to growers of vegetables.

SECTION 37. 100.03 (8) (e) of the statutes is created to read:

100.03 (8) (e) *Prohibition.* No contractor may assess a separate line item deduction from the payment to the grower to recover the cost of security filed under this section.

SECTION 38. 100.03 (15) (title) of the statutes is amended to read:

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

SECTION 39. 100.03 (15) (a) (intro.) of the statutes is amended to read:

100.03 (15) (a) *Grading procedures and grade standards.* (intro.) If under a procurement contract the amount received by the producer depends on the grade of the farm products vegetables, the farm products vegetables shall be graded in compliance with all of the following:

SECTION 40. 100.03 (15) (c) of the statutes is amended to read:

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

SECTION 41. 100.03 (18) of the statutes is amended to read:

100.03 (18) **SUMMARY ORDER REQUIRING PAYMENT ON DELIVERY.** If the department has reasonable grounds to believe that a contractor does not meet the minimum financial standards under sub. (7), and does not have adequate security on file under sub. (8), the department may issue a summary special order requiring the contractor to make payment on delivery for all farm products vegetables. A summary special order shall set forth the specific basis for the order. The order shall remain in effect until the contractor meets the financial standards under sub. (7) or files adequate security under sub. (8). A person adversely affected by a special order under this section shall

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be given a prompt hearing before the department upon request, under ch. 227.

SECTION 42. 100.03 (19) (a) (intro.) of the statutes is amended to read:

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

SECTION 43. Appropriation changes.

(1) FARM PRODUCT PRODUCER SECURITY. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of agriculture, trade and consumer protection under section 20.115 (1) (gm) of the statutes, as affected by the acts of 1995, the dollar amount is decreased by \$32,500 for fiscal year 1995–96 and the dollar amount is decreased by \$32,500 for fiscal year 1996–97 to decrease funding for the purposes for which the appropriation is made.