

112TH CONGRESS
1ST SESSION

S. 1026

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 19, 2011

Mr. ENZI (for himself, Mr. JOHNSON of South Dakota, Mr. GRASSLEY, and Mr. TESTER) 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 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 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 redesignated
10 by paragraph (3)) the following:

11 “(6) except as provided in subsection (c), use,
12 in effectuating any sale of livestock, a forward contract that—
13 contract 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 entered into;
17 entered into;

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

20 “(i) buyers and sellers have the opportunity to participate in the bid; and
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.”.

○