

109TH CONGRESS  
2D SESSION

# S. 2307

To enhance fair and open competition in the production and sale of  
agricultural commodities.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2006

Mr. HARKIN (for himself, Mr. ENZI, and Mr. THOMAS) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To enhance fair and open competition in the production  
and sale of agricultural commodities.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Competitive and Fair Agricultural Markets Act of  
6 2006”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for  
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AGRICULTURAL FAIR PRACTICES

Sec. 101. Agricultural fair practices.  
 Sec. 102. Application.

#### TITLE II—PACKERS AND STOCKYARDS

Sec. 201. Investigation of live poultry dealers.  
 Sec. 202. No competitive injury requirement.  
 Sec. 203. Attorneys fees.  
 Sec. 204. Appointment of outside counsel.  
 Sec. 205. Competitive harm.  
 Sec. 206. Regulations.

## 1    **TITLE I—AGRICULTURAL FAIR** 2                                   **PRACTICES**

### 3    **SEC. 101. AGRICULTURAL FAIR PRACTICES.**

4           The Agricultural Fair Practices Act of 1967 (7  
 5 U.S.C. 2301 et seq.) is amended to read as follows:

#### 6    **“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

7           “(a) IN GENERAL.—This Act may be cited as the  
 8 ‘Agricultural Fair Practices Act of 1967’.

9           “(b) TABLE OF CONTENTS.—The table of contents  
 10 of this Act is as follows:

“Sec. 1. Short title; table of contents.

“Sec. 2. Definitions.

#### “TITLE I—AGRICULTURAL TRADE PRACTICES

“Sec. 101. Office of Special Counsel for Competition Matters.

“Sec. 102. Report on corporate structure.

#### “TITLE II—UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN AGRICULTURAL COMMERCE

“Sec. 201. Prohibition on unfair or deceptive acts or practices in agricul-  
 tural commerce.

“Sec. 202. Agricultural contracts.

“Sec. 203. Production contracts.

“Sec. 204. Authority of Secretary to promulgate rules and regulations.

“Sec. 205. Enforcement.

“Sec. 206. Effect on other laws.

“Sec. 207. Assignment of association dues and fees.

“Sec. 208. Severability.

1 **“SEC. 2. DEFINITIONS.**

2 “In this Act:

3 “(1) **AGRICULTURAL COMMODITY.**—The term  
4 ‘agricultural commodity’ has the meaning given the  
5 term in section 102 of the Agricultural Trade Act of  
6 1978 (7 U.S.C. 5602).

7 “(2) **AGRICULTURAL CONTRACT.**—The term  
8 ‘agricultural contract’ means a marketing contract  
9 or a production contract.

10 “(3) **AGRICULTURAL COOPERATIVE.**—The term  
11 ‘agricultural cooperative’ means an association of  
12 persons engaged in the production, marketing, or  
13 processing of an agricultural commodity that meets  
14 the requirements of the Act entitled ‘An Act to au-  
15 thorize association of producers of agricultural prod-  
16 ucts’ (commonly known as the ‘Capper-Volstead  
17 Act’) (7 U.S.C. 291 et seq.).

18 “(4) **ASSOCIATION OF PRODUCERS.**—

19 “(A) **IN GENERAL.**—The term ‘association  
20 of producers’ means an association of producers  
21 of agricultural commodities that engages in the  
22 marketing, bargaining, shipping, or processing  
23 of agricultural commodities or of agricultural  
24 services.

25 “(B) **INCLUSIONS.**—The term ‘association  
26 of producers’ includes—

1           “(i) an organization dedicated to pro-  
2           moting the common interest and general  
3           welfare of producers of agricultural com-  
4           modities;

5           “(ii) a cooperative association (as de-  
6           fined in section 15(a) of the Agricultural  
7           Marketing Act (12 U.S.C. 1141j(a))); and

8           “(iii) an association described in the  
9           first section of the Act entitled ‘An Act to  
10          authorize association of producers of agri-  
11          cultural products’ (commonly known as the  
12          ‘Capper-Volstead Act’) (7 U.S.C. 291).

13          “(5) CAPITAL INVESTMENT.—The term ‘capital  
14          investment’ means an investment in—

15               “(A) a structure, such as a building or ma-  
16               nure storage structure; or

17               “(B) machinery or equipment associated  
18               with producing an agricultural commodity that  
19               has a useful life of more than 1 year.

20          “(6) COMMISSION MERCHANT.—The term ‘com-  
21          mission merchant’ means any person engaged in the  
22          business of receiving in interstate or foreign com-  
23          merce any agricultural commodity for sale on com-  
24          mission.

1           “(7) CONTRACT LIVESTOCK FACILITY.—The  
2 term ‘contract livestock facility’ means a facility in  
3 which livestock or a product of live livestock is pro-  
4 duced under a production contract by a contract  
5 producer.

6           “(8) CONTRACTOR.—The term ‘contractor’  
7 means a person that, in accordance with a produc-  
8 tion contract, owns, or will own, an agricultural  
9 commodity that is produced by a contract producer.

10           “(9) CONTRACT PRODUCER.—The term ‘con-  
11 tract producer’ means a producer that produces an  
12 agricultural commodity under a production contract.

13           “(10) COVERED PERSON.—The term ‘covered  
14 person’ means a dealer, handler, contractor, proc-  
15 essor, or commission merchant.

16           “(11) CROP.—The term ‘crop’ means an agri-  
17 cultural commodity produced from a plant.

18           “(12) DEALER.—The term ‘dealer’ means any  
19 person engaged in the business of buying, selling, or  
20 marketing agricultural commodities in interstate or  
21 foreign commerce.

22           “(13) DEPARTMENT.—The term ‘Department’  
23 means the Department of Agriculture.

24           “(14) HANDLER.—The term ‘handler’ means  
25 any person engaged in the business or practice of—

1           “(A) acquiring agricultural commodities  
2           from producers or associations of producers for  
3           processing or sale;

4           “(B) grading, packaging, handling, storing,  
5           or processing agricultural commodities received  
6           from producers or associations of producers;

7           “(C) contracting or negotiating contracts  
8           or other arrangements, written or oral, with or  
9           on behalf of producers or associations of pro-  
10          ducers with respect to the production or mar-  
11          keting of any agricultural commodity; or

12          “(D) acting as an agent or broker for a  
13          handler in the performance of any function or  
14          act described in subparagraph (A), (B), or (C).

15          “(15) INVESTMENT REQUIREMENT.—The term  
16          ‘investment requirement’ means a provision in a pro-  
17          duction contract that requires a contract producer to  
18          make a capital investment associated with producing  
19          an agricultural commodity that, but for the produc-  
20          tion contract, the contract producer would not have  
21          made.

22          “(16) LIVESTOCK.—The term ‘livestock’ means  
23          beef cattle, dairy cattle, swine, sheep, or poultry.

24          “(17) MARKETING CONTRACT.—The term ‘mar-  
25          keting contract’ means a written agreement between

1 a covered person and a producer for the purchase of  
2 an agricultural commodity produced or raised by the  
3 producer.

4 “(18) PERSON.—The term ‘person’ includes an  
5 individual, partnership, corporation, limited liability  
6 company, limited partnership, or association.

7 “(19) PROCESSOR.—The term ‘processor’  
8 means—

9 “(A) any person (other than an agricul-  
10 tural cooperative) engaged in the business of  
11 handling, preparing, or manufacturing (includ-  
12 ing slaughtering) an agricultural commodity or  
13 the products of an agricultural commodity for  
14 sale or marketing in interstate or foreign com-  
15 merce; and

16 “(B) an agricultural cooperative that han-  
17 dles, prepares, or manufactures (including  
18 slaughtering) agricultural commodities of its  
19 members’ own production.

20 “(20) PRODUCE.—The term ‘produce’ means—

21 “(A) to provide feed or services relating to  
22 the care and feeding of livestock, including  
23 milking dairy cattle and storing raw milk; or

24 “(B) to plant, raise, harvest, and store a  
25 crop, including preparing soil for planting and

1           applying a fertilizer, soil conditioner, or pes-  
2           ticide to a crop.

3           “(21) PRODUCER.—The term ‘producer’ means  
4           a person engaged in the production of an agricul-  
5           tural commodity as a farmer, planter, rancher,  
6           dairyman, poultryman, or fruit, vegetable, or nut  
7           grower.

8           “(22) PRODUCTION CONTRACT.—

9           “(A) IN GENERAL.—The term ‘production  
10          contract’ means a written agreement that pro-  
11          vides for—

12                 “(i) the production of an agricultural  
13                 commodity by a contract producer; or

14                 “(ii) the provision of a management  
15                 service relating to the production of an ag-  
16                 ricultural commodity by a contract pro-  
17                 ducer.

18           “(B) INCLUSIONS.—The term ‘production  
19          contract’ includes—

20                 “(i) a contract between a contractor  
21                 and a contract producer for the production  
22                 of an agricultural commodity; and

23                 “(ii) a contract between a contractor  
24                 and a contract producer for the provision



1 of a management service in the production  
2 of an agricultural commodity.

3 “(23) SECRETARY.—The term ‘Secretary’  
4 means the Secretary of Agriculture.

5 **“TITLE I—AGRICULTURAL**  
6 **TRADE PRACTICES**

7 **“SEC. 101. OFFICE OF SPECIAL COUNSEL FOR COMPETI-**  
8 **TION MATTERS.**

9 “(a) ESTABLISHMENT.—

10 “(1) IN GENERAL.—There is established within  
11 the Department an office to be known as the ‘Office  
12 of Special Counsel for Competition Matters’.

13 “(2) DUTIES.—The Office shall—

14 “(A) investigate and prosecute violations of  
15 this Act, the Packers and Stockyards Act, 1921  
16 (7 U.S.C. 181 et seq.), and any other Act that  
17 the Secretary determines to be appropriate;

18 “(B) serve as a liaison between the De-  
19 partment and the Department of Justice and  
20 the Federal Trade Commission with respect to  
21 competition and trade practices in the food and  
22 agricultural sector; and

23 “(C) maintain a staff of attorneys and  
24 other professionals with the appropriate exper-  
25 tise.

1       “(b) SPECIAL COUNSEL FOR COMPETITION MAT-  
2 TERS.—

3               “(1) IN GENERAL.—The Office shall be headed  
4 by the Special Counsel for Competition Matters, who  
5 shall be appointed by the President, by and with the  
6 advice and consent of the Senate.

7               “(2) PROSECUTORIAL AUTHORITY.—Notwith-  
8 standing title 28, United States Code, the Special  
9 Counsel for Competition Matters shall have the au-  
10 thority to bring any civil or administrative action au-  
11 thorized under this Act or any other Act that the  
12 Secretary determines to be appropriate.

13 **“SEC. 102. REPORT ON CORPORATE STRUCTURE.**

14       “(a) IN GENERAL.—A covered person with annual  
15 sales in excess of \$100,000,000 shall annually file with  
16 the Secretary a report that describes, with respect to do-  
17 mestic activities and foreign activities, the strategic alli-  
18 ances, ownership in other covered persons, joint ventures,  
19 subsidiaries, brand names, and interlocking boards of di-  
20 rectors with other covered persons.

21       “(b) CONFIDENTIALITY.—A report filed under sub-  
22 section (a) shall be confidential commercial or financial  
23 information for the purposes of section 552(b)(4) of title  
24 5, United States Code.

1 **“TITLE II—UNFAIR OR DECEP-**  
2 **TIVE ACTS OR PRACTICES IN**  
3 **AGRICULTURAL COMMERCE**

4 **“SEC. 201. PROHIBITION ON UNFAIR OR DECEPTIVE ACTS**  
5 **OR PRACTICES IN AGRICULTURAL COM-**  
6 **MERCE.**

7 “(a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN  
8 AGRICULTURAL COMMERCE.—Any unfair or deceptive act  
9 or practice in or affecting the marketing, receiving, pur-  
10 chasing, sale, or contracting for the production of any ag-  
11 ricultural commodity by any covered person shall be un-  
12 lawful.

13 “(b) UNFAIR OR DECEPTIVE ACTS OR PRACTICES  
14 CONCERNING PRODUCER ASSOCIATIONS.—Subject to sub-  
15 section (a), it shall be unlawful for any covered person  
16 knowingly—

17 “(1)(A) to interfere with, restrain, or coerce  
18 any producer in the exercise of the right of the pro-  
19 ducer to join and belong to, or to refrain from join-  
20 ing or belonging to, an association of producers; or

21 “(B) to refuse to deal with any producer be-  
22 cause of the exercise of the right of the producer to  
23 join and belong to the association;

24 “(2) to discriminate against any producer with  
25 respect to price, quantity, quality, or other terms of

1 purchase, acquisition, or other handling of an agri-  
2 cultural commodity because of the membership of  
3 the producer in, or the contract of the producer  
4 with, an association of producers;

5 “(3) to coerce or intimidate any producer to  
6 enter into, maintain, breach, cancel, or terminate a  
7 membership agreement or marketing contract with  
8 an association of producers or a contract with a cov-  
9 ered person;

10 “(4) to pay or loan money, give any thing of  
11 value, or offer any other inducement or reward to a  
12 producer for refusing to or ceasing to belong to an  
13 association of producers;

14 “(5) to make false reports about the finances,  
15 management, or activities of an association of pro-  
16 ducers or handlers;

17 “(6) to conspire, combine, agree, or arrange  
18 with any other person to do, or aid or abet the per-  
19 formance of, any act made unlawful by this Act;

20 “(7)(A) to interfere with the formation or ad-  
21 ministration of any association of producers; or

22 “(B) to contribute financial or other support to  
23 an association of producers; or

24 “(8) to fail to bargain in good faith.

1       “(c) UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN  
2 AGRICULTURAL CONTRACTS.—It shall be unlawful for a  
3 covered person that is a party to an agricultural con-  
4 tract—

5           “(1) to fail to act in good faith (as defined in  
6 applicable State law provisions of the Uniform Com-  
7 mercial Code) with respect to the performance and  
8 enforcement of the agricultural contract;

9           “(2) to fail to include 1 or more cover pages  
10 that disclose provisions of the agricultural contract  
11 relating to—

12           “(A) duration;

13           “(B) termination;

14           “(C) renewal and renegotiation standards;

15           “(D) responsibility for environmental dam-  
16 age;

17           “(E) factors to be used in determining  
18 payment;

19           “(F) responsibility for obtaining and com-  
20 plying with Federal, State, and local permits;

21           “(G) assignability;

22           “(H) the applicable State law and venue;

23           “(I) the effect of oral modifications;

24           “(J) remedies for breach;

1           “(K) in the case of a livestock or poultry  
2           production contract, the minimum number of  
3           animals subject to the contract;

4           “(L) other rules or provisions incorporated  
5           in the contract by reference; and

6           “(M) any other terms that the Secretary  
7           determines to be appropriate for disclosure; or

8           “(3) to violate any of the requirements relating  
9           to production contracts under section 203.

10          “(d) PUBLIC POLICY CONSIDERATIONS.—

11           “(1) IN GENERAL.—In determining whether an  
12           act or practice is unfair, a court may consider estab-  
13           lished public policies as evidence to be considered  
14           with all other evidence.

15           “(2) LIMITATION.—Notwithstanding paragraph  
16           (1), public policy considerations may not serve as a  
17           primary basis for the determination.

18          **“SEC. 202. AGRICULTURAL CONTRACTS.**

19           “(a) CONFIDENTIALITY.—Any provision of an agri-  
20           cultural contract that requires that the agricultural con-  
21           tract remain confidential is void, except as the provision  
22           applies to a trade secret to which section 552 of title 5,  
23           United States Code, applies.

24           “(b) ARBITRATION.—If a livestock or poultry con-  
25           tract provides for the use of arbitration to resolve a con-

1 troversy under the livestock or poultry contract, arbitra-  
2 tion may be used to settle the controversy only if, after  
3 the controversy arises, both parties consent in writing to  
4 use arbitration to settle the controversy.

5 **“SEC. 203. PRODUCTION CONTRACTS.**

6 “(a) RIGHT OF CONTRACT PRODUCERS TO CANCEL  
7 PRODUCTION CONTRACTS.—

8 “(1) IN GENERAL.—A contract producer may  
9 cancel a production contract by mailing a cancella-  
10 tion notice to the contractor not later than the later  
11 of—

12 “(A) the date that is 3 business days after  
13 the date on which the production contract is ex-  
14 ecuted; or

15 “(B) any cancellation date specified in the  
16 production contract.

17 “(2) DISCLOSURE.—A production contract shall  
18 clearly disclose—

19 “(A) the right of the contract producer to  
20 cancel the production contract;

21 “(B) the method by which the contract  
22 producer may cancel the production contract;  
23 and

24 “(C) the deadline for canceling the produc-  
25 tion contract.

1 “(b) PRODUCTION CONTRACT LIENS.—

2 “(1) DEFINITION OF LIEN STARTING DATE.—In  
3 this subsection, the term ‘lien starting date’  
4 means—

5 “(A) in the case of an annual crop, the  
6 date on which the annual crop is planted;

7 “(B) in the case of a perennial crop, the  
8 starting date on which the perennial crop is  
9 subject to a production contract;

10 “(C) in the case of livestock, the date on  
11 which the livestock arrive at the contract live-  
12 stock facility; and

13 “(D) in the case of milk or any other prod-  
14 uct of live livestock, the date on which the milk  
15 or other product is produced.

16 “(2) LIENS.—Except as provided in paragraph  
17 (8), in the case of a production contract that pro-  
18 vides for the production of an agricultural com-  
19 modity by a contract producer, the contract pro-  
20 ducer shall have a lien in the amount owed to the  
21 contract producer under the production contract  
22 on—

23 “(A)(i) the agricultural commodity until  
24 the agricultural commodity is sold or processed  
25 (including slaughtered) by the contractor; and



1           “(ii) the cash proceeds of the sale of the  
2           agricultural commodity, including any cash pro-  
3           vided as part of the sale; and

4           “(B) any property of the contractor that  
5           may be subject to a security interest.

6           “(3) LIEN PERIOD.—A lien for the production  
7           of an agricultural commodity under this subsection  
8           shall apply during the period—

9           “(A) beginning on the lien starting date;  
10          and

11          “(B) ending 1 year after the agricultural  
12          commodity is no longer under the control of the  
13          contract producer.

14          “(4) PERFECTING OF LIENS.—To perfect a lien  
15          for the production of an agricultural commodity  
16          under this subsection, a contract producer shall file  
17          a lien statement under applicable State law provi-  
18          sions based on Article 9 of the Uniform Commercial  
19          Code.

20          “(5) PRIORITY OF LIENS.—A lien created under  
21          this subsection shall be superior to, and have pri-  
22          ority over, any conflicting lien or security interest in  
23          the agricultural commodity, including a lien or secu-  
24          rity interest that was perfected prior to the creation  
25          of the lien under this subsection.

1 “(6) ENFORCEMENT.—

2 “(A) CONTROL.—Before an agricultural  
3 commodity leaves the control of a contract pro-  
4 ducer, the contract producer may foreclose a  
5 lien created under this subsection in the man-  
6 ner provided for the foreclosure of a secured  
7 transaction under applicable State law provi-  
8 sions based on Article 9 of the Uniform Com-  
9 mercial Code.

10 “(B) POST-CONTROL.—After an agricul-  
11 tural commodity leaves the control of the con-  
12 tract producer, the contract producer may en-  
13 force the lien in the manner provided under ap-  
14 plicable State law provisions based on Article 9  
15 of the Uniform Commercial Code.

16 “(7) ELECTION OF OTHER REMEDIES.—In lieu  
17 of obtaining a lien under this subsection, a contract  
18 producer described in paragraph (2) may seek to col-  
19 lect funds due under a production contract in ac-  
20 cordance with—

21 “(A) the Packers and Stockyards Act,  
22 1921 (7 U.S.C. 181 et seq.); or

23 “(B) the Perishable Agricultural Commod-  
24 ities Act, 1930 (7 U.S.C. 499a et seq.).

1           “(8) EXEMPTION.—This subsection does not  
2           apply to a contract producer that is an agricultural  
3           cooperative, at least 50 percent of the ownership in-  
4           terests of which are held by producers.

5           “(c) PRODUCTION CONTRACTS INVOLVING INVEST-  
6           MENT REQUIREMENTS.—

7           “(1) APPLICABILITY.—This subsection applies  
8           only to a production contract between a contract  
9           producer and a contractor if, but for the production  
10          contract, the contract producer would not have made  
11          a capital investment of \$100,000 or more.

12          “(2) RESTRICTIONS ON CONTRACT TERMI-  
13          NATION.—

14                 “(A) NOTICE OF TERMINATION.—Except  
15                 as provided in subparagraph (C), a contractor  
16                 shall not terminate or cancel a production con-  
17                 tract unless the contractor provides the contract  
18                 producer with written notice of the intention of  
19                 the contractor to terminate or cancel the pro-  
20                 duction contract at least 180 days before the ef-  
21                 fective date of the termination or cancellation.

22                 “(B) REQUIREMENTS.—The written notice  
23                 required under subparagraph (A) shall include  
24                 alleged causes of the termination.

1           “(C) EXCEPTIONS.—A contractor may ter-  
2           minate or cancel a production contract without  
3           notice as required under subparagraph (A) if  
4           the basis for the termination or cancellation  
5           is—

6                   “(i) a voluntary abandonment of the  
7                   contractual relationship by the contract  
8                   producer, such as a complete failure of the  
9                   contract producer to perform under the  
10                  production contract;

11                  “(ii) the conviction of the contract  
12                  producer of an offense of fraud or theft  
13                  committed against the contractor; or

14                  “(iii) the natural end of the produc-  
15                  tion contract in accordance with the terms  
16                  of the production contract.

17           “(D) RIGHT TO CURE.—

18                   “(i) IN GENERAL.—If, not later than  
19                   180 days after the date on which the con-  
20                   tract producer receives written notice  
21                   under subparagraph (A), the contract pro-  
22                   ducer remedies each cause of the breach of  
23                   contract alleged in the written notice, the  
24                   contractor may not terminate or cancel a  
25                   production contract under this paragraph.

1                   “(ii) NO ADMISSION OF BREACH.—  
2                   The remedy or attempt to remedy the  
3                   causes for the breach of contract by the  
4                   contract producer under clause (i) does not  
5                   constitute an admission of breach of con-  
6                   tract.

7                   “(d) ADDITIONAL CAPITAL INVESTMENTS IN PRO-  
8                   DUCTION CONTRACTS.—

9                   “(1) IN GENERAL.—A covered person shall not  
10                  require a contract producer to make additional cap-  
11                  ital investments in connection with a production con-  
12                  tract that exceed the initial investment requirements  
13                  of the production contract.

14                  “(2) EXCEPTIONS.—Notwithstanding para-  
15                  graph (1), a covered person may require additional  
16                  capital investments if—

17                         “(A) the additional capital investments are  
18                         offset by reasonable additional consideration,  
19                         including compensation or a modification to the  
20                         terms of the production contract; and

21                         “(B) the contract producer agrees in writ-  
22                         ing that there is acceptable and satisfactory  
23                         consideration for the additional capital invest-  
24                         ment.

1 **“SEC. 204. AUTHORITY OF SECRETARY TO PROMULGATE**  
2 **RULES AND REGULATIONS.**

3 “The Secretary, acting through the Special Counsel  
4 for Competition Matters, may promulgate such rules and  
5 regulations as are necessary to carry out this Act and the  
6 Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.),  
7 including rules and regulations—

8 “(1) relating to unfair or deceptive acts or  
9 practices in agriculture;

10 “(2) that define with specificity acts or prac-  
11 tices that are to be prohibited as unfair or deceptive  
12 acts or practices in agriculture under section 201;  
13 and

14 “(3) to prevent unfair or deceptive acts or prac-  
15 tices from occurring in agriculture.

16 **“SEC. 205. ENFORCEMENT.**

17 “(a) **CIVIL ACTIONS BY THE SECRETARY AGAINST**  
18 **COVERED PERSONS.**—In any case in which the Secretary  
19 has reasonable cause to believe that any covered person  
20 has engaged in any act or practice that violates this Act,  
21 the Secretary may bring a civil action in the United States  
22 district court of the jurisdiction of residence of the covered  
23 person by filing a complaint requesting preventive relief,  
24 including an application for a permanent or temporary in-  
25 junction, restraining order, or other order, against the cov-  
26 ered person.

1 “(b) CIVIL ACTIONS AGAINST COVERED PERSONS.—

2 “(1) PREVENTIVE RELIEF.—

3 “(A) IN GENERAL.—In any case in which  
4 any covered person has engaged, or there are  
5 reasonable grounds to believe that any covered  
6 person is about to engage, in any act or prac-  
7 tice prohibited by this Act, a civil action for  
8 preventive relief, including an application for a  
9 permanent or temporary injunction, restraining  
10 order, or other order, may be instituted by the  
11 person aggrieved in the United States district  
12 court of the jurisdiction of residence of the ag-  
13 grieved person.

14 “(B) SECURITY.—The court may provide  
15 that no restraining order or preliminary injunc-  
16 tion shall issue unless security is provided by  
17 the applicant, in such sum as the court deter-  
18 mines to be appropriate, for the payment of  
19 such costs and damages as may be incurred or  
20 suffered by any party that is found to have  
21 been wrongfully enjoined or restrained.

22 “(2) DAMAGES.—

23 “(A) IN GENERAL.—Any person injured in  
24 the business or property of the person by rea-  
25 son of any violation of, or combination or con-

1           spiracy to violate, this Act may bring a civil ac-  
2           tion in the United States district court of the  
3           jurisdiction of residence of the injured person  
4           or any State court of competent jurisdiction to  
5           recover—

6                   “(i) damages sustained by the person  
7                   as a result of the violation; and

8                   “(ii) any additional penalty that the  
9                   court may allow, but not more than \$1,000  
10                  per violation.

11                  “(B) LIMITATION ON ACTIONS.—A civil ac-  
12                  tion under subparagraph (A) shall be barred  
13                  unless commenced within 2 years after the  
14                  cause of action accrues.

15                  “(3) ATTORNEY’S FEES.—In any action com-  
16                  menced under paragraph (1) or (2), the court may  
17                  allow the prevailing party a reasonable attorney’s fee  
18                  as part of the costs.

19                  “(c) JURISDICTION OF DISTRICT COURTS.—Not later  
20                  than 2 years after the date on which a violation of this  
21                  Act occurs, an action to enforce this Act may be brought  
22                  in—

23                   “(1) the United States district court of the ju-  
24                   risdiction of residence of the aggrieved person, not-  
25                   withstanding the fact that an aggrieved person has



1 not exhausted all administrative or other remedies  
2 provided by law; or

3 “(2) any other court of competent jurisdiction  
4 in the State of residence of the aggrieved person.

5 “(d) CHOICE OF LAW, JURISDICTION, AND VENUE.—

6 “(1) CHOICE OF LAW.—Any provision in an ag-  
7 ricultural contract requiring the application of the  
8 law of a State other than the State in which the pro-  
9 ducer resides is void and unenforceable.

10 “(2) JURISDICTION.—A covered person that en-  
11 ters into an agricultural contract with a producer  
12 shall be subject to personal jurisdiction in the State  
13 in which the producer resides.

14 “(3) VENUE.—Venue shall be determined on  
15 the basis of the residence of the producer.

16 “(e) LIABILITY FOR ACTS OF AGENTS.—In the con-  
17 struction and enforcement of this Act, the act, omission,  
18 or failure of any officer, agent, or person acting for or  
19 employed by any other person within the scope of the em-  
20 ployment or office of the officer, agent, or person, shall  
21 be considered to be the act, omission, or failure of the  
22 other person.

23 **“SEC. 206. EFFECT ON OTHER LAWS.**

24 “(a) STATE LAWS.—

1           “(1) IN GENERAL.—Subject to paragraph (2),  
2           this Act does not annul, alter, or affect, or exempt  
3           any person subject to this Act from complying with,  
4           the law of any State with respect to trade practices  
5           in agriculture.

6           “(2) EXCEPTION.—

7           “(A) IN GENERAL.—This Act annuls, al-  
8           ters, or affects, or exempts a person from, a  
9           State law referred to in paragraph (1) to the  
10          extent the State law is inconsistent with this  
11          Act.

12          “(B) INCONSISTENCY.—For the purposes  
13          of this paragraph, a State law is not incon-  
14          sistent with this Act if the protection that the  
15          law affords any producer is greater than the  
16          protection provided to a producer by this Act.

17          “(b) STATE COURTS.—This Act does not deprive a  
18          State court of jurisdiction under a State law dealing with  
19          the same subject as this Act.

20          **“SEC. 207. ASSIGNMENT OF ASSOCIATION DUES AND FEES.**

21          “(a) IN GENERAL.—A producer of an agricultural  
22          commodity or service may execute, as a clause in an agri-  
23          cultural contract, an assignment of dues or fees to, or the  
24          deduction of a sum to be retained by, an association of

1 producers authorized by contract to represent the pro-  
2 ducer, under which assignment a covered person shall—

3 “(1) deduct a portion of the amount to be paid  
4 for products or services of the producer under a pro-  
5 duction contract; and

6 “(2) pay, on behalf of the producer, the portion  
7 over to the association as dues or fees or a sum to  
8 be retained by the association.

9 “(b) DUTY OF COVERED PERSON.—After a covered  
10 person receives notice from a producer of an assignment  
11 under subsection (a), the covered person shall—

12 “(1) deduct the amount authorized by the as-  
13 signment from the amount paid for any agricultural  
14 commodity sold by the producer or for any service  
15 rendered under any production contract; and

16 “(2) on payment to producers for the product  
17 or service, pay the amount over to the association or  
18 the assignee of the association.

19 **“SEC. 208. SEVERABILITY.**

20 “If any provision of this Act or application of any  
21 provision of this Act is held invalid, the remainder of this  
22 Act and the application of the provision to other persons  
23 and circumstances shall not be affected by the invalidity.”.

1 **SEC. 102. APPLICATION.**

2 The amendment made by section 101 applies to any  
3 contract entered into on or after the date of enactment  
4 of this Act.

5 **TITLE II—PACKERS AND**  
6 **STOCKYARDS**

7 **SEC. 201. INVESTIGATION OF LIVE POULTRY DEALERS.**

8 (a) REMOVAL OF POULTRY SLAUGHTER REQUIRE-  
9 MENT FROM DEFINITIONS.—Section 2(a) of the Packers  
10 and Stockyards Act, 1921 (7 U.S.C. 182), is amended—

11 (1) by striking paragraph (8) and inserting the  
12 following:

13 “(8) POULTRY GROWER.—The term ‘poultry  
14 grower’ means any person engaged in the business  
15 of raising or caring for live poultry under a poultry  
16 growing arrangement, regardless of whether the  
17 poultry is owned by the person or by another per-  
18 son;”;

19 (2) in paragraph (9), by striking “and cares for  
20 live poultry for delivery, in accord with another’s in-  
21 structions, for slaughter” and inserting “or cares for  
22 live poultry in accordance with the instructions of  
23 another person”; and

24 (3) in paragraph (10), by striking “for the pur-  
25 pose of either slaughtering it or selling it for slaugh-  
26 ter by another”.

1 (b) ADMINISTRATIVE ENFORCEMENT AUTHORITY  
2 OVER LIVE POULTRY DEALERS.—Sections 203, 204, and  
3 205 of the Packers and Stockyards Act, 1921 (7 U.S.C.  
4 193, 194, 195), are amended by inserting “or live poultry  
5 dealer” after “packer” each place it appears.

6 (c) AUTHORITY TO REQUEST TEMPORARY INJUNC-  
7 TION OR RESTRAINING ORDER.—Section 408 of the Pack-  
8 ers and Stockyards Act, 1921 (7 U.S.C. 228a), is amend-  
9 ed in the first sentence by striking “on account of poultry”  
10 and inserting “on account of poultry or poultry care”.

11 (d) VIOLATIONS BY LIVE POULTRY DEALERS.—Sec-  
12 tion 411 of the Packers and Stockyards Act, 1921 (7  
13 U.S.C. 228b–2), is amended—

14 (1) in the first sentence of subsection (a), by  
15 striking “any provision of section 207 or section 410  
16 of”; and

17 (2) in the first sentence of subsection (b), by  
18 striking “any provisions of section 207 or section  
19 410” and inserting “any provision”.

20 **SEC. 202. NO COMPETITIVE INJURY REQUIREMENT.**

21 Section 202(a) of the Packers and Stockyards Act,  
22 1921 (7 U.S.C. 192), is amended by inserting after “de-  
23 vice” the following: “, regardless of whether the practice  
24 or device causes a competitive injury or otherwise ad-  
25 versely affects competition”.

1 **SEC. 203. ATTORNEYS FEES.**

2 Section 308(a) of the Packers and Stockyards Act,  
3 1921 (7 U.S.C. 209(a)) is amended by inserting before  
4 the period at the end the following: “and for the cost of  
5 the litigation, including reasonable attorneys’ fees”.

6 **SEC. 204. APPOINTMENT OF OUTSIDE COUNSEL.**

7 Section 407(a) of the Packers and Stockyards Act,  
8 1921 (7 U.S.C. 228(a)), is amended by inserting “obtain  
9 the services of attorneys who are not employees of the  
10 Federal Government,” before “and make such expendi-  
11 tures”.

12 **SEC. 205. COMPETITIVE HARM.**

13 Title IV of the Packers and Stockyards Act, 1921  
14 (7 U.S.C. 221 et seq.), is amended by adding at the end  
15 the following:

16 **“SEC. 417. COMPETITIVE HARM.**

17 “A person affected by an unfair practice under sec-  
18 tion 202(a) or 312(a) shall not be required to prove preda-  
19 tory intent, competitive injury, or likelihood of injury.”.

20 **SEC. 206. REGULATIONS.**

21 (a) IN GENERAL.—Not later than 180 days after the  
22 date of enactment of this Act, the Secretary of Agriculture  
23 shall promulgate regulations to implement the amend-  
24 ments made by this Act, including providing a definition  
25 of the term “unreasonable preference or advantage” for

1 purposes of section 202(b) of the Packers and Stockyards  
2 Act, 1921 (7 U.S.C. 192(b)).

3 (b) REQUIREMENTS.—Regulations promulgated  
4 under subsection (a) shall strictly prohibit any preferences  
5 or price differences based on volume except for preferences  
6 or price differences that reflect actual, verifiable lower  
7 costs of acquiring livestock from larger volume producers.

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