

S-3/5/02 Do Pass
H-3/7/02 Agri.
AGRICULTURE H-3/2/02 Amend/Do Pass
W/48408
FILED MAR 4 2002

SENATE FILE 2309
BY IVERSON and GRONSTAL

Passed Senate, Date 3-6-02 Passed House, Date 3-26-02
Vote: Ayes 48 Nays 0 Vote: Ayes 94 Nays 0

Approved April 9, 2002
Re-Passed 4/1/02
Vote 44-0

A BILL FOR

1 An Act providing for regulation of processors, providing for
2 penalties, and providing an effective date and for retroactive
3 applicability.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2309
AGRICULTURE

1 Section 1. Section 9H.1, Code 2001, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 4A. "Base price" means the price paid for
4 swine, delivered to the processor, before application of any
5 premiums or discounts, and expressed in dollars per hundred
6 pounds of hot carcass weight as defined in 7 C.F.R. § 59.30.

7 NEW SUBSECTION. 5A. "Business association" means a person
8 organized under statute or common law in this state or another
9 jurisdiction for purposes of engaging in a commercial activity
10 on a profit or not-for-profit basis, including but not limited
11 to a corporation or entity taxed as a corporation under the
12 Internal Revenue Code, nonprofit corporation, cooperative
13 association, partnership, limited partnership, limited
14 liability company, limited liability partnership, investment
15 company, joint stock company, joint stock association, or
16 trust, including but not limited to a business trust.

17 NEW SUBSECTION. 5B. "Cash or spot market purchase" means
18 the purchase of swine by a processor from a seller, if the
19 swine are slaughtered not more than fourteen days after the
20 date that the seller and the processor agree on a date of
21 delivery of the swine for slaughter and the base price for
22 purchasing the swine is determined by an oral or written
23 agreement between seller and processor executed on the day the
24 swine are delivered for slaughter.

25 NEW SUBSECTION. 5C. "Cattle operation" means a location
26 including but not limited to a building, lot, yard, corral, or
27 other place where cattle for slaughter are fed or otherwise
28 maintained.

29 NEW SUBSECTION. 6B. "Cooperative association" means the
30 same as defined in section 10.1.

31 NEW SUBSECTION. 14A. "Indirect" means to act or attempt
32 to accomplish an act through an interest in a business
33 association, through one or more affiliates or intermediaries,
34 or by any method other than a direct approach, including by
35 any circuitous or oblique method.

1 NEW SUBSECTION. 19A. "Qualified processor" means a
2 processor of pork products if all of the following apply:

3 a. (1) (a) Swine producers exercise a controlling
4 interest in the processor. "Controlling interest" means
5 actual control or the possession directly or indirectly of the
6 power to direct or cause the direction of the management and
7 policies of a processor, whether through the ownership of
8 voting securities, by contract, or otherwise.

9 (b) Of the total interest held by all persons in the
10 processor, swine producers hold at least sixty percent of the
11 interest. In addition, of the total interest held by all
12 persons in the processor, swine producers hold at least sixty
13 percent of interests with voting rights.

14 (2) Of the total interest held by all persons in the
15 processor, all retailers hold a total of not more than twenty
16 percent of the interest.

17 b. Another processor does not hold a direct or indirect
18 interest in the processor. However, this paragraph does not
19 apply to a person deemed to be a processor solely because the
20 person holds a threshold interest in the processor.

21 c. Not less than twenty-five percent of the swine
22 slaughtered by the processor each day are purchased through
23 cash or spot market purchases from sellers of swine who do not
24 hold a direct or indirect interest in the processor.

25 NEW SUBSECTION. 19B. "Retailer" means a person who is
26 engaged in the business of selling pork products in this
27 state, if all of the following apply:

28 a. The pork products are sold only on a retail basis
29 directly to the ultimate purchasers of the pork products for
30 consumption and not for resale.

31 b. The person is not engaged in the slaughter of swine.

32 c. A processor does not have a direct or indirect interest
33 in the person.

34 NEW SUBSECTION. 20A. "Swine operation" means a location
35 where swine are fed or otherwise maintained, including a

1 building, lot, yard, or corral, and swine which are fed or
2 otherwise maintained at the location.

3 NEW SUBSECTION. 20B. "Swine producer" means a person who
4 owns, controls, or operates a swine operation in this state or
5 who contracts for the care and feeding of swine in this state.

6 Sec. 2. Section 9H.1, subsection 19, Code 2001, is amended
7 to read as follows:

8 19. "Processor" means a person~~7-firm7-corporation7-limited~~
9 ~~liability-company7-or-limited-partnership7-which~~ who alone or
10 in conjunction with others~~7~~ directly or indirectly controls
11 the ~~manufacturing7~~ processing ~~or-preparation-for-sale~~ of beef
12 or pork products, having including the slaughtering of cattle
13 or swine or the manufacturing or preparation of carcasses or
14 goods originating from the carcasses, if the beef or pork
15 products have a total annual wholesale value of ten eighty
16 million dollars or more for the person's tax year. Any A
17 ~~person7-firm7-corporation7-limited-liability-company7-or~~
18 ~~limited-partner-with-a~~ shall be deemed to be a processor, if
19 any of the following applies:

20 a. The person has a threshold interest in a processor
21 which is a business association. "Threshold interest" means a
22 direct or indirect interest in the business association,
23 calculated as follows:

24 (1) For a processor of beef products, the person's
25 threshold interest begins at ten percent or-greater-interest
26 in-another-person7-firm7-corporation7-limited-liability
27 company7-or-limited-partnership-involved-in-the-manufacturing7
28 processing-or-preparation-for-sale-of-beef-or-pork-products
29 having-a-total-annual-wholesale-value-of-ten-million-dollars
30 or-more-shall-also-be-considered-a-processor.

31 (2) For a processor of pork products, the person's
32 threshold interest begins at ten percent for a processor of
33 pork products having a total annual wholesale value of at
34 least eighty million dollars and decreases to one percent for
35 a processor of pork products having a total annual wholesale

1 value of at least two hundred sixty million dollars. The
2 amount of the decrease in the amount of the threshold interest
3 shall equal one percent for each increased increment of twenty
4 million dollars in total annual wholesale value.

5 b. The person holds an executive position in a processor
6 of pork products or owes a processor of pork products a
7 fiduciary duty, if the processor directly or indirectly
8 controls the processing of pork products having a total annual
9 wholesale value of two hundred sixty million dollars or more.
10 A person who held such an executive position or owed a
11 fiduciary duty shall be deemed to still hold the position or
12 owe the duty for a two-year period following the date that the
13 person relinquishes the position or duty. An executive
14 position in a processor organized as a business association
15 includes but is not limited to a member of a board of
16 directors or an officer of a corporation or cooperative
17 association, a director or officer of a joint stock company or
18 joint stock association, a manager of a limited liability
19 company, a general partner of a limited partnership, or a
20 trustee of a trust.

21 Sec. 3. Section 9H.1, subsection 12, Code 2001, is amended
22 by striking the subsection.

23 Sec. 4. Section 9H.2, Code 2001, is amended to read as
24 follows:

25 9H.2 PROHIBITED OPERATIONS AND ACTIVITIES -- EXCEPTIONS.

26 ~~In order to~~ The purpose of this section is to preserve free
27 and private enterprise, prevent monopoly, and also to protect
28 consumers, ~~it is unlawful for any.~~

29 1. Except as provided in subsections 2 through 4, and
30 section 9H.2A, all of the following apply:

31 a. For cattle, a processor of beef or pork or limited
32 partnership in which a processor holds partnership shares as a
33 general partner or partnership shares as a limited partner, or
34 limited liability company in which a processor is a member, to
35 shall not own, control, or operate a feedlot cattle operation

1 in Iowa-in-which-hogs-or-cattle-are-fed-for-slaughter this
2 state.

3 b. For swine, a processor shall not do any of the
4 following:

5 (1) (a) Directly or indirectly own, control, or operate a
6 swine operation in this state.

7 (b) Finance a swine operation in this state or finance a
8 person who directly or indirectly contracts for the care and
9 feeding of swine in this state.

10 For purposes of subparagraph subdivision (a) and this
11 subparagraph subdivision, all of the following apply:

12 (i) "Finance" means an action by a processor to directly
13 or indirectly loan money or to guarantee or otherwise act as a
14 surety.

15 (ii) "Finance" or "control" does not include executing a
16 contract for the purchase of swine by a processor, including
17 but not limited to a contract that contains an unsecured
18 ledger balance or other price risk sharing arrangement.
19 "Finance" also does not include providing an unsecured open
20 account or an unsecured loan, if the unsecured open account or
21 unsecured loan is used for the purchase of feed for the swine
22 and the outstanding amount due by the debtor does not exceed
23 five hundred thousand dollars. However, the outstanding
24 amount due to support a single swine operation shall not be
25 more than two hundred fifty thousand dollars.

26 (c) Obtain a benefit of production associated with feeding
27 or otherwise maintaining swine, by directly or indirectly
28 assuming a morbidity or mortality production risk, if the
29 swine are fed or otherwise maintained as part of a swine
30 operation in this state or by a person who contracts for the
31 care and feeding of swine in this state.

32 (d) Directly or indirectly receive the net revenue derived
33 from a swine operation in this state or from a person who
34 contracts for the care and feeding of swine in this state.

35 (2) In-addition, a-processor-shall-not-directly Directly

1 or indirectly contract for the care and feeding of swine in
2 this state. However, this section subparagraph does not apply
3 to a cooperative association organized under chapter 497, 498,
4 499, or 501, if the cooperative association contracts for the
5 care and feeding of swine with a member of the cooperative
6 association who is actively engaged in farming. This section
7 subparagraph does not apply to an association organized as a
8 cooperative in which another cooperative association organized
9 under chapter 497, 498, 499, or 501 is a member, if the
10 association contracts with a member which is a cooperative
11 association organized under chapter 497, 498, 499, or 501,
12 which contracts for the care and feeding of swine with a
13 member of the cooperative who is actively engaged in farming.

14 2. Subsection 1 shall not apply to a swine producer who
15 holds a threshold interest in a qualified processor, if all of
16 the following apply:

17 a. The swine producer's threshold interest in the
18 qualified processor is not more than ten percent.

19 b. The swine producer is not a processor. However, this
20 paragraph does not apply to a swine producer deemed to be a
21 processor solely because the swine producer holds a threshold
22 interest in the qualified processor as otherwise allowed under
23 this subsection or because the swine producer holds an
24 executive position in the processor or owes the processor a
25 fiduciary duty.

26 3. This section shall not preclude a processor, limited
27 partnership, or limited liability company from contracting
28 from doing any of the following:

29 a. Contracting for the purchase of hogs or cattle or
30 swine, provided that where the contract sets a date for
31 delivery which is more than twenty days after the making of
32 the contract it, the contract shall do one of the following:

33 1- (1) Specify a calendar day for delivery of the
34 livestock, or cattle or swine.

35 2- (2) Specify the month for the delivery, and shall allow

1 the farmer to set the week for the delivery within such month
2 and the processor, ~~limited-partnership, or limited-liability~~
3 company to set the date for delivery within such week.

4 b. ~~This section shall not prevent processors or~~
5 ~~educational institutions from carrying~~ Carrying on legitimate
6 research, educational, or demonstration activities, ~~nor shall~~
7 ~~it prevent processors from owning and operating facilities to~~
8 ~~provide normal care and feeding of animals.~~

9 c. Maintaining cattle or swine for a period not to exceed
10 ten days immediately prior to slaughter, or for a longer
11 period in an emergency. ~~Any processor or limited partnership~~
12 ~~which owns, controls, or operates a feedlot on August 15,~~
13 ~~1975, shall have until July 1, 1985, to dispose of the~~
14 ~~property.~~

15 4. A processor which ~~is~~ was in compliance with this
16 section prior to April 5, 2000, and which ~~is~~ was in violation
17 of this section as a result of 2000 Iowa Acts, chapter 1048,
18 shall have until ~~July 1~~ June 30, 2004, to comply with 2000
19 Iowa Acts, chapter 1048. A processor shall not take action on
20 or after April 5, 2000, which would be in violation of this
21 section.

22 Sec. 5. NEW SECTION. 9H.2A COMPLIANCE REQUIREMENTS.

23 1. A processor that was in compliance with section 9H.2,
24 Code 2001, prior to January 1, 2002, and which is in violation
25 of section 9H.2, as amended by this Act, shall have until June
26 30, 2004, to comply with section 9H.2, as amended by this Act.

27 2. Notwithstanding any provision of this section, a
28 processor shall not take an action on or after January 1,
29 2002, that would be in violation of section 9H.2, as amended
30 by this Act.

31 3. If a processor is in violation of applicable
32 requirements of section 9H.2, as amended by this Act, prior to
33 July 1, 2004, as provided in subsection 1, the two-year period
34 that a person who holds an executive position in a processor
35 or owes the processor a fiduciary duty and thus is deemed to

1 be a processor as provided in section 9H.1, subsection 19,
2 paragraph "b", as enacted in this Act, begins to run on the
3 date that the processor first complies with the requirements
4 of section 9H.2, as amended by this Act.

5 4. This section is repealed on July 1, 2006.

6 Sec. 6. Section 9H.3, Code 2001, is amended to read as
7 follows:

8 9H.3 PENALTIES FOR-PROHIBITED-OPERATION -- INJUNCTIVE
9 RELIEF.

10 ~~A processor violating section 9H.2 shall be assessed a~~
11 ~~civil penalty of not more than twenty-five thousand dollars.~~

12 1. The courts of this state may prevent and restrain
13 violations of this chapter through the issuance of an
14 injunction. The attorney general or a county attorney shall
15 institute suits on behalf of the state to prevent and restrain
16 violations of this chapter.

17 2. a. A processor who violates section 9H.2 is subject to
18 a civil penalty of not more than twenty-five thousand dollars.
19 Each day that a violation continues shall be considered a
20 separate offense.

21 b. If the attorney general or a county attorney is the
22 prevailing party in an action for a violation of section 9H.2,
23 the prevailing party shall be awarded court costs and
24 reasonable attorney fees, which shall be taxed as part of the
25 costs of the action. If the attorney general is the
26 prevailing party, the moneys shall be deposited in the general
27 fund of the state. If the county is the prevailing party, the
28 moneys shall be deposited in the general fund of the county.

29 Sec. 7. Section 9H.9, Code 2001, is amended to read as
30 follows:

31 9H.9 REPORTS BY PROCESSORS.

32 ~~Any A processor of-beef-or-pork-in-this-state shall file a~~
33 ~~report with the secretary of state on or before March 31 of~~
34 ~~each year, a-report-setting-forth as follows:~~

35 1. For all processors, the report shall include all of the

1 following:

2 ~~1-~~ a. The number of hogs swine and the number of cattle
3 owned and fed more than thirty days by the processor in Iowa
4 this state during the processor's preceding calendar-or-fiscal
5 tax year.

6 ~~2-~~ b. The total number of hogs swine and the total number
7 of cattle owned and fed more than thirty days by the processor
8 during the processor's preceding calendar-year-or-fiscal tax
9 year.

10 ~~3-~~ c. The number of hogs swine and the number of cattle
11 slaughtered in Iowa this state by the processor during the
12 processor's preceding calendar-or-fiscal tax year.

13 ~~4-~~ d. The total number of hogs swine and the total number
14 of cattle slaughtered by the processor during the processor's
15 preceding calendar-or-fiscal tax year.

16 e. The total wholesale value of beef or pork products that
17 have been processed by the processor during the preceding tax
18 year.

19 ~~5-~~ f. The total number of hogs swine for which the
20 processor has contracted for feeding as provided in section
21 9H.2.

22 2. For a qualified processor, the report shall include all
23 of the following:

24 a. The total number of swine slaughtered each day during
25 the qualified processor's preceding tax year.

26 b. The total number of swine slaughtered each day that are
27 purchased through cash or spot market purchases during the
28 qualified processor's preceding tax year.

29 Sec. 8. LEGISLATIVE INTENT -- ACTING DIRECTLY AND
30 INDIRECTLY. This Act shall not be interpreted to mean that a
31 person may accomplish an act or attempt to accomplish an act
32 in a manner prohibited by chapter 9H as amended by this Act by
33 using any indirect method, if the person is prohibited by
34 chapter 9H as amended by this Act from accomplishing the act
35 or attempting to accomplish the act directly.

1 confinement building as well as any other area where livestock
2 are maintained. The bill eliminates the term "feedlot" and
3 replaces it with "cattle operation" and "swine operation".
4 The bill strikes references to specific business organizations
5 that have been added to Code sections 9H.1 and 9H.2 (e.g.,
6 limited partnerships and limited liability companies), but
7 retains the term "person" which under Code section 4.1
8 includes a variety of legal entities including limited
9 partnerships and limited liability companies. The bill
10 strikes other language that is currently inapplicable because
11 a deadline has expired and makes other changes in order to
12 improve the organization of the provisions and readability of
13 the language including changes that conform with bill drafting
14 style practices.

15 The bill also makes substantive changes to Code sections
16 9H.1 and 9H.2. It amends the definition of "processor".
17 Currently, the Code section provides that a "processor" means
18 a person who prepares beef or pork products having a total
19 annual wholesale value of \$10 million or more. The bill
20 increases that amount to \$80 million. In addition, the bill
21 provides that a person is considered to be a processor if the
22 person holds a "threshold interest" in a business association
23 that directly or indirectly controls the processing of beef or
24 pork products. For processors of pork the threshold interest
25 begins at a 10 percent interest for a business association
26 that directly or indirectly controls the processing of pork
27 products having a total annual wholesale value of at least \$80
28 million, and decreases to 1 percent for a business association
29 that directly or indirectly controls the processing of pork
30 products having a total annual wholesale value of at least
31 \$260 million.

32 A person is also considered a processor if the person holds
33 an executive position in a processor, or the person owes a
34 fiduciary duty to the processor. A person who held such a
35 position or owed such a duty is deemed to still hold the

1 position or owe the duty for two years following the date that
2 the person relinquishes the position or duty.

3 The bill creates a definition of a "qualified processor",
4 which is a processor of pork products in which swine producers
5 must hold at least a 60 percent interest, including a voting
6 interest, and all retailers cannot hold an interest of more
7 than 20 percent. In addition, not less than 25 percent of the
8 swine slaughtered by the processor each day must be purchased
9 through cash or spot market purchases.

10 The bill amends Code section 9H.2 to prohibit a processor
11 from directly or indirectly owning a swine operation in this
12 state, controlling or operating a swine operation in this
13 state, or directly or indirectly financing a swine operation
14 in this state. The term "finance" is defined to mean to
15 directly or indirectly loan moneys or to guarantee or
16 otherwise act as a surety. "Finance" or "control" does not
17 include executing a contract for the purchase of swine by a
18 processor, including but not limited to a contract that
19 contains an unsecured ledger balance or other price risk-
20 sharing arrangement. The bill provides that "finance" also
21 does not include providing an unsecured open account or an
22 unsecured loan within certain limits. The bill also prohibits
23 a processor from obtaining a benefit of production associated
24 with feeding or otherwise maintaining swine, by directly or
25 indirectly assuming a morbidity or mortality production risk,
26 and from directly or indirectly receiving the net revenue
27 derived from a swine operation in this state or from a person
28 who contracts for the care and feeding of swine in this state.

29 The bill provides a special exception for swine producers
30 who hold a threshold interest in a qualified processor, as
31 long as the swine producer's threshold interest is not more
32 than 10 percent and the swine producer is not engaged in
33 processing.

34 The bill amends Code section 9H.9 requiring reports by
35 processors, providing information regarding the number of

1 swine and cattle controlled by the processor. The bill
2 requires that the information be based on the processor's tax
3 year. It requires the processor to report the total wholesale
4 value of beef or pork products that have been processed by the
5 processor during the preceding tax year. Finally, it provides
6 that for a qualified processor the report must include the
7 total number of swine slaughtered each day and the total
8 number of swine slaughtered each day that are purchased
9 through cash or spot market purchases.

10 The bill provides that a processor that is in compliance
11 with the law prior to January 1, 2002, and which is in
12 violation of the bill has until June 30, 2004, to comply with
13 the bill's provisions. However, the bill prohibits a
14 processor from taking an action on or after January 1, 2002,
15 that would be in violation of its provisions.

16 Under current law, a processor who violates Code section
17 9H.2 is subject to a civil penalty of not more than \$25,000.
18 The bill provides that each day that a violation continues is
19 considered a separate offense. The bill provides that if the
20 attorney general or a county attorney is the prevailing party
21 in an action for a violation of Code section 9H.2, the
22 prevailing party shall be awarded court costs and reasonable
23 attorney fees. The moneys are deposited in either the general
24 fund of the state or the general fund of the county. The bill
25 provides a number of directions to the Code editor in order to
26 enhance the readability of the Code.

27 The bill takes effect upon enactment and is made
28 retroactively applicable to January 1, 2002.

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SENATE FILE 2309

H-8408

- 1 Amend Senate File 2309, as passed by the Senate, as
2 follows:
- 3 1. Page 1, line 6, by striking the word "defined"
4 and inserting the following: "calculated in the same
5 manner as provided".
- 6 2. Page 1, line 10, by inserting after the words
7 "a profit" the following: ", cooperative,".
- 8 3. Page 3, line 1, by striking the word "corral,"
9 and inserting the following: "corral;".
- 10 4. Page 3, by striking line 11, and inserting the
11 following: "the manufacturing, processing, or
12 preparation for sale of beef".
- 13 5. Page 5, lines 24 and 25, by striking the words
14 "be more than" and inserting the following: "exceed".
- 15 6. Page 6, line 15, by inserting after the word
16 "processor" the following: "in the manner provided in
17 section 9H.1".
- 18 7. Page 6, by striking line 24, and inserting the
19 following: "executive position in the qualified
20 processor or owes the qualified processor a".
- 21 8. Page 7, by striking lines 7 through 9, and
22 inserting the following: "~~it prevent processors from~~
23 ~~owning.~~
- 24 c. Owning and operating facilities to provide
25 normal care and feeding of ~~animals~~ cattle or swine for
26 a period not to exceed".
- 27 9. By striking page 7, line 31 through page 8,
28 line 4, and inserting the following:
- 29 "3. The two-year period that a person who holds an
30 executive position in a processor or owes a processor
31 a fiduciary duty and thus is deemed to be a processor
32 as provided in section 9H.1, subsection 19, paragraph
33 "b", shall not apply if the person held the position
34 or owed the duty on January 1, 2002, and relinquishes
35 the position or duty on or before June 30, 2004."
- 36 10. By renumbering, relettering, or redesignating
37 and correcting internal references as necessary.

By COMMITTEE ON AGRICULTURE
KLEMME of Plymouth,

Chairperson

H-8408 FILED MARCH 21, 2002

Adapted

3/26/01

(P. 1002)

SENATE FILE 2309

H-8440

1 Amend Senate File 2309, as passed by the Senate, as
2 follows:
3 1. Page 8, by inserting after line 28 the
4 following:
5 "____. NEW SECTION. 9H.8 ENGLISH CLASSES.
6 A processor with more than ten percent of its
7 workforce as noncitizens shall provide English
8 language proficiency classes and the time to attend
9 such classes to all employees who desire to attend
10 such classes."
11 2. By renumbering, redesignating, and correcting
12 internal references as necessary.

By WARNSTADT of Woodbury

H-8440 FILED MARCH 26, 2002

W/D
3/26/02
(P.1002)

**HOUSE AMENDMENT TO
SENATE FILE 2309**

S-5260

1 Amend Senate File 2309, as passed by the Senate, as
2 follows:

3 1. Page 1, line 6, by striking the word "defined"
4 and inserting the following: "calculated in the same
5 manner as provided".

6 2. Page 1, line 10, by inserting after the words
7 "a profit" the following: ", cooperative,".

8 3. Page 3, line 1, by striking the word "corral,"
9 and inserting the following: "corral;".

10 4. Page 3, by striking line 11, and inserting the
11 following: "the manufacturing, processing, or
12 preparation for sale of beef".

13 5. Page 5, lines 24 and 25, by striking the words
14 "be more than" and inserting the following: "exceed".

15 6. Page 6, line 15, by inserting after the word
16 "processor" the following: "in the manner provided in
17 section 9H.1".

18 7. Page 6, by striking line 24, and inserting the
19 following: "executive position in the qualified
20 processor or owes the qualified processor a".

21 8. Page 7, by striking lines 7 through 9, and
22 inserting the following: "~~it prevent processors from~~
23 ~~owning.~~

24 c. Owning and operating facilities to provide
25 normal care and feeding of animals cattle or swine for
26 a period not to exceed".

27 9. By striking page 7, line 31 through page 8,
28 line 4, and inserting the following:

29 "3. The two-year period that a person who holds an
30 executive position in a processor or owes a processor
31 a fiduciary duty and thus is deemed to be a processor
32 as provided in section 9H.1, subsection 19, paragraph
33 "b", shall not apply if the person held the position
34 or owed the duty on January 1, 2002, and relinquishes
35 the position or duty on or before June 30, 2004."

36 10. By renumbering, relettering, or redesignating
37 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-5260 FILED MARCH 27, 2002

Senate Concurred
4/1/02

SENATE FILE 2309

AN ACT

PROVIDING FOR REGULATION OF PROCESSORS, PROVIDING FOR PENALTIES, AND PROVIDING AN EFFECTIVE DATE AND FOR RETROACTIVE APPLICABILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 9H.1, Code 2001, is amended by adding the following new subsections:

NEW SUBSECTION. 4A. "Base price" means the price paid for swine, delivered to the processor, before application of any premiums or discounts, and expressed in dollars per hundred pounds of hot carcass weight as calculated in the same manner as provided in 7 C.F.R. § 59.30.

NEW SUBSECTION. 5A. "Business association" means a person organized under statute or common law in this state or another jurisdiction for purposes of engaging in a commercial activity on a profit, cooperative, or not-for-profit basis, including but not limited to a corporation or entity taxed as a corporation under the Internal Revenue Code, nonprofit corporation, cooperative association, partnership, limited partnership, limited liability company, limited liability partnership, investment company, joint stock company, joint stock association, or trust, including but not limited to a business trust.

NEW SUBSECTION. 5B. "Cash or spot market purchase" means the purchase of swine by a processor from a seller, if the swine are slaughtered not more than fourteen days after the date that the seller and the processor agree on a date of

delivery of the swine for slaughter and the base price for purchasing the swine is determined by an oral or written agreement between seller and processor executed on the day the swine are delivered for slaughter.

NEW SUBSECTION. 5C. "Cattle operation" means a location including but not limited to a building, lot, yard, corral, or other place where cattle for slaughter are fed or otherwise maintained.

NEW SUBSECTION. 6B. "Cooperative association" means the same as defined in section 10.1.

NEW SUBSECTION. 14A. "Indirect" means to act or attempt to accomplish an act through an interest in a business association, through one or more affiliates or intermediaries, or by any method other than a direct approach, including by any circuitous or oblique method.

NEW SUBSECTION. 19A. "Qualified processor" means a processor of pork products if all of the following apply:

a. (1) (a) Swine producers exercise a controlling interest in the processor. "Controlling interest" means actual control or the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a processor, whether through the ownership of voting securities, by contract, or otherwise.

(b) Of the total interest held by all persons in the processor, swine producers hold at least sixty percent of the interest. In addition, of the total interest held by all persons in the processor, swine producers hold at least sixty percent of interests with voting rights.

(2) Of the total interest held by all persons in the processor, all retailers hold a total of not more than twenty percent of the interest.

b. Another processor does not hold a direct or indirect interest in the processor. However, this paragraph does not apply to a person deemed to be a processor solely because the person holds a threshold interest in the processor.

c. Not less than twenty-five percent of the swine slaughtered by the processor each day are purchased through cash or spot market purchases from sellers of swine who do not hold a direct or indirect interest in the processor.

NEW SUBSECTION. 19B. "Retailer" means a person who is engaged in the business of selling pork products in this state, if all of the following apply:

a. The pork products are sold only on a retail basis directly to the ultimate purchasers of the pork products for consumption and not for resale.

b. The person is not engaged in the slaughter of swine.

c. A processor does not have a direct or indirect interest in the person.

NEW SUBSECTION. 20A. "Swine operation" means a location where swine are fed or otherwise maintained, including a building, lot, yard, or corral; and swine which are fed or otherwise maintained at the location.

NEW SUBSECTION. 20B. "Swine producer" means a person who owns, controls, or operates a swine operation in this state or who contracts for the care and feeding of swine in this state.

Sec. 2. Section 9H.1, subsection 19, Code 2001, is amended to read as follows:

19. "Processor" means a ~~person, firm, corporation, limited liability company, or limited partnership, which who~~ alone or in conjunction with others, directly or indirectly controls the manufacturing, processing, or preparation for sale of beef or pork products, having including the slaughtering of cattle or swine or the manufacturing or preparation of carcasses or goods originating from the carcasses, if the beef or pork products have a total annual wholesale value of ten eighty million dollars or more for the person's tax year. Any A ~~person, firm, corporation, limited liability company, or limited partner with a shall be deemed to be a processor, if any of the following applies:~~

a. The person has a threshold interest in a processor which is a business association. "Threshold interest" means a direct or indirect interest in the business association, calculated as follows:

(1) For a processor of beef products, the person's threshold interest begins at ten percent or greater interest in another person, firm, corporation, limited liability company, or limited partnership involved in the manufacturing processing or preparation for sale of beef or pork products having a total annual wholesale value of ten million dollars or more shall also be considered a processor.

(2) For a processor of pork products, the person's threshold interest begins at ten percent for a processor of pork products having a total annual wholesale value of at least eighty million dollars and decreases to one percent for a processor of pork products having a total annual wholesale value of at least two hundred sixty million dollars. The amount of the decrease in the amount of the threshold interest shall equal one percent for each increased increment of twenty million dollars in total annual wholesale value.

b. The person holds an executive position in a processor of pork products or owes a processor of pork products a fiduciary duty, if the processor directly or indirectly controls the processing of pork products having a total annual wholesale value of two hundred sixty million dollars or more. A person who held such an executive position or owed a fiduciary duty shall be deemed to still hold the position or owe the duty for a two-year period following the date that the person relinquishes the position or duty. An executive position in a processor organized as a business association includes but is not limited to a member of a board of directors or an officer of a corporation or cooperative association, a director or officer of a joint stock company or joint stock association, a manager of a limited liability company, a general partner of a limited partnership, or a trustee of a trust.

Sec. 3. Section 9H.1, subsection 12, Code 2001, is amended by striking the subsection.

Sec. 4. Section 9H.2, Code 2001, is amended to read as follows:

9H.2 PROHIBITED OPERATIONS AND ACTIVITIES -- EXCEPTIONS.

In order to The purpose of this section is to preserve free and private enterprise, prevent monopoly, and also to protect consumers,--it-is-unlawful-for-any.

1. Except as provided in subsections 2 through 4, and section 9H.2A, all of the following apply:

a. For cattle, a processor of beef or pork or limited partnership in which a processor holds partnership shares as a general partner or partnership shares as a limited partner, or limited liability company in which a processor is a member, to shall not own, control, or operate a feedlot cattle operation in Iowa in which hogs or cattle are fed for slaughter this state.

b. For swine, a processor shall not do any of the following:

(1) (a) Directly or indirectly own, control, or operate a swine operation in this state.

(b) Finance a swine operation in this state or finance a person who directly or indirectly contracts for the care and feeding of swine in this state.

For purposes of subparagraph subdivision (a) and this subparagraph subdivision, all of the following apply:

(i) "Finance" means an action by a processor to directly or indirectly loan money or to guarantee or otherwise act as a surety.

(ii) "Finance" or "control" does not include executing a contract for the purchase of swine by a processor, including but not limited to a contract that contains an unsecured ledger balance or other price risk sharing arrangement. "Finance" also does not include providing an unsecured open account or an unsecured loan, if the unsecured open account or

unsecured loan is used for the purchase of feed for the swine and the outstanding amount due by the debtor does not exceed five hundred thousand dollars. However, the outstanding amount due to support a single swine operation shall not exceed two hundred fifty thousand dollars.

(c) Obtain a benefit of production associated with feeding or otherwise maintaining swine, by directly or indirectly assuming a morbidity or mortality production risk, if the swine are fed or otherwise maintained as part of a swine operation in this state or by a person who contracts for the care and feeding of swine in this state.

(d) Directly or indirectly receive the net revenue derived from a swine operation in this state or from a person who contracts for the care and feeding of swine in this state.

(2) In addition, a processor shall not directly or indirectly contract for the care and feeding of swine in this state. However, this section subparagraph does not apply to a cooperative association organized under chapter 497, 498, 499, or 501, if the cooperative association contracts for the care and feeding of swine with a member of the cooperative association who is actively engaged in farming. This section subparagraph does not apply to an association organized as a cooperative in which another cooperative association organized under chapter 497, 498, 499, or 501 is a member, if the association contracts with a member which is a cooperative association organized under chapter 497, 498, 499, or 501, which contracts for the care and feeding of swine with a member of the cooperative who is actively engaged in farming.

2. Subsection 1 shall not apply to a swine producer who holds a threshold interest in a qualified processor in the manner provided in section 9H.1, if all of the following apply:

a. The swine producer's threshold interest in the qualified processor is not more than ten percent.

b. The swine producer is not a processor. However, this paragraph does not apply to a swine producer deemed to be a processor solely because the swine producer holds a threshold interest in the qualified processor as otherwise allowed under this subsection or because the swine producer holds an executive position in the qualified processor or owes the qualified processor a fiduciary duty.

3. This section shall not preclude a processor, limited partnership, or limited liability company from contracting from doing any of the following:

a. Contracting for the purchase of hogs or cattle or swine, provided that where the contract sets a date for delivery which is more than twenty days after the making of the contract it, the contract shall do one of the following:

1. Specify a calendar day for delivery of the livestock, or cattle or swine.

2. Specify the month for the delivery, and shall allow the farmer to set the week for the delivery within such month and the processor, limited partnership, or limited liability company to set the date for delivery within such week.

b. This section shall not prevent processors or educational institutions from carrying on legitimate research, educational, or demonstration activities, nor shall it prevent processors from owning.

c. Owning and operating facilities to provide normal care and feeding of animals cattle or swine for a period not to exceed ten days immediately prior to slaughter, or for a longer period in an emergency. Any processor or limited partnership which owns, controls, or operates a feedlot on August 15, 1975, shall have until July 1, 1985, to dispose of the property.

4. A processor which is was in compliance with this section prior to April 5, 2000, and which is was in violation of this section as a result of 2000 Iowa Acts, chapter 1048, shall have until July 1 June 30, 2004, to comply with 2000

Iowa Acts, chapter 1048. A processor shall not take action on or after April 5, 2000, which would be in violation of this section.

Sec. 5. NEW SECTION. 9H.2A COMPLIANCE REQUIREMENTS.

1. A processor that was in compliance with section 9H.2, Code 2001, prior to January 1, 2002, and which is in violation of section 9H.2, as amended by this Act, shall have until June 30, 2004, to comply with section 9H.2, as amended by this Act.

2. Notwithstanding any provision of this section, a processor shall not take an action on or after January 1, 2002, that would be in violation of section 9H.2, as amended by this Act.

3. The two-year period that a person who holds an executive position in a processor or owes a processor a fiduciary duty and thus is deemed to be a processor as provided in section 9H.1, subsection 19, paragraph "b", shall not apply if the person held the position or owed the duty on or before January 1, 2002, and relinquishes the position or duty on or before June 30, 2004.

4. This section is repealed on July 1, 2006.

Sec. 6. Section 9H.3, Code 2001, is amended to read as follows:

9H.3 PENALTIES FOR PROHIBITED OPERATION -- INJUNCTIVE RELIEF.

A processor violating section 9H.2 shall be assessed a civil penalty of not more than twenty-five thousand dollars.

1. The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

2. a. A processor who violates section 9H.2 is subject to a civil penalty of not more than twenty-five thousand dollars. Each day that a violation continues shall be considered a separate offense.

b. If the attorney general or a county attorney is the prevailing party in an action for a violation of section 9H.2, the prevailing party shall be awarded court costs and reasonable attorney fees, which shall be taxed as part of the costs of the action. If the attorney general is the prevailing party, the moneys shall be deposited in the general fund of the state. If the county is the prevailing party, the moneys shall be deposited in the general fund of the county.

Sec. 7. Section 9H.9, Code 2001, is amended to read as follows:

9H.9 REPORTS BY PROCESSORS.

Any A processor of-beef-or-pork-in-this-state shall file a report with the secretary of state on or before March 31 of each year, a-report-setting-forth as follows:

1. For all processors, the report shall include all of the following:

1- a. The number of hogs swine and the number of cattle owned and fed more than thirty days by the processor in Iowa this state during the processor's preceding calendar-or-fiscal tax year.

2- b. The total number of hogs swine and the total number of cattle owned and fed more than thirty days by the processor during the processor's preceding calendar-year-or-fiscal tax year.

3- c. The number of hogs swine and the number of cattle slaughtered in Iowa this state by the processor during the processor's preceding calendar-or-fiscal tax year.

4- d. The total number of hogs swine and the total number of cattle slaughtered by the processor during the processor's preceding calendar-or-fiscal tax year.

e. The total wholesale value of beef or pork products that have been processed by the processor during the preceding tax year.

5- f. The total number of hogs swine for which the processor has contracted for feeding as provided in section 9H.2.

2. For a qualified processor, the report shall include all of the following:

a. The total number of swine slaughtered each day during the qualified processor's preceding tax year.

b. The total number of swine slaughtered each day that are purchased through cash or spot market purchases during the qualified processor's preceding tax year.

Sec. 8. LEGISLATIVE INTENT -- ACTING DIRECTLY AND INDIRECTLY. This Act shall not be interpreted to mean that a person may accomplish an act or attempt to accomplish an act in a manner prohibited by chapter 9H as amended by this Act by using any indirect method, if the person is prohibited by chapter 9H as amended by this Act from accomplishing the act or attempting to accomplish the act directly.

Sec. 9. SEVERABILITY. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the invalidity does not affect other provisions of this Act or sections 9H.1, 9H.2, 9H.3, and 9H.9 as those provisions existed prior to the effective date of this Act, which shall be given effect without the invalid provision or application, and to this end, the provisions of this Act are severable.

Sec. 10. DIRECTIONS TO CODE EDITOR. The Code editor is directed to do all of the following:

1. Replace the term "hogs" with the term "swine" wherever it appears in chapter 9H for publication in the 2003 Code.

2. Transfer chapter 567 to a new chapter in proximity to chapter 9H for publication in the 2003 Code.

3. Strike section 9H.2, subsection 4, as amended by this Act for publication in the 2005 Code. The Code editor shall internally renumber the section and correct internal references as necessary.

Sec. 11. RETROACTIVE APPLICABILITY. This Act applies retroactively to January 1, 2002.

Sec. 12. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

MARY E. KRAMER
President of the Senate

BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2309, Seventy-ninth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved 4/9, 2002

THOMAS J. VILSACK
Governor