

103^D CONGRESS
1ST SESSION

H. R. 365

To amend the Small Business Act to assist and protect small businesses and to protect small businesses against unreasonable use of economic power by major meatpacking companies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. SMITH of Iowa introduced the following bill; which was referred jointly to the Committees on Agriculture and Small Business

A BILL

To amend the Small Business Act to assist and protect small businesses and to protect small businesses against unreasonable use of economic power by major meatpacking companies, 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,*
3 That this Act may be cited as the “Small Business Preser-
4 vation and Protection Act of 1993”.

5 CONGRESSIONAL FINDING AND DECLARATION OF POLICY

6 SEC. 2. (a) The Congress finds that the existence,
7 in businesses engaged in commerce or in the production,
8 processing, manufacturing, and distribution of livestock

1 and meat food products for commerce, of marketing condi-
2 tions detrimental to the maintenance of a free and com-
3 petitive environment needed for the health, efficiency, and
4 the general well-being of business (1) unduly burdens
5 small businesses; (2) burdens commerce and the free flow
6 of livestock and meat food products in commerce; (3) im-
7 pairs the participation of small business enterprises in
8 Federal procurement and Government contracts; (4) inter-
9 feres with the orderly and fair marketing of goods in com-
10 merce by small businesses; (5) leads to a burdening and
11 obstruction of commerce and the free flow of goods in
12 commerce; and (6) that it is in the national interest to
13 further define the level of activity and course of conduct
14 which is appropriate for the protection of small businesses.

15 (b) It is declared to be the policy of this Act, through
16 the exercise by Congress of its power to assist and protect
17 small businesses, to correct, to prevent, and as rapidly as
18 possible to eliminate the conditions referred to above.

19 DEFINITIONS

20 SEC. 3. As used in this Act—

21 (a) “Administrator” means the Administrator
22 of the Small Business Administration of the United
23 States, or any officer or employee of the Small Busi-
24 ness Administration to whom authority has been or
25 may be delegated to act in his stead;

1 (b) “State” means each of the several States of
2 the United States, the District of Columbia, the
3 Commonwealth of Puerto Rico, and the Virgin Is-
4 lands;

5 (c) “commerce” means trade, traffic, commerce,
6 or transportation, within the jurisdiction of the
7 United States (1) between a place in a State and
8 any place outside of such State, or (2) which affects
9 trade, traffic, commerce, or transportation described
10 in clause (1);

11 (d) “activity affecting commerce” means any
12 activity in commerce, or burdening or obstructing
13 commerce or the free flow of goods in commerce, or
14 having led or tending to lead to a burdening or ob-
15 struction of commerce or the free flow of commerce,
16 or having led or tending to impair a free and com-
17 petitive environment needed for the health, effi-
18 ciency, and general well-being of business;

19 (e) “person” means any individual or any part-
20 nership, corporation, joint stock company, any orga-
21 nized group whether or not incorporated, or any
22 other business association existing under or author-
23 ized by the laws of either the United States, the laws
24 of any State, or the laws of any foreign country;

1 (f) “packer” means any person engaged in the
2 business (1) of buying livestock in commerce for the
3 purposes of slaughter, or (2) of manufacturing or
4 preparing meats or meat food products for sale, or
5 shipment in commerce, or (3) of marketing meats,
6 meat food products, or livestock products in an un-
7 manufactured form acting as a wholesale broker,
8 dealer, or distributor in commerce, or (4) of buying,
9 slaughtering, manufacturing, preparing, or process-
10 ing meats, meat food products, or livestock which in-
11 volves any activity affecting commerce. For the pur-
12 poses of this Act, all references to “packer” also in-
13 clude any person who directly or indirectly owns or
14 controls a packer or any subsidiary, plant, facility,
15 division, affiliate, joint venture, or any other entity
16 under the direct or indirect control of a packer;

17 (g) “small business meatpacking concern”
18 means any packer which has less than a 5 per cen-
19 tum share of the national slaughter for each of the
20 three classifications;

21 (h) “slaughter” means the act of killing an ani-
22 mal for human consumption;

23 (i) “process” means any reduction of the car-
24 cass, after slaughter, into smaller cuts (such as
25 primals or fabricated cuts) or cutting the carcass or

1 primals to subprimals or smaller. For purposes of
2 this Act, “process” shall be synonymous with “fab-
3 ricate” or “break”;

4 (j) “carcass” means the dressed body of a
5 slaughtered animal, excluding viscera, and includes
6 each of the four quarters of the animal;

7 (k) “meat food products” means all products
8 and byproducts of the cattle and hog slaughtering
9 and meatpacking industry, if edible;

10 (l) “livestock” means cattle or hogs, whether
11 live or dead;

12 (m) “classification” refers to each of the follow-
13 ing: (1) steers and heifers, (2) cows and bulls, or (3)
14 hogs. For the purposes of this Act, there are three
15 separate classifications;

16 (n) “livestock futures contract” means stand-
17 ardized contracts covering the purchase or sale of
18 cattle, hogs or meat food products for future delivery
19 on or subject to the rules of a contract market des-
20 ignated pursuant to section 5 of the Commodity Ex-
21 change Act as amended (7 U.S.C. 7);

22 (o) “retail” means to sell directly to the
23 consumer; and

24 (p) “future livestock transaction” means any
25 livestock futures contract and any contract dealing

1 with cattle, hogs or meat food products, whether
2 traded on a contract market or not, commonly
3 known to the trade as a margin account, margin
4 contract, leverage account, leverage contract, op-
5 tion, privilege, indemnity, bid, offer, put, call, ad-
6 vance guaranty, or decline guaranty.

7 PROHIBITED ACTIVITIES

8 SEC. 4. (a) Each of the following activities is deemed
9 to be unfair and detrimental to small business
10 meatpacking concerns and each such activity is prohibited
11 as follows:

12 (1) No packer which is not a small business
13 meatpacking concern shall own, lease, or operate in
14 any manner any retail meat outlet in the United
15 States.

16 (2) No packer's total slaughter for any classi-
17 fication during any calendar year shall exceed 25 per
18 centum of the larger of the last two annual national
19 slaughter totals for that classification as most re-
20 cently published by the Crop Reporting Board, Eco-
21 nomics, Statistics, and Cooperatives Service, United
22 States Department of Agriculture. For the purposes
23 of this paragraph, a packer's purchase, acquisition,
24 or control in any manner of carcasses or any other
25 meat food products from any other person or packer
26 shall be added to that packer's annual slaughter

1 total for the appropriate classification and this com-
2 bined total shall not exceed 25 per centum of the
3 larger of the last two annual national slaughter to-
4 tals published for that classification.

5 (3) No packer shall engage in any unreasonable
6 use of economic power or discriminate in price be-
7 tween different purchasers of meat food products in
8 any marketing area of the United States for the
9 purpose of impairing in any manner the marketing
10 ability of one or more small business meatpacking
11 concerns in such marketing area.

12 (4) No packer shall sell below cost or contract
13 to sell below cost any meat food products for the
14 purpose of impairing in any manner the marketing
15 ability of one or more small business meatpacking
16 concerns or for the purpose of eliminating one or
17 more small business meatpacking concerns. Nothing
18 contained herein shall prevent a packer from selling
19 below cost from time to time where such action is
20 in response to changing supply and demand condi-
21 tions affecting the market for or the marketability of
22 the meat food products concerned, such as but not
23 limited to actual or imminent deterioration of perish-
24 able goods, distress sales under court process, or
25 sales in good faith in discontinuance of business.

1 (5) Any officer of a packer which is required to
2 file an annual report by the regulations issued under
3 the Packers and Stockyards Act (7 U.S.C. 181) by
4 the United States Department of Agriculture is pro-
5 hibited from owning or entering into any future live-
6 stock transaction.

7 (6) No packer, which is required to file an an-
8 nual report by the regulations issued under the
9 Packers and Stockyards Act (7 U.S.C. 181) by the
10 United States Department of Agriculture, may en-
11 gage in any livestock futures contract activity or fu-
12 ture livestock transaction other than a bona fide
13 hedge transaction as defined by the regulations of
14 the Commodity Futures Trading Commission en-
15 acted pursuant to the Commodity Exchange Act, as
16 amended (7 U.S.C. 7).

17 (b) Authority to enforce compliance with this section
18 is vested in the Administrator. The Administrator is em-
19 powered to secure compliance with this section by filing
20 a complaint with the appropriate department or agency
21 of the United States. Such department or agency shall im-
22 mediately and forthwith investigate the complaint filed by
23 the Administrator and if such department or agency
24 deems that the complaint has merit, shall initiate the ap-
25 propriate action to enforce compliance with this section,

1 utilizing all applicable statutes and regulations of such de-
2 partment or agency.

3 (c) Any person or packer who knowingly violates any
4 provision of this section shall, upon conviction, be pun-
5 ished by a fine of not more than \$500,000 for each such
6 offense committed. Additionally, after such person or
7 packer has received notice from either the Administrator
8 or the department or agency to whom the Administrator
9 has referred the complaint that a violation of this section
10 has occurred or is occurring, each day during which a vio-
11 lation of this section occurs shall be deemed a separate
12 offense.

13 (d) Any small business meatpacking concern which
14 is injured in his business or property in an amount exceed-
15 ing \$10,000 by reason of any activity forbidden by this
16 section may sue therefor in any district court in the Unit-
17 ed States in the district in which the defendant resides
18 or is found or has an agent and shall recover threefold
19 the damages sustained by such small business
20 meatpacking concern, together with the cost of the suit,
21 including a reasonable attorney's fee.

22 MISCELLANEOUS PROVISIONS AND EFFECTIVE DATE

23 SEC. 5. (a) If any provision of this Act or the applica-
24 tion thereof to any person or circumstances is held invalid,
25 the validity of the remainder of the Act and of the applica-

1 tion of such provision to other persons and circumstances
2 shall not be affected thereby.

3 (b) Nothing contained in this Act shall be construed
4 to prevent or interfere with the enforcement of the Anti-
5 trust Acts or the Acts to regulate commerce, nor shall any-
6 thing contained in this Act be construed to release any
7 person from any obligation, limitation, or requirement of
8 any Act prohibiting restraint of trade or unfair competi-
9 tion.

10 (c) This Act shall become effective on the first day
11 of January after the date of enactment.

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