

Public Law 94-410
94th Congress

An Act

To amend the Packers and Stockyards Act of 1921, as amended, and for other purposes.

Sept. 13, 1976
[H.R. 8410]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proviso in the paragraph designated "Packers and Stockyards Act" under the heading "MARKETING SERVICE" in the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), is amended by striking out "market agency and dealer" and inserting in lieu thereof "market agency (as defined in title III of the Act), every packer (as defined in title II of the Act) in connection with its livestock purchasing operations (except that those packers whose average annual purchases do not exceed \$500,000 will be exempt from the provisions of this paragraph), and every other person operating as a dealer (as defined in title III of the Act)".

Packers and
Stockyards
Act of 1921,
amendments.

7 USC 201.
Infra.

SEC. 2. Section 201 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 191) is amended to read as follows:

"Packer."

"SEC. 201. When used in this Act the term 'packer' means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce."

SEC. 3. (a) Sections 202 and 312(a) of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 192 and 213(a)) are amended by deleting the phrase "in commerce" wherever it appears in those sections, and by deleting the commas immediately before and following the phrase "in commerce" in sections 202(b) and 312(a) of the Act (7 U.S.C. 192(b) and 213(a)).

(b) Sections 203(b) and 312(b) of the Packers and Stockyards Act (7 U.S.C. 193(b) and 213(b)) are amended by adding at the end of both sections the following new sentences: "The Secretary may also assess a civil penalty of not more than \$10,000 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. 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."

Penalty.

(c) The Packers and Stockyards Act, 1921, as amended, is amended by striking out the words "live stock" and "live-stock" wherever they appear in the Act and substituting therefor "livestock".

7 USC 182, 183,
201, 207, 210,
212, 213.

SEC. 4. The proviso in the paragraph designated "Packers and Stockyards Act" under the heading "MARKETING SERVICE" in the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), is further

Notice and
hearing.

amended by adding at the end thereof a new sentence as follows: "If the Secretary finds any packer is insolvent, he may after notice and hearing issue an order under the provisions of section 203 requiring such packer to cease and desist from purchasing livestock while insolvent, or while insolvent purchasing livestock except under such conditions as the Secretary may prescribe to effectuate the purposes of the Act."

Temporary
injunction or
restraining order.
7 USC 229.
7 USC 228a.

SEC. 5. The Packers and Stockyards Act, 1921, as amended, is further amended by redesignating section 408 as section 411 and by adding a new section 408 to read as follows:

"SEC. 408. Whenever the Secretary has reason to believe that any person subject to this Act (a) with respect to any transactions subject to this Act, has failed to pay or is unable to pay for livestock, meats, meat food products, or livestock products in unmanufactured form, or has failed to remit to the person entitled thereto the net proceeds from the sale of any such commodity sold on a commission basis; or (b) has operated while insolvent, or otherwise in violation of this Act in a manner which may reasonably be expected to cause irreparable damage to another person; or (c) does not have the required bond; and that it would be in the public interest to enjoin such person from operating subject to this Act or enjoin him from operating subject to this Act except under such conditions as would protect vendors or consignors of such commodities or other affected persons, until a complaint under this Act is issued and dismissed by the Secretary or until an order to cease and desist made thereon by the Secretary has become final and effective within the meaning of this Act or is set aside on appellate review of the Secretary's order, the Secretary may notify the Attorney General, who may apply to the United States district court for the district in which such person has his principal place of business or in which he resides for a temporary injunction or restraining order. When needed to effectuate the purposes of this section, the court shall, upon a proper showing, issue a temporary injunction or restraining order, without bond. Attorneys employed by the Secretary of Agriculture may, with the approval of the Attorney General, appear in the United States district court representing the Secretary in any action seeking such a temporary restraining order or injunction."

Violations.

SEC. 6. Section 308(a) of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 209(a)) is amended to read as follows:

"(a) If any person subject to this Act violates any of the provisions of this Act, or of any order of the Secretary under this Act, relating to the purchase, sale, or handling of livestock, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation."

SEC. 7. The Packers and Stockyards Act, 1921, as amended, is further amended by adding after section 408 (7 U.S.C. 229) a new section 409 to read as follows:

Livestock
delivery.
7 USC 228b.

"SEC. 409. (a) Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price: *Provided*, That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of

possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized representative a check or shall wire transfer funds to the seller's account for the full amount of the purchase price; or, in the case of a purchase on a carcass or 'grade and yield' basis, the purchaser shall make payment by check at the point of transfer of possession or shall wire transfer funds to the seller's account for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: *Provided further*, That if the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency or dealer shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirement for prompt payment.

"(b) Notwithstanding the provisions of subsection (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a). Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

Written agreement.

Disclosure.

"(c) Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock 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."

Unfair practice.

SEC. 8. The Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), is further amended by adding after section 205 (7 U.S.C. 195) a new section 206, to read as follows:

"SEC. 206. (a) It is hereby found that a burden on and obstruction to commerce in livestock is caused by financing arrangements under which packers encumber, give lenders security interest in, or place liens on, livestock purchased by packers in cash sales, or on inventories of or receivables or proceeds from meat, meat food products, or livestock products therefrom, when payment is not made for the livestock and that such arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in livestock and protect the public interest.

Financing arrangements, remedy.
7 USC 196.

"(b) All livestock purchased by a packer in cash sales, and all inventories of, or receivables or proceeds from meat, meat food products, or livestock products derived therefrom, shall be held by such packer in trust for the benefit of all unpaid cash sellers of such livestock until full payment has been received by such unpaid sellers: *Provided*, That any packer whose average annual purchases do not exceed \$500,000 will be exempt from the provisions of this section. Payment shall not be considered to have been made if the seller receives a payment instrument which is dishonored: *Provided*, That the unpaid seller shall lose the benefit of such trust if, in the event that a payment instrument has

not been received, within thirty days of the final date for making a payment under section 409, or within fifteen business days after the seller has received notice that the payment instrument promptly presented for payment has been dishonored, the seller has not preserved his trust under this subsection. The trust shall be preserved by giving written notice to the packer and by filing such notice with the Secretary.

“(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.”.

State and local
requirements,
Federal
preemption.
7 USC 228c.

SEC. 9. The Packers and Stockyards Act, 1921, as amended, is further amended by adding after new section 409 a new section 410 to read as follows:

“SEC. 410. No requirement of any State or territory of the United States, or any subdivision thereof, or the District of Columbia, with respect to bonding of packers or prompt payment by packers for livestock purchases may be enforced upon any packer operating in compliance with the bonding provisions under the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), and prompt payment provisions of section 409 of this Act, respectively: *Provided*, That this section shall not preclude a State from enforcing a requirement, with respect to payment for livestock purchased by a packer at a stockyard subject to this Act, which is not in conflict with this Act or regulations thereunder: *Provided further*, That this section shall not preclude a State from enforcing State law or regulations with respect to any packer not subject to this Act or the Act of July 12, 1943.”.

Savings
provision.
7 USC 182 note.
7 USC 181 *et seq.*
7 USC 204.

SEC. 10. Pending proceedings shall not be abated by reason of any provision of this Act, but shall be disposed of pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended, and the Act of July 12, 1943, in effect immediately prior to the effective date of this Act.

Budget estimates,
testimony before
congressional
committees.
7 USC 228.

SEC. 11. Section 407 of the Packers and Stockyards Act, 1921, as amended, is amended by adding the following new subsections to read as follows:

“(d) On or before February 15 of each calendar year beginning with calendar year 1977, or such other date as may be specified by the appropriate committee, the Secretary of Agriculture shall testify before the Senate Committee on Agriculture and Forestry and the House Committee on Agriculture and provide justification in detail of the amount requested in the budget to be appropriated for the next fiscal year for the purposes authorized in the Packers and Stockyards Act, 1921, as amended.

Rules.

“(e) The Secretary shall, not later than sixty days after the effective date of this subsection, prescribe and implement rules to assure that any hearing from which any order may issue under this Act or any hearing the expenses of which are paid from funds authorized to be appropriated under this Act shall—

“(1) if such hearing concerns a single unit of local government or the residents thereof, be held within the boundaries of such unit;

“(2) if such hearing concerns a single geographic area within a State or the residents thereof, be held within the boundaries of such area; or

“(3) if such hearing concerns a single State or the residents thereof, be held within such State.

“(f) For the purposes of subsection (e)—

“(1) the term ‘unit of local government’ means a county, municipality, town, township, village, or other unit of general government below the State level; and

“(2) the term ‘geographic area within a State’ means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.”.

Definitions.

Approved September 13, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-1043 (Comm. on Agriculture) and No. 94-1391 (Comm. of Conference).

SENATE REPORTS: No. 94-932 (Comm. on Agriculture and Forestry) and No. 94-1065 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 122 (1976):

May 6, considered and passed House.

June 17, considered and passed Senate, amended.

Aug. 4, Senate agreed to conference report.

Aug. 30, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 12, No. 38:

Sept. 13, Presidential statement.