AGRICULTURE

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SENATE FILE 455

BY BARTZ

Passed Senate, Date ____________ Passed House, Date ____________

Vote: Ayes ______ Nays ________ Vote: Ayes ______ Nays ________

Approved ____________________________

A BILL FOR

An Act relating to the production and marketing of agricultural commodities and products and providing penalties.

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

SF 455

AGRICULTURE

TLSB 1447XS 78

da/jw/5

S.F. 455 H.F. ______

Section 1. Section 9H.1, subsection 19, Code 1999, is amended by striking the subsection.

Sec. 2. Section 22.7, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 38. Provisions contained in contracts submitted by contract feeders and processors to the attorney general pursuant to section 172C.16, to the extent that the attorney general determines that disclosure of the provisions would not serve the public interest.

SUBCHAPTER I

GENERAL

Sec. 3. NEW SECTION. 172C.1 SHORT TITLE.

This Act shall be known and may be cited as the "Iowa farmers protection Act".

Sec. 4. NEW SECTION. 172C.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Agricultural input" means any organic or synthetic substance or compound that is used to produce an agricultural commodity including all of the following:

a. Agricultural seed as regulated pursuant to chapter 199.

b. A fertilizer as regulated pursuant to chapter 200.

c. A pesticide as regulated pursuant to chapter 206.

d. Semen or eggs for breeding livestock.

2. "Agricultural commodity" means any unprocessed agricultural product, including livestock as defined in section 717.1; agricultural crops; hay, straw, or stover; or fruit from fruit trees, if the product is produced in this state for sale in commercial channels.

3. "Agricultural inputs contract" means a contract executed by an agricultural producer and a person who sells an agricultural input to an agricultural producer.

4. "Agricultural producer" means a person who owns the agricultural commodity that is produced by or under the direction or management of the person.

5. "Animal feeding operation" means the same as defined in section 455B.161.

6. "Article" means livestock or a product derived in whole or in part from a livestock carcass.

7. "Care and feeding contract" means a contract for the care and feeding of livestock or the marketing of livestock offered to a producer by a contract feeder or processor or executed between the producer and contract feeder or processor.

8. "Commercial channels" means the processes of sale of an agricultural commodity to any person, public or private, who resells the agricultural commodity for breeding, processing, slaughter, or distribution.

9. "Commodities contract" means a contract executed by an agricultural producer and other party who purchases commodities from an agricultural producer.

10. "Contract" means an agricultural input contract or a commodities contract.

11. "Contract feeder" means a person owning in the applicable reporting year, as provided in section 172C.16, more than one thousand head of cattle, two thousand five hundred head of swine or sheep or five thousand head of poultry, if the livestock are being cared for and fed pursuant to a care and feeding contract on land which is not owned, leased, or held by the owner of the livestock.

12. "Fair market value" means the cash price that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell.

13. "Federal patent protection" means a patent issued by the United States patent and trademark office as provided in Title 35 of the United States Code or pursuant to the federal Plant Variety Protection Act as provided in 7 U.S.C. § 2321.

14. "Ledger contract" means a contract executed between a contract feeder or processor and a producer, if either party to the contract assumes a debt to the other party arising from

underpayment or overpayment by the contract feeder or processor to the producer, and settlement of the debt obligation may be deferred for more than ninety days following the earlier of either event:

a. The date when any payment is due to the producer arising from the care and feeding or marketing of the swine.

b. The date that the swine are delivered to the contract feeder or processor.

15. "Livestock" means cattle, swine, poultry, or sheep.

16. "Livestock market" means any place where livestock is assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such livestock is kept for ten days or less.

17. "Other party" means a party to a contract other than an agricultural producer.

18. "Packer" means a person who is engaged in the business of slaughtering livestock or receiving, purchasing, or soliciting livestock for slaughter, if the meat products of the slaughtered livestock are directly or indirectly offered for resale or for public consumption, and the meat products have a total annual wholesale value of ten million dollars or more. "Packer" includes an agent of the packer engaged in buying or soliciting livestock for slaughter on behalf of a packer.

19. a. "Processor" means a person who alone or in conjunction with others, directly or indirectly engages in business as a packer or in the processing of livestock carcasses, if the meat products of the slaughtered livestock have a total annual wholesale value of ten million dollars or more. "Processor" includes controlling the manufacturing or preparation for sale of meat products of slaughtered livestock, if the meat products are not directly offered for resale for public consumption.

b. As used in this chapter, "processor" does not include any of the following:

(1) A frozen food locker plant regulated under chapter 172.

(2) A livestock market.

(3) A food establishment regulated pursuant to chapter 137F.

20. "Purchase contract" means a contract for the purchase of livestock made by a packer and a producer, if the terms of the agreement require the purchase of livestock by the packer from the producer to be according to promises made by each party which the law requires to be performed.

21. "Security interest" means security against a debt which is a mortgage under chapter 654; a real estate contract under chapter 656; or a secured interest in property under chapter 554.

Sec. 5. NEW SECTION. 172C.3 FINDINGS AND PURPOSE.

1. The general assembly finds all of the following:

a. This state is in a period when the economic structure of production and marketing of agricultural commodities is undergoing a period of rapid transformation.

b. It is necessary to enact protections for agricultural producers who execute contracts with sellers of agricultural inputs and purchasers of agricultural commodities in order to provide agricultural producers the ability to effectively compete in the market.

2. This chapter shall be liberally construed and applied to promote its underlying policy. The underlying policy of this chapter is to protect agricultural producers from unfair contracts by persons having an unequal bargaining position, while having due regard for the interests of legitimate and scrupulous sellers of agricultural inputs and purchasers of agricultural commodities.

Sec. 6. NEW SECTION. 172C.4 FEDERAL PATENT PROTECTIONS.

There is a rebuttable presumption that the provisions of this chapter apply to a contract and, if a federal patent protection applies, this chapter shall govern any contract to every extent consistent with federal patent protections.

Sec. 7. NEW SECTION. 172C.5 EXECUTION AND TERMINATION OF CONTRACTS.

As used in this chapter, a contract is executed when it is signed by each party to the contract or by each party's authorized representative. A license agreement shall be deemed to be a contract executed in this state, if the agricultural producer purchases the agricultural input or commodity subject to the license agreement in this state. A contract is terminated upon completion of terms and conditions by each party, unless a time period for termination is provided in the contract. Nothing in this paragraph prohibits an agricultural producer from executing a new contract with any person.

Sec. 8. NEW SECTION. 172C.6 FORUM.

Any action arising from a contract under this chapter shall be heard in a court sitting in this state. The choice of law shall be Iowa law. Venue for a civil action commenced under this chapter shall be determined in accordance with chapter 616.

Sec. 9. NEW SECTION. 172C.7 AGRICULTURAL PRODUCER PROTECTIONS -- VOID CONTRACT PROVISIONS.

A provision in a contract executed in this state is void and unenforceable, if the provision does any of the following:

1. Restricts a party's forum or choice of law, by doing any of the following:

a. Restricts jurisdiction to a forum outside this state.

b. Requires an agricultural producer to participate in arbitration.

c. Requires the application of the law of another state in lieu of the law of this state.

2. Requires a party's ability to extend, renew, or execute a new contract.

3. Restricts an agricultural producer from associating with any person, association, or organization.

4. Requires an agricultural producer to provide any of the following:

a. Personal information other than as necessary to identify an agricultural producer.

b. Financial information except as required to provide an assessment of creditworthiness.

5. Requires that the terms and conditions of a contract be confidential. However, this section does not apply to provisions which are trade secrets protected pursuant to chapter 550.

6. Requires as a condition of a contract that a producer be certified or complete an educational program, including but not limited to a program administered by the federal or state government, a private or public educational institution, or an organization representing producers.

Sec. 10. NEW SECTION. 172C.8 ENFORCEMENT AND PENALTIES.

1. The attorney general's office is the primary agency responsible for enforcing this chapter. The secretary of state shall notify the attorney general when the secretary of state has reason to believe that a violation of a reporting requirement provided in this chapter has occurred.

2. The attorney general or a county attorney in the county where the violation occurs, in cooperation with the attorney general, shall institute a legal action to enforce the provisions of this chapter, which may include seeking any of the following:

a. The assessment and collection of civil penalties required under this section.

b. Injunctions brought on behalf of the state to prevent and restrain violations of this chapter. A petitioner shall not be required to allege facts necessary to show, or tending to show, a lack of adequate remedy at law, that irreparable damage or loss will result if the action is brought at law, or that unique or special circumstances exist.

3. A person violating this chapter shall be subject to the following civil penalties:

a. A person who is a party to a contract other than an agricultural producer who violates section 172C.6 is subject to a civil penalty not to exceed one thousand dollars.

b. A person failing to report as required by sections 172C.13 through 172C.16 is subject to a civil penalty not to exceed one thousand dollars for each day that a timely or complete report is not delivered as provided in those sections.

c. A contract feeder or processor failing to submit contracts to the attorney general as required pursuant to section 172C.16 is subject to a civil penalty not to exceed one thousand dollars for each day that a timely or complete contract is not submitted.

d. A processor is subject to a civil penalty not to exceed twenty-five thousand dollars for any violation of this chapter other than as provided in paragraph "a" or "b". Each day that an offense continues constitutes a separate offense.

e. A person, other than an agricultural producer, who executes an agricultural inputs contract in violation of section 172C.21 is subject to a civil penalty not to exceed one thousand dollars.

SUBCHAPTER II

LIVESTOCK MARKETING CONTRACT

Sec. 11. NEW SECTION. 172C.11 PROHIBITED OPERATIONS -- EXCEPTIONS.

1. a. In order to preserve free and private enterprise, prevent monopoly, and protect consumers, it is unlawful for any processor of beef or pork to directly or indirectly own, control, or operate an animal feeding operation in this state in which cattle or swine are fed for slaughter.

b. A processor shall not directly or indirectly control the slaughter, manufacturing, processing, or preparation for sale of pork products derived from swine if the processor contracted for the care and feeding of the swine in this state.

c. However, this subsection does not apply to a cooperative association organized under chapter 497, 498, or 499, 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 subsection does not apply to an association organized as a cooperative in which another cooperative association organized under chapter 497, 498, or 499 is a member, if the association contracts with a member which is a cooperative association organized under chapter 497, 498, or 499, which contracts for the care and feeding of swine with a member of the cooperative who is actively engaged in farming.

2. This section shall not preclude a processor from contracting for the purchase of cattle or swine, if any of the following applies:

a. The purchase contract sets a date for delivery that is more than ten days after the making of the contract.

b. The cattle or swine are used by the processor for legitimate research, educational, or demonstration activities.

c. The cattle or swine are kept at facilities owned and operated by the processor to provide normal care and feeding of animals for a period not to exceed ten days immediately prior to slaughter or for a longer period in an emergency.

Sec. 12. NEW SECTION. 172C.12 PURCHASE CONTRACT RESTRICTIONS.

A packer and a producer may execute a purchase contract subject to the following limitations:

1. If the purchase contract provides for delivery of livestock more than ten days after the purchase contract is executed, the purchase contract shall include a stipulation allowing the packer to set the month for the delivery, and the producer to set the week and date for the delivery within that

month at any time.

2. For each species of livestock purchased during a calendar month not more than seventy percent of the livestock of that species shall be delivered to the packer according to the terms of a purchase contract that provides for delivery more than ten days after the purchase contract is executed.

Sec. 13. NEW SECTION. 172C.13 UNFAIR PRACTICES PROHIBITED.

A processor shall not do any of the following:

1. Engage in or use an unfair, unjustly discriminatory, or deceptive practice or device.

2. Make or give an undue or unreasonable preference or advantage to a person or locality, or subject a person or locality to an undue or unreasonable prejudice or disadvantage.

3. Transfer to or for another processor or otherwise receive from or for another processor an article, if both of the following apply:

a. The purpose or effect of the transfer is to apportion the supply between the processors.

b. The apportionment has the tendency or effect of restraining intrastate commerce or creating a monopoly.

4. Transfer to or for another person, or buy or otherwise receive from or for another person, an article, if the purpose or effect of the transfer is to do any of the following:

a. Manipulate or control prices.

b. Create a monopoly in the acquisition of, buying, selling, or dealing in any article.

c. Restrain commerce.

5. Engage in any course of business or do any act for the purpose or with the effect of doing any of the following:

a. Manipulating or controlling prices.

b. Creating a monopoly in the acquisition of, buying, selling, or dealing in any article.

c. Restraining commerce.

6. Conspire, combine, agree, or arrange with any other person to do any of the following:

a. Apportion territory for carrying on business.

b. Apportion purchases or sales of any article.

c. Manipulate or control prices.

Sec. 14. NEW SECTION. 172C.13 PRICE REPORTING.

1. A packer shall make available for publication and to a board of trade approved by the secretary of state, a daily report setting forth information regarding prices paid for livestock, under each purchase contract in force, to which the packer and a producer are parties.

2. The reports shall be completed on forms prepared by the secretary of state for comparison with cash market prices for the livestock according to procedures required by the secretary of state. However, a report shall not include information regarding the identify of a seller.

Sec. 15. NEW SECTION. 172C.14 REPORTS BY PROCESSORS.

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

1. The number of swine and the number of cattle owned and fed more than thirty days by the processor in Iowa during the preceding calendar or fiscal year.

2. The total number of swine and the total number of cattle owned and fed more than thirty days by the processor during the preceding calendar year.

3. The number of swine and the number of cattle slaughtered in Iowa by the processor during the preceding calendar or fiscal year.

4. The total number of swine and the total number of cattle slaughtered by the processor during the preceding calendar or fiscal year.

5. The total number of swine for which the processor has contracted for feeding as provided in section 172C.2.

Sec. 16. NEW SECTION. 172C.15 REPORTS BY CONTRACT

FEEDERS.

A contract feeder shall file with the secretary of state on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state an annual report containing all of the following information, if applicable:

1. The name and address of the contract feeder.

2. For each county, which the contract feeder shall identify, the approximate total number of livestock subject to a contract for feeding and care as described in section 9H.1, subsection 6.

3. The name and address of the purchaser of the livestock.

Sec. 17. NEW SECTION. 172C.16 SUBMISSION AND DISSEMINATION OF CONTRACTS.

1. The attorney general may require that a contract feeder or processor submit to the attorney general any contract offered to a producer by a contract feeder or processor or executed between the contract feeder or processor and a producer.

a. The contract shall be delivered to the attorney general according to terms and conditions required by the attorney general.

b. The attorney general may establish a system for the printed or electronic dissemination of the contracts, including contract terms and prices.

c. The attorney general may keep all or part of such contracts confidential. The attorney general shall assist any committee of the general assembly studying the effects of this section and the practices of contract feeders and processors executing contracts with producers.

2. The attorney general shall scrutinize the terms and conditions of ledger contracts and report to the general assembly any recommendations to regulate the use of ledger contracts.

SUBCHAPTER III

AGRICULTURAL INPUTS CONTRACTS

Sec. 18. NEW SECTION. 172C.21 VOID CONTRACT PROVISIONS.

A provision in an agricultural inputs contract executed in this state is void and unenforceable, if the provision does any of the following:

1. Requires that an agricultural producer sell an agricultural commodity to a particular person.

2. Requires that an agricultural producer use certain practices or products in conjunction with the agricultural input.

3. Prohibits an agricultural producer from storing an agricultural input for later use.

4. Allows the other party to acquire a security interest in the residence of the agricultural producer.

5. Allows the other party to come onto the agricultural producer's land without invitation from the agricultural producer.

6. Advertises that a portion of the price paid for an agricultural input is used for a specific purpose, if the portion of the price is not used for that purpose.

Sec. 19. Section 579A.1, subsection 5, Code 1999, is amended to read as follows:

5. "Processor" means the same as defined in section ~~9H.1~~ 172C.1.

Sec. 20. Sections 9H.2, 9H.3, 9H.5B, and 9H.9, Code 1999, are repealed.

EXPLANATION

This bill regulates the contracts relating to the production and marketing of agricultural input and commodities.

Specifically, the bill creates a new Code chapter 172C for the regulation of contracts involving an agricultural producer and a person selling to the agricultural producer an input such as seed, fertilizers, or pesticides, or involving an agricultural producer, and a purchaser of an agricultural commodity. The bill provides that a number of provisions in contracts are prohibited, including restrictions on choice of law, requiring renewal of contracts, requiring certain personal information, and restrictions on agricultural producers from belonging to associations.

The bill prohibits a contract from requiring that a producer complete an educational program or use certain management practices as a condition of the contract.

The bill regulates contracts for the care and feeding of livestock or the marketing of livestock offered to a producer by a contract feeder or processor or executed between the producer and the contract feeder or processor.

The bill transfers Code section 9H.2 to section 172C.11. This section prohibits processors of beef and pork from owning feedlots in Iowa and prohibits processors, other than certain cooperative associations, from contracting for the care and feeding of swine.

The bill provides restrictions upon contracts executed by packers and producers, based on provisions in Code section 9H.2. The bill provides that if a purchase contract provides for delivery of livestock more than 10 days after the purchase contract is executed, the parties must stipulate the delivery date according to a system that allows the packer and producer to set a date for delivery.

The bill prohibits unfair practices based on provisions in the federal Stockyards Act. Generally, the bill provides that a processor is prohibited from using unfair, unjust, or discriminatory or deceptive practices.

The bill requires a packer to make available for publication and to a board of trade a daily report setting forth information regarding prices paid for livestock under each purchase contract in force.

The bill transfers a number of provisions contained in Code chapter 9H, which requires reports by processors and contract feeders.

The bill provides that the attorney general may require that a contract feeder or processor submit to the attorney general any contract offered to a producer by a contract feeder or processor or executed between the contract feeder or processor and a producer.

The bill provides that any provision of a contract that requires the terms and conditions of the contract be confidential is void.

The bill provides that the attorney general is the primary agency responsible for enforcing these provisions. The bill authorizes the attorney general or a county attorney in the county where a violation occurs to institute legal action to enforce the provisions of the chapter. The bill provides for the assessment and collection of civil penalties or injunctions necessary to prevent or restrain violations of this bill.