

109TH CONGRESS
2D SESSION

S. 2307

To enhance fair and open competition in the production and sale of
agricultural commodities.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2006

Mr. HARKIN (for himself, Mr. ENZI, and Mr. THOMAS) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To enhance fair and open competition in the production
and sale of agricultural commodities.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Competitive and Fair Agricultural Markets Act of
6 2006”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AGRICULTURAL FAIR PRACTICES

Sec. 101. Agricultural fair practices.
 Sec. 102. Application.

TITLE II—PACKERS AND STOCKYARDS

Sec. 201. Investigation of live poultry dealers.
 Sec. 202. No competitive injury requirement.
 Sec. 203. Attorneys fees.
 Sec. 204. Appointment of outside counsel.
 Sec. 205. Competitive harm.
 Sec. 206. Regulations.

1 **TITLE I—AGRICULTURAL FAIR** 2 **PRACTICES**

3 **SEC. 101. AGRICULTURAL FAIR PRACTICES.**

4 The Agricultural Fair Practices Act of 1967 (7
 5 U.S.C. 2301 et seq.) is amended to read as follows:

6 **“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

7 “(a) IN GENERAL.—This Act may be cited as the
 8 ‘Agricultural Fair Practices Act of 1967’.

9 “(b) TABLE OF CONTENTS.—The table of contents
 10 of this Act is as follows:

“Sec. 1. Short title; table of contents.

“Sec. 2. Definitions.

“TITLE I—AGRICULTURAL TRADE PRACTICES

“Sec. 101. Office of Special Counsel for Competition Matters.

“Sec. 102. Report on corporate structure.

“TITLE II—UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN AGRICULTURAL COMMERCE

“Sec. 201. Prohibition on unfair or deceptive acts or practices in agricul-
 tural commerce.

“Sec. 202. Agricultural contracts.

“Sec. 203. Production contracts.

“Sec. 204. Authority of Secretary to promulgate rules and regulations.

“Sec. 205. Enforcement.

“Sec. 206. Effect on other laws.

“Sec. 207. Assignment of association dues and fees.

“Sec. 208. Severability.

1 **“SEC. 2. DEFINITIONS.**

2 “In this Act:

3 “(1) AGRICULTURAL COMMODITY.—The term
4 ‘agricultural commodity’ has the meaning given the
5 term in section 102 of the Agricultural Trade Act of
6 1978 (7 U.S.C. 5602).

7 “(2) AGRICULTURAL CONTRACT.—The term
8 ‘agricultural contract’ means a marketing contract
9 or a production contract.

10 “(3) AGRICULTURAL COOPERATIVE.—The term
11 ‘agricultural cooperative’ means an association of
12 persons engaged in the production, marketing, or
13 processing of an agricultural commodity that meets
14 the requirements of the Act entitled ‘An Act to au-
15 thorize association of producers of agricultural prod-
16 ucts’ (commonly known as the ‘Capper-Volstead
17 Act’) (7 U.S.C. 291 et seq.).

18 “(4) ASSOCIATION OF PRODUCERS.—

19 “(A) IN GENERAL.—The term ‘association
20 of producers’ means an association of producers
21 of agricultural commodities that engages in the
22 marketing, bargaining, shipping, or processing
23 of agricultural commodities or of agricultural
24 services.

25 “(B) INCLUSIONS.—The term ‘association
26 of producers’ includes—

1 “(i) an organization dedicated to pro-
2 moting the common interest and general
3 welfare of producers of agricultural com-
4 modities;

5 “(ii) a cooperative association (as de-
6 fined in section 15(a) of the Agricultural
7 Marketing Act (12 U.S.C. 1141j(a))); and

8 “(iii) an association described in the
9 first section of the Act entitled ‘An Act to
10 authorize association of producers of agri-
11 cultural products’ (commonly known as the
12 ‘Capper-Volstead Act’) (7 U.S.C. 291).

13 “(5) CAPITAL INVESTMENT.—The term ‘capital
14 investment’ means an investment in—

15 “(A) a structure, such as a building or ma-
16 nure storage structure; or

17 “(B) machinery or equipment associated
18 with producing an agricultural commodity that
19 has a useful life of more than 1 year.

20 “(6) COMMISSION MERCHANT.—The term ‘com-
21 mission merchant’ means any person engaged in the
22 business of receiving in interstate or foreign com-
23 merce any agricultural commodity for sale on com-
24 mission.

1 “(7) CONTRACT LIVESTOCK FACILITY.—The
2 term ‘contract livestock facility’ means a facility in
3 which livestock or a product of live livestock is pro-
4 duced under a production contract by a contract
5 producer.

6 “(8) CONTRACTOR.—The term ‘contractor’
7 means a person that, in accordance with a produc-
8 tion contract, owns, or will own, an agricultural
9 commodity that is produced by a contract producer.

10 “(9) CONTRACT PRODUCER.—The term ‘con-
11 tract producer’ means a producer that produces an
12 agricultural commodity under a production contract.

13 “(10) COVERED PERSON.—The term ‘covered
14 person’ means a dealer, handler, contractor, proc-
15 essor, or commission merchant.

16 “(11) CROP.—The term ‘crop’ means an agri-
17 cultural commodity produced from a plant.

18 “(12) DEALER.—The term ‘dealer’ means any
19 person engaged in the business of buying, selling, or
20 marketing agricultural commodities in interstate or
21 foreign commerce.

22 “(13) DEPARTMENT.—The term ‘Department’
23 means the Department of Agriculture.

24 “(14) HANDLER.—The term ‘handler’ means
25 any person engaged in the business or practice of—

1 “(A) acquiring agricultural commodities
2 from producers or associations of producers for
3 processing or sale;

4 “(B) grading, packaging, handling, storing,
5 or processing agricultural commodities received
6 from producers or associations of producers;

7 “(C) contracting or negotiating contracts
8 or other arrangements, written or oral, with or
9 on behalf of producers or associations of pro-
10 ducers with respect to the production or mar-
11 keting of any agricultural commodity; or

12 “(D) acting as an agent or broker for a
13 handler in the performance of any function or
14 act described in subparagraph (A), (B), or (C).

15 “(15) INVESTMENT REQUIREMENT.—The term
16 ‘investment requirement’ means a provision in a pro-
17 duction contract that requires a contract producer to
18 make a capital investment associated with producing
19 an agricultural commodity that, but for the produc-
20 tion contract, the contract producer would not have
21 made.

22 “(16) LIVESTOCK.—The term ‘livestock’ means
23 beef cattle, dairy cattle, swine, sheep, or poultry.

24 “(17) MARKETING CONTRACT.—The term ‘mar-
25 keting contract’ means a written agreement between

1 a covered person and a producer for the purchase of
2 an agricultural commodity produced or raised by the
3 producer.

4 “(18) PERSON.—The term ‘person’ includes an
5 individual, partnership, corporation, limited liability
6 company, limited partnership, or association.

7 “(19) PROCESSOR.—The term ‘processor’
8 means—

9 “(A) any person (other than an agricul-
10 tural cooperative) engaged in the business of
11 handling, preparing, or manufacturing (includ-
12 ing slaughtering) an agricultural commodity or
13 the products of an agricultural commodity for
14 sale or marketing in interstate or foreign com-
15 merce; and

16 “(B) an agricultural cooperative that han-
17 dles, prepares, or manufactures (including
18 slaughtering) agricultural commodities of its
19 members’ own production.

20 “(20) PRODUCE.—The term ‘produce’ means—

21 “(A) to provide feed or services relating to
22 the care and feeding of livestock, including
23 milking dairy cattle and storing raw milk; or

24 “(B) to plant, raise, harvest, and store a
25 crop, including preparing soil for planting and

1 applying a fertilizer, soil conditioner, or pes-
2 ticide to a crop.

3 “(21) PRODUCER.—The term ‘producer’ means
4 a person engaged in the production of an agricul-
5 tural commodity as a farmer, planter, rancher,
6 dairyman, poultryman, or fruit, vegetable, or nut
7 grower.

8 “(22) PRODUCTION CONTRACT.—

9 “(A) IN GENERAL.—The term ‘production
10 contract’ means a written agreement that pro-
11 vides for—

12 “(i) the production of an agricultural
13 commodity by a contract producer; or

14 “(ii) the provision of a management
15 service relating to the production of an ag-
16 ricultural commodity by a contract pro-
17 ducer.

18 “(B) INCLUSIONS.—The term ‘production
19 contract’ includes—

20 “(i) a contract between a contractor
21 and a contract producer for the production
22 of an agricultural commodity; and

23 “(ii) a contract between a contractor
24 and a contract producer for the provision

1 of a management service in the production
2 of an agricultural commodity.

3 “(23) SECRETARY.—The term ‘Secretary’
4 means the Secretary of Agriculture.

5 **“TITLE I—AGRICULTURAL**
6 **TRADE PRACTICES**

7 **“SEC. 101. OFFICE OF SPECIAL COUNSEL FOR COMPETI-**
8 **TION MATTERS.**

9 “(a) ESTABLISHMENT.—

10 “(1) IN GENERAL.—There is established within
11 the Department an office to be known as the ‘Office
12 of Special Counsel for Competition Matters’.

13 “(2) DUTIES.—The Office shall—

14 “(A) investigate and prosecute violations of
15 this Act, the Packers and Stockyards Act, 1921
16 (7 U.S.C. 181 et seq.), and any other Act that
17 the Secretary determines to be appropriate;

18 “(B) serve as a liaison between the De-
19 partment and the Department of Justice and
20 the Federal Trade Commission with respect to
21 competition and trade practices in the food and
22 agricultural sector; and

23 “(C) maintain a staff of attorneys and
24 other professionals with the appropriate exper-
25 tise.

1 “(b) SPECIAL COUNSEL FOR COMPETITION MAT-
2 TERS.—

3 “(1) IN GENERAL.—The Office shall be headed
4 by the Special Counsel for Competition Matters, who
5 shall be appointed by the President, by and with the
6 advice and consent of the Senate.

7 “(2) PROSECUTORIAL AUTHORITY.—Notwith-
8 standing title 28, United States Code, the Special
9 Counsel for Competition Matters shall have the au-
10 thority to bring any civil or administrative action au-
11 thorized under this Act or any other Act that the
12 Secretary determines to be appropriate.

13 **“SEC. 102. REPORT ON CORPORATE STRUCTURE.**

14 “(a) IN GENERAL.—A covered person with annual
15 sales in excess of \$100,000,000 shall annually file with
16 the Secretary a report that describes, with respect to do-
17 mestic activities and foreign activities, the strategic alli-
18 ances, ownership in other covered persons, joint ventures,
19 subsidiaries, brand names, and interlocking boards of di-
20 rectors with other covered persons.

21 “(b) CONFIDENTIALITY.—A report filed under sub-
22 section (a) shall be confidential commercial or financial
23 information for the purposes of section 552(b)(4) of title
24 5, United States Code.

1 **“TITLE II—UNFAIR OR DECEP-**
2 **TIVE ACTS OR PRACTICES IN**
3 **AGRICULTURAL COMMERCE**

4 **“SEC. 201. PROHIBITION ON UNFAIR OR DECEPTIVE ACTS**
5 **OR PRACTICES IN AGRICULTURAL COM-**
6 **MERCE.**

7 “(a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN
8 AGRICULTURAL COMMERCE.—Any unfair or deceptive act
9 or practice in or affecting the marketing, receiving, pur-
10 chasing, sale, or contracting for the production of any ag-
11 ricultural commodity by any covered person shall be un-
12 lawful.

13 “(b) UNFAIR OR DECEPTIVE ACTS OR PRACTICES
14 CONCERNING PRODUCER ASSOCIATIONS.—Subject to sub-
15 section (a), it shall be unlawful for any covered person
16 knowingly—

17 “(1)(A) to interfere with, restrain, or coerce
18 any producer in the exercise of the right of the pro-
19 ducer to join and belong to, or to refrain from join-
20 ing or belonging to, an association of producers; or

21 “(B) to refuse to deal with any producer be-
22 cause of the exercise of the right of the producer to
23 join and belong to the association;

24 “(2) to discriminate against any producer with
25 respect to price, quantity, quality, or other terms of

1 purchase, acquisition, or other handling of an agri-
2 cultural commodity because of the membership of
3 the producer in, or the contract of the producer
4 with, an association of producers;

5 “(3) to coerce or intimidate any producer to
6 enter into, maintain, breach, cancel, or terminate a
7 membership agreement or marketing contract with
8 an association of producers or a contract with a cov-
9 ered person;

10 “(4) to pay or loan money, give any thing of
11 value, or offer any other inducement or reward to a
12 producer for refusing to or ceasing to belong to an
13 association of producers;

14 “(5) to make false reports about the finances,
15 management, or activities of an association of pro-
16 ducers or handlers;

17 “(6) to conspire, combine, agree, or arrange
18 with any other person to do, or aid or abet the per-
19 formance of, any act made unlawful by this Act;

20 “(7)(A) to interfere with the formation or ad-
21 ministration of any association of producers; or

22 “(B) to contribute financial or other support to
23 an association of producers; or

24 “(8) to fail to bargain in good faith.

1 “(c) UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN
2 AGRICULTURAL CONTRACTS.—It shall be unlawful for a
3 covered person that is a party to an agricultural con-
4 tract—

5 “(1) to fail to act in good faith (as defined in
6 applicable State law provisions of the Uniform Com-
7 mercial Code) with respect to the performance and
8 enforcement of the agricultural contract;

9 “(2) to fail to include 1 or more cover pages
10 that disclose provisions of the agricultural contract
11 relating to—

12 “(A) duration;

13 “(B) termination;

14 “(C) renewal and renegotiation standards;

15 “(D) responsibility for environmental dam-
16 age;

17 “(E) factors to be used in determining
18 payment;

19 “(F) responsibility for obtaining and com-
20 plying with Federal, State, and local permits;

21 “(G) assignability;

22 “(H) the applicable State law and venue;

23 “(I) the effect of oral modifications;

24 “(J) remedies for breach;

1 “(K) in the case of a livestock or poultry
2 production contract, the minimum number of
3 animals subject to the contract;

4 “(L) other rules or provisions incorporated
5 in the contract by reference; and

6 “(M) any other terms that the Secretary
7 determines to be appropriate for disclosure; or

8 “(3) to violate any of the requirements relating
9 to production contracts under section 203.

10 “(d) PUBLIC POLICY CONSIDERATIONS.—

11 “(1) IN GENERAL.—In determining whether an
12 act or practice is unfair, a court may consider estab-
13 lished public policies as evidence to be considered
14 with all other evidence.

15 “(2) LIMITATION.—Notwithstanding paragraph
16 (1), public policy considerations may not serve as a
17 primary basis for the determination.

18 **“SEC. 202. AGRICULTURAL CONTRACTS.**

19 “(a) CONFIDENTIALITY.—Any provision of an agri-
20 cultural contract that requires that the agricultural con-
21 tract remain confidential is void, except as the provision
22 applies to a trade secret to which section 552 of title 5,
23 United States Code, applies.

24 “(b) ARBITRATION.—If a livestock or poultry con-
25 tract provides for the use of arbitration to resolve a con-

1 troversy under the livestock or poultry contract, arbitra-
2 tion may be used to settle the controversy only if, after
3 the controversy arises, both parties consent in writing to
4 use arbitration to settle the controversy.

5 **“SEC. 203. PRODUCTION CONTRACTS.**

6 “(a) RIGHT OF CONTRACT PRODUCERS TO CANCEL
7 PRODUCTION CONTRACTS.—

8 “(1) IN GENERAL.—A contract producer may
9 cancel a production contract by mailing a cancella-
10 tion notice to the contractor not later than the later
11 of—

12 “(A) the date that is 3 business days after
13 the date on which the production contract is ex-
14 ecuted; or

15 “(B) any cancellation date specified in the
16 production contract.

17 “(2) DISCLOSURE.—A production contract shall
18 clearly disclose—

19 “(A) the right of the contract producer to
20 cancel the production contract;

21 “(B) the method by which the contract
22 producer may cancel the production contract;
23 and

24 “(C) the deadline for canceling the produc-
25 tion contract.

1 “(b) PRODUCTION CONTRACT LIENS.—

2 “(1) DEFINITION OF LIEN STARTING DATE.—In
3 this subsection, the term ‘lien starting date’
4 means—

5 “(A) in the case of an annual crop, the
6 date on which the annual crop is planted;

7 “(B) in the case of a perennial crop, the
8 starting date on which the perennial crop is
9 subject to a production contract;

10 “(C) in the case of livestock, the date on
11 which the livestock arrive at the contract live-
12 stock facility; and

13 “(D) in the case of milk or any other prod-
14 uct of live livestock, the date on which the milk
15 or other product is produced.

16 “(2) LIENS.—Except as provided in paragraph
17 (8), in the case of a production contract that pro-
18 vides for the production of an agricultural com-
19 modity by a contract producer, the contract pro-
20 ducer shall have a lien in the amount owed to the
21 contract producer under the production contract
22 on—

23 “(A)(i) the agricultural commodity until
24 the agricultural commodity is sold or processed
25 (including slaughtered) by the contractor; and

1 “(ii) the cash proceeds of the sale of the
2 agricultural commodity, including any cash pro-
3 vided as part of the sale; and

4 “(B) any property of the contractor that
5 may be subject to a security interest.

6 “(3) LIEN PERIOD.—A lien for the production
7 of an agricultural commodity under this subsection
8 shall apply during the period—

9 “(A) beginning on the lien starting date;
10 and

11 “(B) ending 1 year after the agricultural
12 commodity is no longer under the control of the
13 contract producer.

14 “(4) PERFECTING OF LIENS.—To perfect a lien
15 for the production of an agricultural commodity
16 under this subsection, a contract producer shall file
17 a lien statement under applicable State law provi-
18 sions based on Article 9 of the Uniform Commercial
19 Code.

20 “(5) PRIORITY OF LIENS.—A lien created under
21 this subsection shall be superior to, and have pri-
22 ority over, any conflicting lien or security interest in
23 the agricultural commodity, including a lien or secu-
24 rity interest that was perfected prior to the creation
25 of the lien under this subsection.

1 “(6) ENFORCEMENT.—

2 “(A) CONTROL.—Before an agricultural
3 commodity leaves the control of a contract pro-
4 ducer, the contract producer may foreclose a
5 lien created under this subsection in the man-
6 ner provided for the foreclosure of a secured
7 transaction under applicable State law provi-
8 sions based on Article 9 of the Uniform Com-
9 mercial Code.

10 “(B) POST-CONTROL.—After an agricul-
11 tural commodity leaves the control of the con-
12 tract producer, the contract producer may en-
13 force the lien in the manner provided under ap-
14 plicable State law provisions based on Article 9
15 of the Uniform Commercial Code.

16 “(7) ELECTION OF OTHER REMEDIES.—In lieu
17 of obtaining a lien under this subsection, a contract
18 producer described in paragraph (2) may seek to col-
19 lect funds due under a production contract in ac-
20 cordance with—

21 “(A) the Packers and Stockyards Act,
22 1921 (7 U.S.C. 181 et seq.); or

23 “(B) the Perishable Agricultural Commod-
24 ities Act, 1930 (7 U.S.C. 499a et seq.).

1 “(8) EXEMPTION.—This subsection does not
2 apply to a contract producer that is an agricultural
3 cooperative, at least 50 percent of the ownership in-
4 terests of which are held by producers.

5 “(c) PRODUCTION CONTRACTS INVOLVING INVEST-
6 MENT REQUIREMENTS.—

7 “(1) APPLICABILITY.—This subsection applies
8 only to a production contract between a contract
9 producer and a contractor if, but for the production
10 contract, the contract producer would not have made
11 a capital investment of \$100,000 or more.

12 “(2) RESTRICTIONS ON CONTRACT TERMI-
13 NATION.—

14 “(A) NOTICE OF TERMINATION.—Except
15 as provided in subparagraph (C), a contractor
16 shall not terminate or cancel a production con-
17 tract unless the contractor provides the contract
18 producer with written notice of the intention of
19 the contractor to terminate or cancel the pro-
20 duction contract at least 180 days before the ef-
21 fective date of the termination or cancellation.

22 “(B) REQUIREMENTS.—The written notice
23 required under subparagraph (A) shall include
24 alleged causes of the termination.

1 “(C) EXCEPTIONS.—A contractor may ter-
2 minate or cancel a production contract without
3 notice as required under subparagraph (A) if
4 the basis for the termination or cancellation
5 is—

6 “(i) a voluntary abandonment of the
7 contractual relationship by the contract
8 producer, such as a complete failure of the
9 contract producer to perform under the
10 production contract;

11 “(ii) the conviction of the contract
12 producer of an offense of fraud or theft
13 committed against the contractor; or

14 “(iii) the natural end of the produc-
15 tion contract in accordance with the terms
16 of the production contract.

17 “(D) RIGHT TO CURE.—

18 “(i) IN GENERAL.—If, not later than
19 180 days after the date on which the con-
20 tract producer receives written notice
21 under subparagraph (A), the contract pro-
22 ducer remedies each cause of the breach of
23 contract alleged in the written notice, the
24 contractor may not terminate or cancel a
25 production contract under this paragraph.

1 “(ii) NO ADMISSION OF BREACH.—
2 The remedy or attempt to remedy the
3 causes for the breach of contract by the
4 contract producer under clause (i) does not
5 constitute an admission of breach of con-
6 tract.

7 “(d) ADDITIONAL CAPITAL INVESTMENTS IN PRO-
8 DUCTION CONTRACTS.—

9 “(1) IN GENERAL.—A covered person shall not
10 require a contract producer to make additional cap-
11 ital investments in connection with a production con-
12 tract that exceed the initial investment requirements
13 of the production contract.

14 “(2) EXCEPTIONS.—Notwithstanding para-
15 graph (1), a covered person may require additional
16 capital investments if—

17 “(A) the additional capital investments are
18 offset by reasonable additional consideration,
19 including compensation or a modification to the
20 terms of the production contract; and

21 “(B) the contract producer agrees in writ-
22 ing that there is acceptable and satisfactory
23 consideration for the additional capital invest-
24 ment.

1 **“SEC. 204. AUTHORITY OF SECRETARY TO PROMULGATE**
2 **RULES AND REGULATIONS.**

3 “The Secretary, acting through the Special Counsel
4 for Competition Matters, may promulgate such rules and
5 regulations as are necessary to carry out this Act and the
6 Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.),
7 including rules and regulations—

8 “(1) relating to unfair or deceptive acts or
9 practices in agriculture;

10 “(2) that define with specificity acts or prac-
11 tices that are to be prohibited as unfair or deceptive
12 acts or practices in agriculture under section 201;
13 and

14 “(3) to prevent unfair or deceptive acts or prac-
15 tices from occurring in agriculture.

16 **“SEC. 205. ENFORCEMENT.**

17 “(a) **CIVIL ACTIONS BY THE SECRETARY AGAINST**
18 **COVERED PERSONS.**—In any case in which the Secretary
19 has reasonable cause to believe that any covered person
20 has engaged in any act or practice that violates this Act,
21 the Secretary may bring a civil action in the United States
22 district court of the jurisdiction of residence of the covered
23 person by filing a complaint requesting preventive relief,
24 including an application for a permanent or temporary in-
25 junction, restraining order, or other order, against the cov-
26 ered person.

1 “(b) CIVIL ACTIONS AGAINST COVERED PERSONS.—

2 “(1) PREVENTIVE RELIEF.—

3 “(A) IN GENERAL.—In any case in which
4 any covered person has engaged, or there are
5 reasonable grounds to believe that any covered
6 person is about to engage, in any act or prac-
7 tice prohibited by this Act, a civil action for
8 preventive relief, including an application for a
9 permanent or temporary injunction, restraining
10 order, or other order, may be instituted by the
11 person aggrieved in the United States district
12 court of the jurisdiction of residence of the ag-
13 grieved person.

14 “(B) SECURITY.—The court may provide
15 that no restraining order or preliminary injunc-
16 tion shall issue unless security is provided by
17 the applicant, in such sum as the court deter-
18 mines to be appropriate, for the payment of
19 such costs and damages as may be incurred or
20 suffered by any party that is found to have
21 been wrongfully enjoined or restrained.

22 “(2) DAMAGES.—

23 “(A) IN GENERAL.—Any person injured in
24 the business or property of the person by rea-
25 son of any violation of, or combination or con-

1 spiracy to violate, this Act may bring a civil ac-
2 tion in the United States district court of the
3 jurisdiction of residence of the injured person
4 or any State court of competent jurisdiction to
5 recover—

6 “(i) damages sustained by the person
7 as a result of the violation; and

8 “(ii) any additional penalty that the
9 court may allow, but not more than \$1,000
10 per violation.

11 “(B) LIMITATION ON ACTIONS.—A civil ac-
12 tion under subparagraph (A) shall be barred
13 unless commenced within 2 years after the
14 cause of action accrues.

15 “(3) ATTORNEY’S FEES.—In any action com-
16 menced under paragraph (1) or (2), the court may
17 allow the prevailing party a reasonable attorney’s fee
18 as part of the costs.

19 “(c) JURISDICTION OF DISTRICT COURTS.—Not later
20 than 2 years after the date on which a violation of this
21 Act occurs, an action to enforce this Act may be brought
22 in—

23 “(1) the United States district court of the ju-
24 risdiction of residence of the aggrieved person, not-
25 withstanding the fact that an aggrieved person has

1 not exhausted all administrative or other remedies
2 provided by law; or

3 “(2) any other court of competent jurisdiction
4 in the State of residence of the aggrieved person.

5 “(d) CHOICE OF LAW, JURISDICTION, AND VENUE.—

6 “(1) CHOICE OF LAW.—Any provision in an ag-
7 ricultural contract requiring the application of the
8 law of a State other than the State in which the pro-
9 ducer resides is void and unenforceable.

10 “(2) JURISDICTION.—A covered person that en-
11 ters into an agricultural contract with a producer
12 shall be subject to personal jurisdiction in the State
13 in which the producer resides.

14 “(3) VENUE.—Venue shall be determined on
15 the basis of the residence of the producer.

16 “(e) LIABILITY FOR ACTS OF AGENTS.—In the con-
17 struction and enforcement of this Act, the act, omission,
18 or failure of any officer, agent, or person acting for or
19 employed by any other person within the scope of the em-
20 ployment or office of the officer, agent, or person, shall
21 be considered to be the act, omission, or failure of the
22 other person.

23 **“SEC. 206. EFFECT ON OTHER LAWS.**

24 “(a) STATE LAWS.—

1 “(1) IN GENERAL.—Subject to paragraph (2),
2 this Act does not annul, alter, or affect, or exempt
3 any person subject to this Act from complying with,
4 the law of any State with respect to trade practices
5 in agriculture.

6 “(2) EXCEPTION.—

7 “(A) IN GENERAL.—This Act annuls, al-
8 ters, or affects, or exempts a person from, a
9 State law referred to in paragraph (1) to the
10 extent the State law is inconsistent with this
11 Act.

12 “(B) INCONSISTENCY.—For the purposes
13 of this paragraph, a State law is not incon-
14 sistent with this Act if the protection that the
15 law affords any producer is greater than the
16 protection provided to a producer by this Act.

17 “(b) STATE COURTS.—This Act does not deprive a
18 State court of jurisdiction under a State law dealing with
19 the same subject as this Act.

20 **“SEC. 207. ASSIGNMENT OF ASSOCIATION DUES AND FEES.**

21 “(a) IN GENERAL.—A producer of an agricultural
22 commodity or service may execute, as a clause in an agri-
23 cultural contract, an assignment of dues or fees to, or the
24 deduction of a sum to be retained by, an association of

1 producers authorized by contract to represent the pro-
2 ducer, under which assignment a covered person shall—

3 “(1) deduct a portion of the amount to be paid
4 for products or services of the producer under a pro-
5 duction contract; and

6 “(2) pay, on behalf of the producer, the portion
7 over to the association as dues or fees or a sum to
8 be retained by the association.

9 “(b) DUTY OF COVERED PERSON.—After a covered
10 person receives notice from a producer of an assignment
11 under subsection (a), the covered person shall—

12 “(1) deduct the amount authorized by the as-
13 signment from the amount paid for any agricultural
14 commodity sold by the producer or for any service
15 rendered under any production contract; and

16 “(2) on payment to producers for the product
17 or service, pay the amount over to the association or
18 the assignee of the association.

19 **“SEC. 208. SEVERABILITY.**

20 “If any provision of this Act or application of any
21 provision of this Act is held invalid, the remainder of this
22 Act and the application of the provision to other persons
23 and circumstances shall not be affected by the invalidity.”.

1 **SEC. 102. APPLICATION.**

2 The amendment made by section 101 applies to any
3 contract entered into on or after the date of enactment
4 of this Act.

5 **TITLE II—PACKERS AND**
6 **STOCKYARDS**

7 **SEC. 201. INVESTIGATION OF LIVE POULTRY DEALERS.**

8 (a) REMOVAL OF POULTRY SLAUGHTER REQUIRE-
9 MENT FROM DEFINITIONS.—Section 2(a) of the Packers
10 and Stockyards Act, 1921 (7 U.S.C. 182), is amended—

11 (1) by striking paragraph (8) and inserting the
12 following:

13 “(8) POULTRY GROWER.—The term ‘poultry
14 grower’ means any person engaged in the business
15 of raising or caring for live poultry under a poultry
16 growing arrangement, regardless of whether the
17 poultry is owned by the person or by another per-
18 son;”;

19 (2) in paragraph (9), by striking “and cares for
20 live poultry for delivery, in accord with another’s in-
21 structions, for slaughter” and inserting “or cares for
22 live poultry in accordance with the instructions of
23 another person”; and

24 (3) in paragraph (10), by striking “for the pur-
25 pose of either slaughtering it or selling it for slaugh-
26 ter by another”.

1 (b) ADMINISTRATIVE ENFORCEMENT AUTHORITY
 2 OVER LIVE POULTRY DEALERS.—Sections 203, 204, and
 3 205 of the Packers and Stockyards Act, 1921 (7 U.S.C.
 4 193, 194, 195), are amended by inserting “or live poultry
 5 dealer” after “packer” each place it appears.

6 (c) AUTHORITY TO REQUEST TEMPORARY INJUNC-
 7 TION OR RESTRAINING ORDER.—Section 408 of the Pack-
 8 ers and Stockyards Act, 1921 (7 U.S.C. 228a), is amend-
 9 ed in the first sentence by striking “on account of poultry”
 10 and inserting “on account of poultry or poultry care”.

11 (d) VIOLATIONS BY LIVE POULTRY DEALERS.—Sec-
 12 tion 411 of the Packers and Stockyards Act, 1921 (7
 13 U.S.C. 228b–2), is amended—

14 (1) in the first sentence of subsection (a), by
 15 striking “any provision of section 207 or section 410
 16 of”; and

17 (2) in the first sentence of subsection (b), by
 18 striking “any provisions of section 207 or section
 19 410” and inserting “any provision”.

20 **SEC. 202. NO COMPETITIVE INJURY REQUIREMENT.**

21 Section 202(a) of the Packers and Stockyards Act,
 22 1921 (7 U.S.C. 192), is amended by inserting after “de-
 23 vice” the following: “, regardless of whether the practice
 24 or device causes a competitive injury or otherwise ad-
 25 versely affects competition”.

1 **SEC. 203. ATTORNEYS FEES.**

2 Section 308(a) of the Packers and Stockyards Act,
3 1921 (7 U.S.C. 209(a)) is amended by inserting before
4 the period at the end the following: “and for the cost of
5 the litigation, including reasonable attorneys’ fees”.

6 **SEC. 204. APPOINTMENT OF OUTSIDE COUNSEL.**

7 Section 407(a) of the Packers and Stockyards Act,
8 1921 (7 U.S.C. 228(a)), is amended by inserting “obtain
9 the services of attorneys who are not employees of the
10 Federal Government,” before “and make such expendi-
11 tures”.

12 **SEC. 205. COMPETITIVE HARM.**

13 Title IV of the Packers and Stockyards Act, 1921
14 (7 U.S.C. 221 et seq.), is amended by adding at the end
15 the following:

16 **“SEC. 417. COMPETITIVE HARM.**

17 “A person affected by an unfair practice under sec-
18 tion 202(a) or 312(a) shall not be required to prove preda-
19 tory intent, competitive injury, or likelihood of injury.”.

20 **SEC. 206. REGULATIONS.**

21 (a) IN GENERAL.—Not later than 180 days after the
22 date of enactment of this Act, the Secretary of Agriculture
23 shall promulgate regulations to implement the amend-
24 ments made by this Act, including providing a definition
25 of the term “unreasonable preference or advantage” for

1 purposes of section 202(b) of the Packers and Stockyards
2 Act, 1921 (7 U.S.C. 192(b)).

3 (b) REQUIREMENTS.—Regulations promulgated
4 under subsection (a) shall strictly prohibit any preferences
5 or price differences based on volume except for preferences
6 or price differences that reflect actual, verifiable lower
7 costs of acquiring livestock from larger volume producers.

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