

109TH CONGRESS  
1ST SESSION

# S. 960

To amend the Packers and Stockyards Act, 1921, to prohibit the use of certain anti-competitive forward contracts.

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## IN THE SENATE OF THE UNITED STATES

APRIL 28, 2005

Mr. ENZI (for himself, Mr. DORGAN, Mr. JOHNSON, 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 amend the Packers and Stockyards Act, 1921, to prohibit the use of certain anti-competitive forward contracts.

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.**

4       This Act may be cited as the “Captive Supply Reform  
5       Act”.

6       **SEC. 2. LIMITATION ON USE OF FORWARD CONTRACTS.**

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

9               (1) by striking “to:” and inserting “to—”;

1           (2) by redesignating subsections (a), (b), (c),  
 2           (d), (e), (f), and (g) as paragraphs (1), (2), (3), (4),  
 3           (5), (7), and (8), respectively, and indenting appro-  
 4           priately;

5           (3) in paragraph (7) (as redesignated by para-  
 6           graph (2)), by designating paragraphs (1), (2), and  
 7           (3) as subparagraphs (A), (B), and (C), respectively;

8           (4) in paragraph (8) (as redesignated by para-  
 9           graph (2)), by striking “subdivision (a), (b), (c), (d),  
 10          or (e)” and inserting “paragraph (1), (2), (3), (4),  
 11          (5), or (6)”;

12          (5) in each of paragraphs (1), (2), (3), (4), (5),  
 13          (7), and (8) (as redesignated by paragraph (2)), by  
 14          striking the first capital letter of the first word in  
 15          the paragraph and inserting the same letter in the  
 16          lower case;

17          (6) in each of paragraphs (1) through (5) (as  
 18          redesignated by paragraph (2)), by striking “or” at  
 19          the end; and

20          (7) by inserting after paragraph (5) (as redesign-  
 21          ated by paragraph (2)) the following:

22               “(6) use, in effectuating any sale of livestock,  
 23          a forward contract that—

24                       “(A) does not contain a firm base price  
 25                       that may be equated to a fixed dollar amount

1 on the day on which the forward contract is en-  
 2 tered into;

3 “(B) is not offered for bid in an open, pub-  
 4 lic manner under which—

5 “(i) buyers and sellers have the oppor-  
 6 tunity to participate in the bid;

7 “(ii) more than 1 blind bid is solie-  
 8 ited; and

9 “(iii) buyers and sellers may witness  
 10 bids that are made and accepted;

11 “(C) is based on a formula price; or

12 “(D) provides for the sale of livestock in a  
 13 quantity in excess of—

14 “(i) in the case of cattle, 40 cattle;

15 “(ii) in the case of swine, 30 swine;

16 and

17 “(iii) in the case of other types of live-  
 18 stock, a comparable quantity of the type of  
 19 livestock determined by the Secretary.”.

20 (b) DEFINITIONS.—Section 2(a) of the Packers and  
 21 Stockyards Act, 1921 (7 U.S.C. 182(a)) is amended by  
 22 adding at the end the following:

23 “(15) FORMULA PRICE.—

24 “(A) IN GENERAL.—The term ‘formula  
 25 price’ means any price term that establishes a

1 base from which a purchase price is calculated  
2 on the basis of a price that will not be deter-  
3 mined or reported until a date after the day the  
4 forward price is established.

5 “(B) EXCLUSION.—The term ‘formula  
6 price’ does not include—

7 “(i) any price term that establishes a  
8 base from which a purchase price is cal-  
9 culated on the basis of a futures market  
10 price; or

11 “(ii) any adjustment to the base for  
12 quality, grade, or other factors relating to  
13 the value of livestock or livestock products  
14 that are readily verifiable market factors  
15 and are outside the control of the packer.

16 “(16) FORWARD CONTRACT.—The term ‘for-  
17 ward contract’ means an oral or written contract for  
18 the purchase of livestock that provides for the deliv-  
19 ery of the livestock to a packer at a date that is  
20 more than 7 days after the date on which the con-  
21 tract is entered into, without regard to whether the  
22 contract is for—

23 “(A) a specified lot of livestock; or

- 1 “(B) a specified number of livestock over a
- 2 certain period of time.”.

