

107TH CONGRESS  
2D SESSION

# H. R. 3810

To prohibit livestock packers from owning or feeding livestock intended for slaughter for more than 14 days before such slaughter, to prohibit excessive concentration resulting from mergers among certain purchasers, processors, and sellers of livestock, poultry, and basic agricultural commodities, to require the Attorney General to establish an Office of Special Counsel for Agriculture, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2002

Mr. NUSSLE (for himself and Mr. THUNE) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To prohibit livestock packers from owning or feeding livestock intended for slaughter for more than 14 days before such slaughter, to prohibit excessive concentration resulting from mergers among certain purchasers, processors, and sellers of livestock, poultry, and basic agricultural commodities, to require the Attorney General to establish an Office of Special Counsel for Agriculture, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Livestock Ownership  
3 Fairness Act of 2002”.

4 **TITLE I—LIVESTOCK OWNER-**  
5 **SHIP AND FEEDING PROHIBI-**  
6 **TION**

7 **SEC. 101. PROHIBITION ON PACKERS OWNING OR FEEDING**  
8 **LIVESTOCK FOR EXTENDED PERIOD.**

9 (a) PROHIBITION; EXCEPTIONS.—The Packers and  
10 Stockyards Act, 1921, is amended by inserting after sec-  
11 tion 202 (7 U.S.C. 192) the following new section:

12 **“SEC. 202A. PROHIBITION ON PACKERS OWNING OR FEED-**  
13 **ING LIVESTOCK FOR EXTENDED PERIOD.**

14 “(a) PROHIBITION.—It shall be unlawful for any  
15 packer with respect to livestock, meats, meat food prod-  
16 ucts, or livestock products in unmanufactured form to own  
17 or feed livestock intended for slaughter for more than 14  
18 days prior to slaughter. The prohibition applies regardless  
19 of whether the ownership or feeding of the livestock is by  
20 the packer directly or through a subsidiary or an arrange-  
21 ment described in subsection (b).

22 “(b) COVERED ARRANGEMENTS.—The arrangements  
23 referred to in subsection (a) mean arrangements that give  
24 a packer operational, managerial, or supervisory control  
25 over livestock or over a farming operation that produces  
26 livestock to such an extent that the actual producer of the

1 livestock is no longer materially participating (as such  
2 term is defined in section 469(h) of the Internal Revenue  
3 Code of 1986) in the management of the farming oper-  
4 ation with respect to the production of the livestock.

5 “(c) EXCEPTIONS.—Subsection (a) does not apply to  
6 the following:

7 “(1) Forward contracting arrangements, exe-  
8 cuted in advance of slaughter and used by packers  
9 for the purchase of livestock, so long as the producer  
10 retains operational, managerial, and supervisory con-  
11 trol over the livestock until their delivery for slaugh-  
12 ter and over the farming operation that produces the  
13 livestock.

14 “(2) A cooperative, if a majority of the owner-  
15 ship interest in the cooperative is held by active co-  
16 operative members that—

17 “(A) own or feed livestock; and

18 “(B) provide the livestock to the coopera-  
19 tive for slaughter.

20 “(3) A packer that is owned or controlled by  
21 producers of a type of livestock, if, during the pre-  
22 vious calendar year, the packer slaughtered less than  
23 2 percent of the total number of that type of live-  
24 stock slaughtered in the United States.

1       “(d) CONSPIRACY.—It shall also be unlawful for any  
2 packer to conspire, combine, agree, or arrange with any  
3 other person to do, or aid or abet the doing of, any act  
4 made unlawful by subsection (a).”.

5       (b) EFFECTIVE DATE.—

6           (1) IN GENERAL.—Subject to paragraph (2),  
7 section 202A of the Packers and Stockyards Act,  
8 1921, as added by subsection (a), takes effect on the  
9 date of the enactment of this Act.

10          (2) TRANSITION RULES.—In the case of a pack-  
11 er that, as of the date of the enactment of this Act,  
12 owns or feeds livestock in violation of section 202A  
13 of the Packers and Stockyards Act, 1921, the prohi-  
14 bitions in subsections (a) and (d) of such section  
15 shall apply to the packer—

16           (A) in the case of a packer of swine, begin-  
17 ning 540 days after the date of the enactment  
18 of this Act; and

19           (B) in the case of a packer of any other  
20 type of livestock, beginning as soon as prac-  
21 ticable, but not later than 180 days, after the  
22 date of the enactment of this Act, as deter-  
23 mined by the Secretary of Agriculture.

1           **TITLE II—AGRICULTURAL**  
2           **ANTITRUST PROVISIONS**

3   **SEC. 201. PREMERGER NOTICE REQUIREMENT.**

4           (a) NOTICE.—Whenever a person in the business of  
5   purchasing livestock, poultry, or a basic agricultural com-  
6   modity for wholesale resale either unprocessed or proc-  
7   essed, files a notification under section 7A of the Clayton  
8   Act (15 U.S.C. 18a), such person shall file simultaneously  
9   with the Secretary a notice in accordance with rules issued  
10   by the Secretary, that such person has filed such notifica-  
11   tion.

12          (b) PUBLIC COMMENTS.—The Secretary shall—

13               (1) publish promptly in the Federal Register a  
14          copy of each notice received under subsection (a),

15               (2) accept public comments on the proposed  
16          merger described in such notice, and

17               (3) consider as part of the review required by  
18          subsection (c), such comments timely received.

19          (c) REVIEW.—Not later than 30 days after receiving  
20   a notice filed under subsection (a), the Secretary shall—

21               (1) review the proposed acquisition described in  
22          such notice;

23               (2) determine—

24                       (A) the probable effects such acquisition  
25          would have on the prices paid to producers of

any livestock, poultry, or basic agricultural commodities who sell to, buy from, or bargain with 1 or more of the persons involved in the proposed acquisition; and

(B) whether such acquisition would—

(i) result in significantly increased market power for any of such persons; and

(ii) increase the potential for anti-competitive or predatory pricing conduct by any of such persons;

(3) prepare a report containing—

(A) the detailed findings made by the Secretary as a result of such review and such determination; and

(B) an economic analysis of the Secretary regarding whether such acquisition may substantially lessen competition or tend to create a monopoly; and

(4) transmit to the Office of Special Counsel for Agriculture, and shall publish in the Federal Register, simultaneously, a copy of such report.

**SEC. 202. SPECIAL COUNSEL FOR AGRICULTURE.**

(a) ESTABLISHMENT OF OFFICE.—The Attorney General shall establish in the Department of Justice an Office of Special Counsel for Agriculture that shall handle

1 agricultural antitrust issues and related matters, as deter-  
2 mined by the Attorney General.

3 (b) APPOINTMENT.—The Special Counsel for Agri-  
4 culture may be appointed by the Attorney General only  
5 after the expiration of the 30-day period beginning on the  
6 date the Attorney General publishes in the Federal Reg-  
7 ister the name of the individual proposed to be appointed  
8 and requests public comment with respect to the appoint-  
9 ment of such individual.

10 **SEC. 203. DEFINITIONS.**

11 For purposes of this title—

12 (1) the term “antitrust laws” has the meaning  
13 given such term in subsection (a) of the 1st section  
14 of the Clayton Act (15 U.S.C. 12(a)),

15 (2) the term “basic agricultural commodity”  
16 means corn, wheat, or soybeans,

17 (3) the term “livestock” means cattle, sheep,  
18 goats, swine, or equine animals used for food or in  
19 the production of food,

20 (4) the term “person” has the meaning given  
21 such term in subsection (a) of the 1st section of the  
22 Clayton Act (15 U.S.C. 12(a)),

23 (5) the term “poultry” means chickens, turkeys,  
24 ducks, geese, or other domestic fowl used for food or  
25 in the production of food, and

- 1           (6) the term “Secretary” means the Secretary  
2   of Agriculture.

