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AGRICULTURE

SENATE FILE

2135

BY KIBBIE

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act providing for the regulation of packers and the purchase
2 of swine from producers, and providing for penalties.

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

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AGRICULTURE

SC 2135

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1 Section 1. NEW SECTION. 202D.1 PURPOSE.

2 The purpose of this chapter is to increase competition and
3 transparency among packers that purchase swine from producers.

4 Sec. 2. NEW SECTION. 202D.2 DEFINITIONS.

5 1. "Base price" means the price paid for swine, delivered
6 to a packer, before application of any premiums or discounts,
7 and expressed in dollars per hundred pounds of hot carcass
8 weight as calculated in the same manner as provided in 7
9 C.F.R. § 59.30.

10 2. "Business association" means the same as defined in
11 section 202B.102.

12 3. "Controlling interest" means actual control of a
13 business or the exercise of material participation, directly
14 or indirectly, in the management and policies of a business,
15 whether through the ownership of voting securities, by
16 contract, or otherwise.

17 4. "Covered packer" means a packer that is required to
18 report to the United States department of agriculture each
19 reporting day purchase data and slaughter data regarding swine
20 as provided in section 202D.3. However, a covered packer does
21 not include a packer which has a controlling interest in only
22 one packing plant.

23 5. "Department" means the department of agriculture and
24 land stewardship.

25 6. "Federal meat inspection Act" means the same as defined
26 in section 189A.2.

27 7. "Nonaffiliated producer" means a producer who sells
28 swine to a packer. In addition, all of the following must
29 apply:

30 a. The producer has less than a one percent equity
31 interest in the packer, including but not limited to as a
32 shareholder, partner, member, or beneficiary.

33 b. If the producer is a business association, the packer
34 has less than a one percent equity interest in the producer,
35 including but not limited to as a shareholder, partner,

1 member, or beneficiary.

2 c. The producer is not an officer, director, employee, or
3 owner of the producer who is also an officer, director,
4 employee, or owner of the packer. If the producer is a
5 business association, an officer, director, employee, or owner
6 of the producer cannot also be an officer, director, employee,
7 or owner of the packer.

8 d. The producer does not owe a fiduciary responsibility to
9 the packer.

10 e. If the producer is a business association, the packer
11 does not have an equity interest in the producer.

12 8. "Packer" means a business association engaged in buying
13 swine in commerce for purposes of slaughter, of manufacturing
14 or preparing meats or meat food products from swine for sale
15 or shipment in commerce, or of marketing meats or meat food
16 products from swine in an unmanufactured form acting as a
17 wholesale broker, dealer, or distributor in commerce.

18 9. "Processing plant" means the geographic location of an
19 establishment as defined in section 189A.2 which is both of
20 the following:

21 a. Subject to inspection by the department pursuant to
22 chapter 189A or the United States department of agriculture
23 pursuant to the federal Meat Inspection Act.

24 b. Slaughters an average of at least one hundred thousand
25 swine per year during the immediately preceding five calendar
26 years or has the capacity to slaughter that number of swine in
27 any one of those years.

28 10. "Producer" means a person who holds an ownership
29 interest or controlling interest in a business association
30 which operates a location where livestock are fed or otherwise
31 maintained, including a building, lot, yard, or corral; and
32 livestock which are fed or otherwise maintained at the
33 location.

34 11. "Reasonable competitive bidding opportunity" means
35 circumstances in which all of the following apply:

1 a. A written or oral agreement does not preclude a
2 producer from soliciting or receiving bids from other packers.

3 b. No circumstances, customs, or practices exist that do
4 any of the following:

5 (1) Establish the existence of an implied contract.

6 (2) Preclude the producer from soliciting or receiving
7 bids from other packers.

8 12. "Spot market sale" means a purchase and sale of swine
9 by a packer from a producer that specifies a firm base price
10 that may be equated with a fixed dollar amount on the date the
11 agreement is entered into under which the swine are
12 slaughtered not more than seven days after the date on which
13 the agreement is entered into, and under circumstances in
14 which a reasonable competitive bidding opportunity exists on
15 the date on which the agreement is entered into.

16 13. "Swine" means a porcine animal raised to be a feeder
17 pig, raised for seedstock, or raised for slaughter.

18 Sec. 3. NEW SECTION. 202D.3 ELECTRONIC PACKER REPORTING
19 -- PURCHASE DATA FOR SWINE.

20 1. The department of agriculture and land stewardship
21 shall establish an electronic packer reporting system which
22 automatically receives data for all swine purchased and
23 slaughtered as reported daily by packers to the United States
24 department of agriculture pursuant to 7 U.S.C. ch. 38, subch.
25 II, pt. C. The department of agriculture and land stewardship
26 shall cooperate with the United States department of
27 agriculture as necessary in order to establish and administer
28 the electronic system.

29 2. The department of agriculture and land stewardship
30 shall establish and administer the electronic packer reporting
31 system in order to do all of the following:

32 a. Provide timely, accurate, and reliable market
33 information.

34 b. Facilitate more informed marketing decisions.

35 c. Promote competition in the swine slaughtering industry.

1 d. Enforce the provisions of section 202D.4.

2 Sec. 4. NEW SECTION. 202D.4 SPOT MARKET SALE

3 REQUIREMENTS.

4 For each reporting day, at least twenty-five percent of all
5 swine slaughtered by a covered packer must be purchased from
6 nonaffiliated producers by spot market sale.

7 Sec. 5. NEW SECTION. 202D.5 CITIZEN ACTION.

8 If a nonaffiliated producer cannot make a spot market sale
9 to a covered packer on a reporting day because a covered
10 packer violates section 202D.4, the nonaffiliated producer may
11 bring a civil action against the covered packer. The
12 nonaffiliated producer may bring the civil action in district
13 court for Polk county, the district court of the covered
14 packer's principal place of business in this state, or in the
15 district where the nonaffiliated producer resides in this
16 state or if the nonaffiliated producer is a business
17 association, its principal place of business in this state. A
18 covered packer who is guilty of violating section 202D.4 shall
19 be liable to the nonaffiliated producer for three times the
20 amount of the spot market sales price for the swine that the
21 nonaffiliated producer would have received if the violation
22 had not occurred. The court shall award the nonaffiliated
23 producer who prevails in the civil action reasonable attorney
24 fees and expert witness fees incurred by the nonaffiliated
25 producer, to be paid by the covered packer and taxed as part
26 of the costs of the civil action.

27 Sec. 6. NEW SECTION. 202D.6 PENALTIES.

28 A covered packer who violates a provision of section 202D.4
29 is subject to a civil penalty of not more than twenty-five
30 thousand dollars. The civil penalties collected under this
31 chapter shall be deposited into the general fund of the state.

32 Sec. 7. NEW SECTION. 202D.7 ENFORCEMENT ACTION.

33 1. a. The attorney general's office is the primary agency
34 responsible for enforcing this chapter.

35 b. The department shall notify the attorney general's

1 office if the department has reason to believe that a
2 violation of section 202D.4 has occurred.

3 2. The attorney general's office may bring an enforcement
4 action in district court in Polk county, in the county where
5 the violation occurs, or in the county where the covered
6 packer has its principal place of business. The attorney
7 general's office may do all of the following:

8 a. Apply to the district court for an injunction to do any
9 of the following:

10 (1) Restrain a covered packer from engaging in conduct or
11 practices in violation of this chapter.

12 (2) Require a covered packer to comply with a provision of
13 this chapter.

14 b. Apply to district court for the issuance of a subpoena
15 to obtain contracts, documents, or other records of a covered
16 packer for purposes of enforcing this chapter.

17 c. Bring an action in district court to enforce civil
18 penalties as provided in section 202D.6, including the
19 imposition, assessment, and collection of the civil penalties.

20 EXPLANATION

21 This bill regulates packers engaged in the business of
22 purchasing swine for slaughter and processing. It is based on
23 the federal Agricultural Marketing Act of 1946, and specific
24 provisions which require packers to report purchase data
25 relating to swine for slaughter to the United States
26 department of agriculture (7 U.S.C. ch. 38, subch. II, pt. C).
27 The bill is also based on provisions included in S. 325
28 introduced in the Senate of the United States on February 6,
29 2003, which states an intent to increase competition and
30 transparency among packers that purchase livestock including
31 swine from producers. That intention is rephrased in the
32 first section of the bill.

33 The bill requires the department of agriculture and land
34 stewardship to establish an electronic packer reporting system
35 which is to automatically receive purchase data and slaughter

1 data reported for swine by the United States department of
2 agriculture and provided by packers on a daily basis.

3 The bill generally defines the term "packer" as a person
4 who engages in buying swine for purposes of slaughter, or of
5 manufacturing or preparing meats or meat food products from
6 swine. The bill uses the term "covered packer" to describe a
7 packer required to report purchase data or slaughter data for
8 swine to the United States department of agriculture.

9 Generally, under the federal livestock reporting law, a packer
10 is a person who owns a federally inspected processing plant
11 which slaughters an average of at least 100,000 swine per year
12 during the immediately preceding five calendar years.

13 The bill requires that when a covered packer purchases
14 swine, it must reserve a percentage of its daily reported kill
15 for the purchase of swine from nonaffiliated producers on the
16 spot market. The bill defines a "spot market sale" in the
17 same manner as federal law to mean a purchase and sale of
18 swine by a packer from a producer that specifies a firm base
19 price on the date the agreement is executed, if the swine are
20 slaughtered not more than seven days after the date on which
21 the agreement is executed. It defines a "nonaffiliated
22 producer" to mean a producer who holds no more than a de
23 minimus equity interest (shares) in or fiduciary duty to the
24 packer.

25 The bill provides enforcement mechanisms. A nonaffiliated
26 producer may bring a legal action against a covered packer who
27 violates the bill's provisions and may be awarded treble
28 damages together with reasonable attorney fees and fees for
29 expert witnesses. The bill imposes civil penalties upon a
30 covered packer who violates the provisions of the bill.

31 The attorney general's office is the primary agency
32 responsible for enforcing the bill's provisions. The attorney
33 general's office may apply to district court for an injunction
34 to restrain a covered packer from engaging in conduct or
35 practices in violation of the bill's provisions, require a

1 covered packer to comply with a provision of the bill, obtain
2 a subpoena to obtain contracts, documents, or other records
3 for purposes of enforcing the bill's provisions, or bring an
4 action in district court to impose and collect the civil
5 penalties. The amount of the civil penalties and the
6 authority granted to the office of attorney general are
7 similar to provisions included in Code chapter 202B which
8 prohibits the ownership of swine operations by processors and
9 restricts contract feeding contracts executed by processors
10 and producers.

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