

111TH CONGRESS
1ST SESSION

S. 1086

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

IN THE SENATE OF THE UNITED STATES

MAY 20, 2009

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

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 serting 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 designating paragraphs (1), (2), and
20 (3) as subparagraphs (A), (B), and (C), respectively,
21 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 lower case;

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 1 livestock processing
 8 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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