

Public Law 100-173
100th Congress

An Act

To amend the Packers and Stockyards Act, 1921, to provide financial protection to poultry growers and sellers, and to clarify Federal jurisdiction under such Act.

Nov. 23, 1987

[H.R. 3457]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Poultry
Producers
Financial
Protection
Act of 1987.
7 USC 181 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Poultry Producers Financial Protection Act of 1987".

SEC. 2. DEFINITIONS.

Section 2(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182), is amended—

- (1) in paragraph (5) by striking "and" at the end;
- (2) by redesignating paragraph (6) as paragraph (11); and
- (3) by inserting after paragraph (5) the following:

"(6) The term 'poultry' means chickens, turkeys, ducks, geese, and other domestic fowl;

"(7) The term 'poultry product' means any product or byproduct of the business of slaughtering poultry and processing poultry after slaughter;

"(8) The term 'poultry grower' means any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such person or by another, but not an employee of the owner of such poultry;

"(9) The term 'poultry growing arrangement' means any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another's instructions, for slaughter;

"(10) The term 'live poultry dealer' means any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another, if poultry is obtained by such person in commerce, or if poultry obtained by such person is sold or shipped in commerce, or if poultry products from poultry obtained by such person are sold or shipped in commerce; and".

SEC. 3. UNLAWFUL PRACTICES.

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

- (1) by striking "It shall be unlawful with respect to livestock, meats, meat food products, livestock products in unmanufactured form, poultry or poultry products for any packer or any live poultry dealer or handler to:" and inserting "It shall be unlawful for any packer with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:"; and

- (2) in subdivision (c) by striking "Sell or otherwise transfer to or for any other packer or any live poultry dealer or handler, or

buy or otherwise receive from or for any other packer or any live poultry dealer or handler, any article for the purpose or with the effect of apportioning the supply between any such packers," and inserting "Sell or otherwise transfer to or for any other packer or any live poultry dealer, or buy or otherwise receive from or for any other packer or any live poultry dealer. any article for the purpose or with the effect of apportioning the supply between any such persons,".

SEC. 4. STATUTORY TRUST ESTABLISHED.

The Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), is amended by inserting after section 206 the following:

7 USC 197.

"SEC. 207. (a) It is hereby found that a burden on and obstruction to commerce in poultry is caused by financing arrangements under which live poultry dealers encumber, give lenders security interest in, or place liens on, poultry obtained by such persons by purchase in cash sales or by poultry growing arrangements, or on inventories of or receivables or proceeds from such poultry or poultry products therefrom, when payment is not made for the poultry and that such financing arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in poultry and protect the public interest.

"(b) All poultry obtained by a live poultry dealer, by purchase in cash sales or by poultry growing arrangement, and all inventories of, or receivables or proceeds from such poultry or poultry products derived therefrom, shall be held by such live poultry dealer in trust for the benefit of all unpaid cash sellers or poultry growers of such poultry, until full payment has been received by such unpaid cash sellers or poultry growers, unless such live poultry dealer does not have average annual sales of live poultry, or average annual value of live poultry obtained by purchase or by poultry growing arrangement, in excess of \$100,000.

"(c) Payment shall not be considered to have been made if the cash seller or poultry grower receives a payment instrument which is dishonored.

"(d) The unpaid cash seller or poultry grower shall lose the benefit of such trust if, in the event that a payment instrument has not been received, within 30 days of the final date for making payment under section 410, or within 15 business days after the seller or poultry grower has received notice that the payment instrument promptly presented for payment has been dishonored, the seller or poultry grower has not preserved his trust under this section. The trust shall be preserved by giving written notice to the live poultry dealer and by filing such notice with the Secretary.

"(e) For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer."

SEC. 5. LIABILITY AND ENFORCEMENT.

Section 308(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 209(a)), is amended by inserting "the purchase or sale of poultry, or relating to any poultry growing arrangement," after "livestock,".

SEC. 6. RECORDS AND RESPONSIBILITY.

Sections 401 and 403 of the Packers and Stockyards Act, 1921 (7 U.S.C. 221, 223), are each amended by striking, "or any live poultry dealer or handler," each place it appears and inserting ", any live poultry dealer,".

SEC. 7. POWERS OF FEDERAL TRADE COMMISSION AND SECRETARY OF AGRICULTURE.

Section 406 of the Packers and Stockyards Act, 1921 (7 U.S.C. 227), is amended—

(1) in subsection (b)—

(A) in the first sentence of paragraph (2)—

(i) by striking “or poultry products”; and

(ii) by inserting “or” before “livestock products in unmanufactured form.”; and

(B) by amending paragraph (3) to read as follows:

“(3) Over all transactions in commerce in margarine, oleomargarine, or poultry products and over retail sales of meat, meat food products and livestock products in unmanufactured form.”;

Margarine.
Meat.

(2) by amending subsection (d) to read as follows:

“(d) The Secretary of Agriculture shall exercise power or jurisdiction over oleomargarine or retail sales of meat, meat food products, or livestock products in unmanufactured form only when he determines, in any investigation of, or any proceeding for the prevention of, an alleged violation of this Act, that such action is necessary to avoid impairment of his power or jurisdiction over acts or transactions involving livestock, meat, meat food products, livestock products in unmanufactured form, or poultry other than retail sales thereof. In order to avoid unnecessary duplication of effort by the Government and burdens upon the industry, the Secretary shall notify the Federal Trade Commission of such determination, the reasons therefor, and the acts or transactions involved, and shall not exercise power or jurisdiction with respect to acts or transactions involving oleomargarine or retail sales of meat, meat food products, or livestock products in unmanufactured form if the Commission within 10 days from the date of receipt of such notice notifies the Secretary that there is pending in the Commission an investigation of, or proceeding for the prevention of, an alleged violation of any Act administered by the Commission involving the same subject matter.”;

(3) by redesignating subsection (e) as subsection (f);

(4) by inserting after subsection (d) the following:

“(e) The Secretary of Agriculture shall exercise jurisdiction over poultry products only in a proceeding brought under section 207 or section 410 when such action is necessary to avoid impairment of his jurisdiction.”; and

(5) in subsection (f), as so redesignated, by striking “and (d)” and inserting “, (d), and (e)”.

SEC. 8. AUTHORITY OF SECRETARY TO REQUEST INJUNCTIVE RELIEF.

Section 408 of the Packers and Stockyards Act, 1921 (7 U.S.C. 228a), is amended by inserting after “unmanufactured form,” the following: “or live poultry, or has failed to pay any poultry grower what is due on account of poultry obtained under a poultry growing arrangement,”.

SEC. 9. PROMPT PAYMENT FOR PURCHASE OF POULTRY.

The Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), is amended—

(1) by redesignating sections 410 and 411 as sections 414 and 415, respectively; and

7 USC 228c, 229.

(2) by inserting after section 409 the following:

7 USC 228b-1.

"Sec. 410. (a) Each live poultry dealer obtaining live poultry by purchase in a cash sale shall, before the close of the next business day following the purchase of poultry, and each live poultry dealer obtaining live poultry under a poultry growing arrangement shall, before the close of the fifteenth day following the week in which the poultry is slaughtered, deliver, to the cash seller or poultry grower from whom such live poultry dealer obtains the poultry, the full amount due to such cash seller or poultry grower on account of such poultry.

"(b) Any delay or attempt to delay, by a live poultry dealer which is a party to any such transaction, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for poultry obtained by poultry growing arrangement or purchased in a cash sale, shall be considered an 'unfair practice' in violation of this Act. Nothing in this section shall be deemed to limit the meaning of the term 'unfair practice' as used in this Act.

"(c) For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.

7 USC 228b-2.

"Sec. 411. (a) Whenever the Secretary has reason to believe that any live poultry dealer has violated or is violating any provision of section 207 or section 410 of this Act, he shall cause a complaint in writing to be served upon the live poultry dealer, stating his charges in that respect, and requiring the live poultry dealer to attend and testify at a hearing at a time and place designated therein, at least 30 days after the service of such complaint; and at such time and place there shall be afforded the live poultry dealer a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may, on application, be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel. At any time prior to the close of the hearing, the Secretary may amend the complaint; but in case of any amendment adding new charges, the hearing shall, on the request of the live poultry dealer, be adjourned for a period not exceeding 15 days.

Reports.

"(b) If, after such hearing, the Secretary finds that the live poultry dealer has violated, or is violating, any provisions of section 207 or section 410 of this Act covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the live poultry dealer an order requiring such live poultry dealer to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture. The Secretary may also assess a civil penalty of not more than \$20,000 for each such violation. In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business: *Provided, however,* That in no event can the penalty assessed by the Secretary take priority over or impede the ability of the live poultry dealer to pay any unpaid cash seller or poultry grower. If, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the person against whom the civil penalty is assessed fails to pay such penalty, the Secretary may refer the matter to the Attorney General, who may

recover such penalty by an action in the appropriate District Court of the United States.

"(c) Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 412, the Secretary, at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the live poultry dealer to be heard, may amend or set aside the report or order, in whole or in part.

"(d) Complaints, orders, and other processes of the Secretary under this section may be served in the same manner as provided in section 5 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes', approved September 26, 1914.

"SEC. 412. (a) An order made under section 411 shall be final and conclusive unless within 30 days after service the live poultry dealer appeals to the court of appeals for the circuit in which he has his principal place of business, by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such live poultry dealer will pay the costs of the proceedings if the court so directs.

7 USC 228b-3.

"(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"(c) At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary injunction, restraining, to the extent it deems proper, the live poultry dealer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

"(d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

"(e) The court may affirm, modify, or set aside the order of the Secretary.

"(f) If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modification or setting aside of his order, with the return of such additional evidence.

"(g) If the court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the live poultry dealer, and his officers, directors, agents, and employees from violating the provisions of such order or such order as modified.

"(h) The court of appeals shall have jurisdiction which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, United States Code, if such writ is duly applied for within 60 days after entry of the decree. The issue of such writ shall not operate as a stay of the decree of the court of appeals, insofar as such decree operates as an injunction, unless so ordered by the Supreme Court.

7 USC 228b-4.

"SEC. 413. Any live poultry dealer, or any officer, director, agent, or employee of a live poultry dealer, who fails to obey any order of the Secretary issued under the provisions of section 411, or such order as modified—

"(1) after the expiration of the time allowed for filing a petition in the court of appeals to set aside or modify such order, if no such petition has been filed within such time;

"(2) after the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the court of appeals and no such writ has been applied for within such time; or

"(3) after such order, or such order as modified, has been sustained by the courts as provided in section 412;

shall on conviction be fined not less than \$1,000 nor more than \$20,000. Each day during which such failure continues shall be deemed a separate offense."

SEC. 10. REPEALER.

Title V of the Packers and Stockyards Act, 1921 (7 U.S.C. 218-218d), is repealed.

SEC. 11. CONSTRUCTION.

7 USC 227 note.

(a) **GENERAL RULE.**—The amendments made by this Act to the Packers and Stockyards Act, 1921, shall not be construed to limit or otherwise affect the power or jurisdiction of the Federal Trade Commission under the Federal Trade Commission Act to prevent the use of—

(1) unfair methods of competition in or affecting commerce, and

(2) unfair and deceptive acts or practices in or affecting commerce, involving poultry products.

(b) **SECRETARY'S AUTHORITY.**—Subsection (a) shall not be construed to limit or otherwise affect the authority of the Secretary of Agriculture under section 406(e), as amended, of the Packers and Stockyards Act, 1921.

SEC. 12. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 90 days after the date of the enactment of this Act. 7 USC 182 note.

Approved November 23, 1987.

LEGISLATIVE HISTORY—H.R. 3457:

HOUSE REPORTS: No. 100-397 (Comm. on Agriculture).

CONGRESSIONAL RECORD, Vol. 133 (1987):

Oct. 27, considered and passed House.

Nov. 3, considered and passed Senate.