

110TH CONGRESS
1ST SESSION

S. 622

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2007

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

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 2007”.

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. 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.

“TITLE II—PROHIBITIONS ON ANY UNFAIR, UNJUSTLY DISCRIMINATORY, OR DECEPTIVE ACT, DEVICE, OR ANTI-COMPETITIVE PRACTICE IN AGRICULTURAL COMMERCE

“Sec. 201. Prohibitions involving crops.
 “Sec. 202. Prohibitions involving producer associations and production contracts.
 “Sec. 203. Production contracts and marketing contracts.
 “Sec. 204. Production contracts.
 “Sec. 205. Authority of Secretary to promulgate rules and regulations.
 “Sec. 206. Enforcement.
 “Sec. 207. Effect on other laws.
 “Sec. 208. Assignment of association dues and fees.
 “Sec. 209. Severability.

1 **“SEC. 2. DEFINITIONS.**

2 “In this Act:

3 “(1) AGRICULTURAL COMMODITY.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the term ‘agricultural com-
6 modity’ has the meaning given the term in sec-
7 tion 102 of the Agricultural Trade Act of 1978
8 (7 U.S.C. 5602).

9 “(B) EXCEPTION.—In section 201, the
10 term ‘agricultural commodity’—

11 “(i) means a crop; and

12 “(ii) does not include a perishable ag-
13 ricultural commodity, as that term is de-
14 fined in section 1(b) of the Perishable Ag-
15 ricultural Commodities Act, 1930 (7
16 U.S.C. 499a(b)).

17 “(2) AGRICULTURAL COOPERATIVE.—The term
18 ‘agricultural cooperative’ means an association of
19 persons engaged in the production, marketing, or
20 processing of an agricultural commodity that meets
21 the requirements of the Act entitled ‘An Act to au-
22 thorize association of producers of agricultural prod-
23 ucts’ (commonly known as the ‘Capper-Volstead
24 Act’) (7 U.S.C. 291 et seq.).

25 “(3) ASSOCIATION OF PRODUCERS.—

1 “(A) IN GENERAL.—The term ‘association
2 of producers’ means an association of producers
3 of agricultural commodities that engages in the
4 marketing, bargaining, shipping, or processing
5 of agricultural commodities or of agricultural
6 services.

7 “(B) INCLUSIONS.—The term ‘association
8 of producers’ includes—

9 “(i) an organization dedicated to pro-
10 moting the common interest and general
11 welfare of producers of agricultural com-
12 modities;

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

16 “(iii) an association described in the
17 first section of the Act entitled ‘An Act to
18 authorize association of producers of agri-
19 cultural products’ (commonly known as the
20 ‘Capper-Volstead Act’) (7 U.S.C. 291).

21 “(4) CAPITAL INVESTMENT.—The term ‘capital
22 investment’ means an investment in—

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

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

4 “(5) COMMISSION MERCHANT.—The term ‘com-
5 mission merchant’ means any person engaged in the
6 business of receiving in interstate or foreign com-
7 merce any agricultural commodity for sale on com-
8 mission.

9 “(6) CONTRACT LIVESTOCK FACILITY.—The
10 term ‘contract livestock facility’ means a facility in
11 which livestock or a product of live livestock is pro-
12 duced under a production contract by a contract
13 producer.

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

18 “(8) CONTRACT PRODUCER.—The term ‘con-
19 tract producer’ means a producer that produces an
20 agricultural commodity under a production contract.

21 “(9) COVERED PERSON.—The term ‘covered
22 person’ means a dealer, handler, contractor, proc-
23 essor, or commission merchant.

24 “(10) CROP.—The term ‘crop’ means an agri-
25 cultural commodity produced from a plant.

1 “(11) DEALER.—The term ‘dealer’ means any
2 person engaged in the business of buying, selling, or
3 marketing agricultural commodities in interstate or
4 foreign commerce.

5 “(12) DEPARTMENT.—The term ‘Department’
6 means the Department of Agriculture.

7 “(13) HANDLER.—The term ‘handler’ means
8 any person engaged in the business or practice of—

9 “(A) acquiring agricultural commodities
10 from producers or associations of producers for
11 processing or sale;

12 “(B) grading, packaging, handling, storing,
13 or processing agricultural commodities received
14 from producers or associations of producers;

15 “(C) contracting or negotiating contracts
16 or other arrangements, written or oral, with or
17 on behalf of producers or associations of pro-
18 ducers with respect to the production or mar-
19 keting of any agricultural commodity; or

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

23 “(14) INVESTMENT REQUIREMENT.—The term
24 ‘investment requirement’ means a provision in a pro-
25 duction contract that requires a contract producer to

1 make a capital investment associated with producing
2 an agricultural commodity that, but for the produc-
3 tion contract, the contract producer would not have
4 made.

5 “(15) LIVESTOCK.—The term ‘livestock’ has
6 the meaning given the term in section 602 of the
7 Agricultural Act of 1949 (7 U.S.C. 1471).

8 “(16) MARKETING CONTRACT.—The term ‘mar-
9 keting contract’ means a written agreement between
10 a covered person and a producer for the purchase of
11 an agricultural commodity produced or raised by the
12 producer.

13 “(17) PERSON.—The term ‘person’ includes an
14 individual, partnership, corporation, limited liability
15 company, limited partnership, or association.

16 “(18) PROCESSOR.—The term ‘processor’
17 means—

18 “(A) any person (other than an agricul-
19 tural cooperative) engaged in the business of
20 handling, preparing, or manufacturing (includ-
21 ing slaughtering) an agricultural commodity or
22 the products of an agricultural commodity for
23 sale or marketing in interstate or foreign com-
24 merce; and

1 “(B) an agricultural cooperative that han-
2 dles, prepares, or manufactures (including
3 slaughtering) agricultural commodities of its
4 members’ own production.

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

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

9 “(B) to plant, raise, harvest, and store a
10 crop, including preparing soil for planting and
11 applying a fertilizer, soil conditioner, or pes-
12 ticide to a crop.

13 “(20) PRODUCER.—The term ‘producer’ means
14 a person engaged in the production of an agricul-
15 tural commodity as a farmer, planter, rancher,
16 dairyman, poultryman, or fruit, vegetable, or nut
17 grower.

18 “(21) PRODUCTION CONTRACT.—

19 “(A) IN GENERAL.—The term ‘production
20 contract’ means a written agreement that pro-
21 vides for—

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

24 “(ii) the provision of a management
25 service relating to the production of an ag-

1 ricultural commodity by a contract pro-
 2 ducer.

3 “(B) INCLUSIONS.—The term ‘production
 4 contract’ includes—

5 “(i) a contract between a contractor
 6 and a contract producer for the production
 7 of an agricultural commodity; or

8 “(ii) a contract between a contractor
 9 and a contract producer for the provision
 10 of a management service in the production
 11 of an agricultural commodity.

12 “(22) SECRETARY.—The term ‘Secretary’
 13 means the Secretary of Agriculture.

14 **“TITLE I—AGRICULTURAL**
 15 **TRADE PRACTICES**

16 **“SEC. 101. OFFICE OF SPECIAL COUNSEL FOR COMPETI-**
 17 **TION MATTERS.**

18 “(a) ESTABLISHMENT.—

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

22 “(2) DUTIES.—The Office shall—

23 “(A) investigate and prosecute violations of
 24 this Act and the Packers and Stockyards Act,
 25 1921 (7 U.S.C. 181 et seq.);

1 “(B) serve as a liaison between, and act in
2 consultation with, the Department and the De-
3 partment of Justice and the Federal Trade
4 Commission with respect to competition and
5 trade practices in the food and agricultural sec-
6 tor; and

7 “(C) maintain a staff of attorneys and
8 other professionals with the appropriate exper-
9 tise.

10 “(b) SPECIAL COUNSEL FOR COMPETITION MAT-
11 TERS.—

12 “(1) IN GENERAL.—The Office shall be headed
13 by the Special Counsel for Competition Matters, who
14 shall be appointed by the President, by and with the
15 advice and consent of the Senate.

16 “(2) PROSECUTORIAL AUTHORITY.—Notwith-
17 standing title 28, United States Code, the Special
18 Counsel for Competition Matters shall have the au-
19 thority to bring any civil or administrative action au-
20 thorized under this Act or the Packers and Stock-
21 yards Act, 1921 (7 U.S.C. 181 et seq.).

1 **“TITLE II—PROHIBITIONS ON**
2 **ANY UNFAIR, UNJUSTLY DIS-**
3 **CRIMINATORY, OR DECEP-**
4 **TIVE ACT, DEVICE, OR ANTI-**
5 **COMPETITIVE PRACTICE IN**
6 **AGRICULTURAL COMMERCE**

7 **“SEC. 201. PROHIBITIONS INVOLVING CROPS.**

8 “(a) PROHIBITION ON ANY UNFAIR, UNJUSTLY DIS-
9 CRIMINATORY, OR DECEPTIVE ACT, DEVICE, OR ANTI-
10 COMPETITIVE PRACTICE.—Any unfair, unjustly discrimi-
11 natory, or deceptive act, device, or anti-competitive prac-
12 tice in or affecting the marketing, receiving, purchasing,
13 sale, or contracting for the production of any agricultural
14 commodity by any covered person shall be unlawful.

15 “(b) OTHER UNLAWFUL ACTS.—It shall be unlawful
16 for any covered person—

17 “(1) to make or give any undue or unreasonable
18 preference or advantage to any particular person or
19 locality in any respect, or subject any particular per-
20 son or locality to any undue or unreasonable preju-
21 dice or disadvantage in any respect;

22 “(2) to sell or otherwise transfer to or for any
23 other person, or buy or otherwise receive from or for
24 any other person, any article for the purpose or with
25 the effect of manipulating or controlling prices, or of

1 creating a monopoly in the acquisition of, buying,
2 selling, or dealing in, any article, or of restraining
3 commerce;

4 “(3) to engage in any course of business or do
5 any act for the purpose or with the effect or manip-
6 ulating or controlling prices, or of creating a monop-
7 oly in the acquisition of, buying, selling, or dealing
8 in, any article, or of restraining commerce;

9 “(4) to conspire, combine, agree, or arrange
10 with any other person—

11 “(A) to apportion territory for carrying on
12 business;

13 “(B) to apportion purchases or sales of
14 any article; or

15 “(C) to manipulate or control prices; or

16 “(5) to conspire, combine, agree, or arrange
17 with any other person to do, or aid or abet the doing
18 of, any act made unlawful by paragraph (1), (2),
19 (3), or (4).

20 “(c) PUBLIC POLICY CONSIDERATIONS.—In deter-
21 mining whether an act, device, or anti-competitive practice
22 described in subsection (a) is unfair, a court may consider
23 whether—

24 “(1) a reasonable person would consider the
25 act, device, or practice unfair under the cir-

1 cumstances, whether or not the act, device, or prac-
2 tice has previously been found unlawful; or

3 “(2) the act, device, or practice may violate
4 standards established by Federal or State law (in-
5 cluding common law and regulations).

6 **“SEC. 202. PROHIBITIONS INVOLVING PRODUCER ASSOCIA-
7 TIONS AND PRODUCTION CONTRACTS.**

8 “(a) ANY UNLAWFUL ACT INVOLVING PRODUCER
9 ASSOCIATIONS AND PRODUCTION CONTRACTS.—It shall
10 be unlawful for any covered person—

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

15 “(B) to refuse to deal with any producer be-
16 cause of the exercise of the right of the producer to
17 join and belong to the association;

18 “(2) to discriminate against any producer with
19 respect to price, quantity, quality, or other terms of
20 purchase, acquisition, or other handling of an agri-
21 cultural commodity because of the membership of
22 the producer in, or the contract of the producer
23 with, an association of producers;

24 “(3) to coerce or intimidate any producer to
25 enter into, maintain, breach, cancel, or terminate a

1 membership agreement or marketing contract with
2 an association of producers or a contract with a cov-
3 ered person;

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

8 “(5) to make false reports about the finances,
9 management, or activities of an association of pro-
10 ducers or covered persons;

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

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

16 “(B) to contribute financial or other support to
17 an association of producers; or

18 “(8) to fail to bargain in good faith with an as-
19 sociation of producers.

20 “(b) ANY UNLAWFUL ACT IN PRODUCTION CON-
21 TRACTS.—It shall be unlawful for a covered person that
22 is a party to a production contract—

23 “(1) to fail to act in good faith with respect to
24 the performance and enforcement of the production
25 contract;

1 “(2) to fail to include 1 or more cover pages
2 that disclose provisions of the production contract
3 relating to—

4 “(A) duration;

5 “(B) termination;

6 “(C) renewal and renegotiation standards;

7 “(D) responsibility for environmental dam-
8 age;

9 “(E) factors to be used in determining
10 payment;

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

13 “(G) assignability;

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

15 “(I) the effect of oral modifications;

16 “(J) remedies for breach;

17 “(K) in the case of a livestock or poultry
18 production contract, the minimum number of
19 animals subject to the contract;

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

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

24 “(3) to violate any of the requirements relating
25 to production contracts under section 204.

1 “(c) PUBLIC POLICY CONSIDERATIONS.—In deter-
2 mining whether an act, device, or anti-competitive practice
3 described in section 201(a), with respect to the production
4 of an agricultural commodity, is unfair, a court may con-
5 sider whether—

6 “(1) a reasonable person would consider the
7 act, device, or practice unfair under the cir-
8 cumstances, whether or not the act, device, or prac-
9 tice has previously been found unlawful; or

10 “(2) the act, device, or practice may violate
11 standards established by Federal or State law (in-
12 cluding common law and regulations).

13 **“SEC. 203. PRODUCTION CONTRACTS AND MARKETING**
14 **CONTRACTS.**

15 “(a) CONFIDENTIALITY.—Any provision of a produc-
16 tion contract or a marketing contract that requires that
17 the production contract or marketing contract remain con-
18 fidential is void, except as the provision applies to a trade
19 secret to which section 552 of title 5, United States Code,
20 applies.

21 “(b) ARBITRATION.—If a livestock or poultry con-
22 tract or marketing contract provides for the use of arbitra-
23 tion to resolve a controversy under the livestock or poultry
24 contract or marketing contract, arbitration may be used
25 to settle the controversy only if, after the controversy

1 arises, both parties consent in writing to use arbitration
2 to settle the controversy.

3 **“SEC. 204. PRODUCTION CONTRACTS.**

4 “(a) RIGHT OF CONTRACT PRODUCERS TO CANCEL
5 PRODUCTION CONTRACTS.—

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

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

13 “(B) any cancellation date specified in the
14 production contract.

15 “(2) DISCLOSURE.—A production contract shall
16 clearly disclose—

17 “(A) the right of the contract producer to
18 cancel the production contract;

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

22 “(C) the deadline for canceling the produc-
23 tion contract.

24 “(b) PRODUCTION CONTRACTS INVOLVING INVEST-
25 MENT REQUIREMENTS.—

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

6 “(2) RESTRICTIONS ON CONTRACT TERMI-
7 NATION.—

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

16 “(B) REQUIREMENTS.—The written notice
17 required under subparagraph (A) shall include
18 alleged causes of the termination.

19 “(C) EXCEPTIONS.—A contractor may ter-
20minate or cancel a production contract without
21 notice as required under subparagraph (A) if
22 the basis for the termination or cancellation
23 is—

24 “(i) a voluntary abandonment of the
25 contractual relationship by the contract

1 producer, such as a complete failure of the
2 contract producer to perform under the
3 production contract;

4 “(ii) the conviction of the contract
5 producer of an offense of fraud or theft
6 committed against the contractor; or

7 “(iii) the natural end of the produc-
8 tion contract in accordance with the terms
9 of the production contract.

10 “(D) RIGHT TO CURE.—

11 “(i) IN GENERAL.—If, not later than
12 180 days after the date on which the con-
13 tract producer receives written notice
14 under subparagraph (A), the contract pro-
15 ducer remedies each cause of the breach of
16 contract alleged in the written notice, the
17 contractor may not terminate or cancel a
18 production contract under this paragraph.

19 “(ii) NO ADMISSION OF BREACH.—
20 The remedy or attempt to remedy the
21 causes for the breach of contract by the
22 contract producer under clause (i) does not
23 constitute an admission of breach of con-
24 tract.

1 “(c) ADDITIONAL CAPITAL INVESTMENTS IN PRO-
2 DDUCTION CONTRACTS.—

3 “(1) IN GENERAL.—A covered person shall not
4 require a contract producer to make additional cap-
5 ital investments in connection with a production con-
6 tract that exceed the initial investment requirements
7 of the production contract.

8 “(2) EXCEPTIONS.—Notwithstanding para-
9 graph (1), a covered person may require additional
10 capital investments if—

11 “(A) the additional capital investments are
12 offset by reasonable additional consideration,
13 including compensation or a modification to the
14 terms of the production contract; and

15 “(B) the contract producer agrees in writ-
16 ing that there is acceptable and satisfactory
17 consideration for the additional capital invest-
18 ment.

19 **“SEC. 205. AUTHORITY OF SECRETARY TO PROMULGATE**
20 **RULES AND REGULATIONS.**

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

1 “(1) relating to unfair, unjustly discriminatory,
2 or deceptive acts, devices, or anti-competitive prac-
3 tices in agriculture;

4 “(2) that define with specificity any act, device,
5 or practice that is to be prohibited as unfair, un-
6 justly discriminatory, or any deceptive act, device, or
7 anti-competitive practice in agriculture under section
8 201 or 202; and

9 “(3) to prevent any unfair, unjustly discrimina-
10 tory, or deceptive act, device, or anti-competitive
11 practice from occurring in agriculture.

12 **“SEC. 206. ENFORCEMENT.**

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

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

24 “(1) PREVENTIVE RELIEF.—

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

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

20 “(2) DAMAGES.—

21 “(A) IN GENERAL.—Any person injured in
22 the business or property of the person by rea-
23 son of any violation of, or combination or con-
24 spiracy to violate, this Act may bring a civil ac-
25 tion in the United States district court of the

1 jurisdiction of residence of the injured person
2 or any State court of competent jurisdiction to
3 recover—

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

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

9 “(B) LIMITATION ON ACTIONS.—A civil ac-
10 tion under subparagraph (A) shall be barred
11 unless commenced within 4 years after the
12 cause of action accrues.

13 “(3) ATTORNEYS’ FEES.—In any action com-
14 menced under paragraph (1) or (2), the court may
15 allow the prevailing party the costs of the litigation,
16 including reasonable attorneys’ fees.

17 “(c) JURISDICTION OF DISTRICT COURTS.—Not later
18 than 4 years after the date on which a violation of this
19 Act occurs, an action to enforce this Act may be brought
20 in—

21 “(1) the United States district court of the ju-
22 risdiction of residence of the aggrieved person, not-
23 withstanding the fact that an aggrieved person has
24 not exhausted all administrative or other remedies
25 provided by law; or

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

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

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

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

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

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

21 **“SEC. 207. EFFECT ON OTHER LAWS.**

22 “(a) STATE LAWS.—

23 “(1) IN GENERAL.—Subject to paragraph (2),
24 this Act does not annul, alter, or affect, or exempt
25 any person subject to this Act from complying with,

1 the law of any State with respect to trade practices
2 in agriculture.

3 “(2) EXCEPTION.—

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

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

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

17 “(c) RELATIONSHIP TO OTHER LAWS.—The Packers
18 and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) and the
19 Perishable Agricultural Commodities Act, 1930 (7 U.S.C.
20 499a et seq.) shall control if there is a conflict between
21 those Acts and section 206.

22 **“SEC. 208. ASSIGNMENT OF ASSOCIATION DUES AND FEES.**

23 “(a) IN GENERAL.—A producer of an agricultural
24 commodity or service may execute, as a clause in a produc-
25 tion contract or a marketing contract, an assignment of

1 dues or fees to, or the deduction of a sum to be retained
 2 by, an association of producers authorized by contract to
 3 represent the producer, under which assignment a covered
 4 person shall—

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

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

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

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

19 “(2) on payment to producers for the product
 20 or service, pay the amount over to the association or
 21 the assignee of the association.

22 **“SEC. 209. SEVERABILITY.**

23 “‘If any provision of this Act or application of any
 24 provision of this Act is held invalid, the remainder of this

1 Act and the application of the provision to other persons
2 and circumstances shall not be affected by the invalidity.”.

3 **SEC. 102. APPLICATION.**

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

7 **TITLE II—PACKERS AND**
8 **STOCKYARDS**

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

10 (a) REMOVAL OF POULTRY SLAUGHTER REQUIRE-
11 MENT FROM DEFINITIONS.—Section 2(a) of the Packers
12 and Stockyards Act, 1921 (7 U.S.C. 182(a)), is amend-
13 ed—

14 (1) by striking paragraph (8) and inserting the
15 following:

16 “(8) POULTRY GROWER.—

17 “(A) IN GENERAL.—The term ‘poultry
18 grower’ means any person engaged in the busi-
19 ness of raising or caring for live poultry under
20 a poultry growing arrangement, regardless of
21 whether the poultry is owned by the person or
22 by another person.

23 “(B) EXCLUSION.—The term ‘poultry
24 grower’ does not include an employee of the

1 owner of live poultry described in subparagraph
2 (A).”;

3 (2) in paragraph (9), by striking “and cares for
4 live poultry for delivery, in accord with another’s in-
5 structions, for slaughter” and inserting “or cares for
6 live poultry in accordance with the instructions of
7 another person”; and

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

11 (b) ADMINISTRATIVE ENFORCEMENT AUTHORITY
12 OVER LIVE POULTRY DEALERS.—Sections 203, 204, and
13 205 of the Packers and Stockyards Act, 1921 (7 U.S.C.
14 193, 194, 195), are amended by inserting “or live poultry
15 dealer” after “packer” each place it appears.

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

21 (d) VIOLATIONS BY LIVE POULTRY DEALERS.—

22 (1) PENALTY.—Section 203(b) of the Packers
23 and Stockyards Act, 1921 (7 U.S.C. 193(b)) is
24 amended in the third sentence by striking
25 “\$10,000” and inserting “\$22,000”.

1 (2) REPEALS.—Sections 411, 412, and 413 of
2 the Packers and Stockyards Act, 1921 (7 U.S.C.
3 228b–2, 228b–3, 228b–4)), are repealed.

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

5 Section 202 of the Packers and Stockyards Act, 1921
6 (7 U.S.C. 192), is amended—

7 (1) in subsection (a), by inserting after “de-
8 vice” the following: “, regardless of whether the
9 practice or device causes a competitive injury or oth-
10 erwise adversely affects competition and regardless
11 of any alleged business justification for the practice
12 or device”; and

13 (2) in subsection (e), by inserting after “com-
14 merce” the following: “, regardless of whether the
15 course of business or act causes a competitive injury
16 or otherwise adversely affects competition and re-
17 gardless of any alleged business justification for the
18 course of business or act”.

19 **SEC. 203. ATTORNEYS’ FEES.**

20 Section 308(a) of the Packers and Stockyards Act,
21 1921 (7 U.S.C. 209(a)) is amended by inserting before
22 the period at the end the following: “and for the costs
23 of the litigation, including reasonable attorneys’ fees”.

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

2 Section 407(a) of the Packers and Stockyards Act,
3 1921 (7 U.S.C. 228(a)), is amended by inserting “obtain
4 the services of attorneys who are not employees of the
5 Federal Government,” before “and make such expendi-
6 tures”.

7 **SEC. 205. REGULATIONS.**

8 (a) **IN GENERAL.**—Not later than 180 days after the
9 date of enactment of this Act, the Secretary of Agriculture
10 shall promulgate regulations to implement the amend-
11 ments made by this Act, including providing a definition
12 of the term “unreasonable preference or advantage” for
13 purposes of section 202(b) of the Packers and Stockyards
14 Act, 1921 (7 U.S.C. 192(b)).

15 (b) **REQUIREMENTS.**—Regulations promulgated
16 under subsection (a) shall strictly prohibit any preferences
17 or price differences based on volume except for preferences
18 or price differences that reflect actual, verifiable lower
19 costs of acquiring livestock from larger volume producers.

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