

112TH CONGRESS  
1ST SESSION

# H. R. 2631

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2011

Mrs. LUMMIS (for herself and Ms. KAPTUR) introduced the following bill;  
which was referred to the Committee on Agriculture

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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 “Livestock Marketing  
5 Fairness Act”.

6       **SEC. 2. PURPOSE.**

7       The purpose of the amendments made by this Act  
8 is to prohibit the use of certain anti-competitive forward  
9 contracts—

1 (1) to require a firm base price in forward con-  
2 tracts and marketing agreements; and

3 (2) to require that forward contracts be traded  
4 in open, public markets.

5 **SEC. 3. LIMITATION ON USE OF ANTI-COMPETITIVE FOR-**  
6 **WARD 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 “**Sec. 202.** It shall be” and in-  
10 sserting the following:

11 **“SEC. 202. UNLAWFUL PRACTICES.**

12 “(a) IN GENERAL.—It shall be”;

13 (2) by striking “to:” and inserting “to—”;

14 (3) by redesignating subsections (a), (b), (c),  
15 (d), (e), (f), and (g) as paragraphs (1), (2), (3), (4),  
16 (5), (7), and (8), respectively, and indenting appro-  
17 priately;

18 (4) in paragraph (7) (as redesignated by para-  
19 graph (3)), by redesignating paragraphs (1), (2),  
20 and (3) as subparagraphs (A), (B), and (C), respec-  
21 tively, and indenting appropriately;

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

1           (6) in each of paragraphs (1), (2), (3), (4), (5),  
2           (7), and (8) (as redesignated by paragraph (3)), by  
3           striking the first capital letter of the first word in  
4           the paragraph and inserting the same letter in the  
5           lowercase;

6           (7) in each of paragraphs (1) through (5) (as  
7           redesignated by paragraph (3)), by striking “or” at  
8           the end;

9           (8) by inserting after paragraph (5) (as redesign-  
10          nated by paragraph (3)) the following:

11          “(6) except as provided in subsection (c), use,  
12          in effectuating any sale of livestock, a forward con-  
13          tract that—

14                 “(A) does not contain a firm base price  
15                 that may be equated to a fixed dollar amount  
16                 on the day on which the forward contract is en-  
17                 tered into;

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

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

22                         “(ii) buyers and sellers may witness  
23                         bids that are made and accepted;

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

1           “(D) subject to subsection (b), provides for  
2           the sale of livestock in a quantity in excess of—

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

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

5                   and

6                   “(iii) in the case of other types of live-  
7                   stock, a comparable quantity of the type of  
8                   livestock determined by the Secretary.”;

9                   and

10           (9) by adding at the end the following:

11           “(b) ADJUSTMENTS.—The Secretary may adjust the  
12           maximum quantity of livestock described in subsection  
13           (a)(6)(D) to reflect advances in marketing and transpor-  
14           tation capabilities if the adjusted quantity provides rea-  
15           sonable market access for all buyers and sellers.

16           “(c) EXEMPTION FOR COOPERATIVES.—Subsection  
17           (a)(6) shall not apply to—

18                   “(1) a cooperative or entity owned by a cooper-  
19                   ative, if a majority of the ownership interest in the  
20                   cooperative is held by active cooperative members  
21                   that—

22                           “(A) own, feed, or control livestock; and

23                           “(B) provide the livestock to the coopera-  
24                   tive for slaughter;

1           “(2) a packer that is not required to report to  
2 the Secretary on each reporting day (as defined in  
3 section 212 of the Agricultural Marketing Act of  
4 1946 (7 U.S.C. 1635a)) information on the price  
5 and quantity of livestock purchased by the packer;  
6 or

7           “(3) a packer that owns only 1 livestock proc-  
8 essing plant.”.

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

12           “(15) FIRM BASE PRICE.—The term ‘firm base  
13 price’ means a transaction using a reference price  
14 from an external source.

15           “(16) FORMULA PRICE.—

16           “(A) IN GENERAL.—The term ‘formula  
17 price’ means any price term that establishes a  
18 base from which a purchase price is calculated  
19 on the basis of a price that will not be deter-  
20 mined or reported until a date after the day the  
21 forward price is established.

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

24           “(i) any price term that establishes a  
25 base from which a purchase price is cal-

1                   culated on the basis of a futures market  
2                   price; or

3                   “(ii) any adjustment to the base for  
4                   quality, grade, or other factors relating to  
5                   the value of livestock or livestock products  
6                   that are readily verifiable market factors  
7                   and are outside the control of the packer.

8                   “(17) FORWARD CONTRACT.—The term ‘for-  
9                   ward contract’ means an oral or written contract for  
10                  the purchase of livestock that provides for the deliv-  
11                  ery of the livestock to a packer at a date that is  
12                  more than 7 days after the date on which the con-  
13                  tract is entered into, without regard to whether the  
14                  contract is for—

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

16                         “(B) a specified number of livestock over a  
17                         certain period of time.”.

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