

**Bill Brief
HB 1167**



The Big Picture:

1. **Applicable Law:** Sale of grain is governed by the Uniform Commercial Code (UCC).
2. **General Rule:** For grain sales of more than \$500, oral contracts are generally enforceable under the UCC only between merchants.
3. **Application:** The SD Supreme Court has stated that a Producer is *not necessarily* a merchant.
4. **Result:** Producers may not be held to oral promises they have made – even when the purchaser has relied upon the oral promise.
5. **Markets:** Fast moving commodity prices have complicated this issue and put pressure on the system that has worked well in South Dakota for decades.

Proposed Legislation – HB1167:

6. **Change to Existing Law:** Amend the UCC to provide for the enforcement of verbal agreements for the sale/purchase of grain *in certain cases* (audio recording, third party verification, a master agreement, or a written confirmation).
7. **Burden:** Party asserting an oral contract would continue to have burden of proving the terms of the agreement.
8. **Practical Impact:**
 - a. Legislation would stop one of the parties from saying: "It's not in writing, so you can't enforce it."
 - b. Would permit producers to continue to buy/sell grain over the phone

Public Policy Rationale:

9. **Producer:** Protects existing practice of buying/selling grain from a phone.
10. **Market:** Stabilizes the market system by enforcing certain oral commitments.
11. **Legal System:** Allows the legal system to enforce promises, provided that the party claiming the oral contract can prove the terms.
12. **Burden:** Party relying on an oral contract still must prove it, and relies on an oral agreement at its own risk.