

House File 2734 - Introduced

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BY SCHOLTEN and TUREK

A BILL FOR

1 An Act providing for the processing and marketing of meat
2 and poultry products, including by prohibiting vertical
3 integration, providing for a health and safety program, and
4 providing for the divestiture of interests in processors by
5 certain retailers, and providing penalties.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. NEW SECTION. **202D.1 Title.**

2 This chapter shall be known and may be cited as the
3 "*Retailer-Processor Fairness Act*".

4 Sec. 2. NEW SECTION. **202D.2 Findings and declaration.**

5 1. The general assembly finds all of the following:

6 a. Concentration in the meat industry has materially impaired
7 competition, eroding the bargaining power of Iowa farmers,
8 independent processors, and workers, while foreclosing market
9 access through captive supply arrangements, vertical integration,
10 and dominant retailer ownership of meat processing facilities.

11 b. The entry of national retailers with substantial market
12 share into the direct ownership of meat processing creates
13 structural competitive disadvantages for independent Iowa
14 farmers, independent processors, and grocers that existing market
15 mechanisms have failed to remedy.

16 c. Federal law, as evidenced by the Sherman Antitrust Act of
17 1890, 15 U.S.C. §1 et seq., the Clayton Antitrust Act of 1914, 15
18 U.S.C. §12 et seq., and the Packers and Stockyards Act of 1921,
19 7 U.S.C. §181 et seq., reflect more than a century-long federal
20 commitment to competitive agricultural markets.

21 2. The general assembly declares the necessity to extend
22 state enforcement mechanisms to supplement provisions in chapters
23 202, 202A, 202B, 202C, and 553 in order to further deter the
24 specific threat posed by dominant retailer ownership of meat
25 processing facilities within this state.

26 Sec. 3. NEW SECTION. **202D.3 Definitions.**

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

29 1. a. "*Covered good*" means a grocery item, including
30 packaged food or unpackaged food.

31 b. "*Covered good*" does not include motor fuel, prescription
32 drugs, tobacco products, or alcoholic beverages.

33 2. "*Department*" means the department of agriculture and land
34 stewardship.

35 3. "*Dominant retailer*" means any of the following:

1 a. A person that has annual retail sales of covered goods
2 in an aggregate amount exceeding eighteen billion dollars as
3 adjusted each year by an amount equal to the percentage increase,
4 if any, in the consumer price index for all urban consumers for
5 the last available twelve-month period published in the federal
6 register by the federal department of labor, bureau of labor
7 statistics.

8 b. A person who owns or operates at least one storefront or
9 distribution center located in more than twenty states, including
10 this state.

11 4. "Processor" means any establishment, plant, or operation
12 engaged in the slaughter, fabrication, processing, or packing of
13 livestock or poultry, including but not limited to the production
14 of beef, pork, lamb, chicken, or turkey products.

15 5. "Producer" means a person who holds a legal interest in a
16 land or facility where livestock or poultry are produced.

17 Sec. 4. NEW SECTION. **202D.11 Prohibition on vertical**
18 **integration.**

19 1. A dominant retailer shall not engage in vertical
20 integration by doing any of the following:

21 a. Owning or controlling a processor including through direct
22 ownership, partial ownership, an exclusive contract, or the
23 ownership or control of a livestock operation. A dominant
24 retailer, or a dominant retailer's purchasing agent, shall not
25 directly or indirectly acquire, hold, or maintain, in whole or in
26 part, an ownership or controlling interest in a processor.

27 b. Entering into an exclusive contract with a producer that
28 requires the sale of livestock or poultry only to that dominant
29 retailer or a processor owned or controlled by the dominant
30 retailer.

31 2. A dominant retailer is liable for a violation of this
32 subchapter committed by a third party contracted by the dominant
33 retailer.

34 Sec. 5. NEW SECTION. **202D.12 Rulemaking.**

35 The attorney general, in consultation with the department,

1 shall adopt rules pursuant to chapter 17A to administer and
2 enforce this chapter.

3 Sec. 6. NEW SECTION. **202D.13 Administration and**
4 **enforcement.**

5 1. The attorney general, in consultation with the department
6 of agriculture and land stewardship, shall determine which
7 dominant retailers are engaging in vertical integration as
8 prohibited in section 202D.11. In making this determination the
9 attorney general shall do all of the following:

10 2. a. Not later than September 1, 2027, and every two years
11 thereafter, assess each person operating as a retailer of covered
12 goods within the state and make a preliminary determination of
13 whether the person is a dominant retailer acting in violation of
14 section 202D.11.

15 b. Publish a preliminary list of the name and address of each
16 person that the attorney general has initially determined to be
17 acting in violation of section 202D.11.

18 3. Not later than October 1, 2027, and every two years
19 thereafter, if necessary, the attorney general, in consultation
20 with the department, shall conduct an inquiry regarding whether
21 a person is a dominant retailer acting in violation of section
22 202D.11.

23 a. In conducting the inquiry, the attorney general shall do
24 all of the following:

25 (1) Accept evidence, in affidavit form, signed by an
26 individual authorized to represent the person named on the
27 preliminary list stating that the named person is not a dominant
28 retailer acting in violation of section 202D.11. The affidavit
29 shall be sworn to by the affiant before an individual who has
30 authority to administer the oath.

31 (2) Accept petitions or public comment submitted by
32 interested persons, that includes evidence that a person is a
33 dominant retailer acting or not acting in violation of section
34 202D.11. The evidence shall be admitted using the same standard
35 as provided in section 17A.4.

1 b. Within thirty days of accepting all evidence described in
2 paragraph "a", the attorney general, in consultation with the
3 department, shall make a final decision as to whether a person is
4 a dominant retailer acting in violation of section 202D.11. The
5 attorney general's final decision constitutes final agency action
6 under chapter 17A, and the person may seek judicial review of
7 such agency action pursuant to section 17A.19.

8 4. Notwithstanding subsection 3, a person included on the
9 preliminary list as provided in subsection 2 may demand a
10 contested case proceeding as provided in chapter 17A to determine
11 the question of whether the person is a dominant retailer acting
12 in violation of section 202D.11. The attorney general's final
13 decision constitutes final agency action under chapter 17A and
14 the person may seek judicial review of such agency action
15 pursuant to section 17A.19.

16 5. The attorney general shall publish a final list of the
17 name and address of each person that the attorney general has
18 determined to be a dominant retailer acting in violation of
19 section 202D.11. A person shall not be included on the final
20 list until after the time that the person's right to seek
21 judicial review has expired or after all judicial review of the
22 person's rights has been exhausted, and the attorney general's
23 final decision has been upheld. The final list shall be posted
24 on the attorney general's internet site.

25 Sec. 7. NEW SECTION. **202D.14 Compliance.**

26 1. Not later than thirty days after the attorney general
27 publishes a final list that includes the name of a person who
28 the attorney general has determined to be a dominant retailer
29 acting in violation of section 202D.11, the person must submit
30 a compliance plan to the attorney general for approval by the
31 attorney general acting in cooperation with the department. The
32 compliance plan shall specify how the dominant retailer will do
33 all of the following:

34 a. Divest itself of any interest in a processor owned or
35 controlled by the dominant retailer.

1 b. Relinquish any interest in a contract entered into with a
2 producer.

3 2. a. A person whom the attorney general has determined to
4 be a dominant retailer acting in violation of section 202D.11
5 included on the final list described in subsection 1 of this
6 section must comply with section 202D.11 within one year from the
7 date the final list is published.

8 b. Notwithstanding paragraph "a", the attorney general may,
9 upon request of the person described in paragraph "a", extend the
10 date of compliance by one hundred eighty days if the attorney
11 general determines that the person is acting in good faith to
12 complete the compliance plan. The attorney general may base
13 the decision to extend the period for compliance on criteria
14 established by the attorney general.

15 Sec. 8. NEW SECTION. **202D.15 Injunctive relief.**

16 The attorney general or a county attorney may apply to the
17 district court for injunctive relief in order to restrain a
18 person from acting in violation of this chapter.

19 Sec. 9. NEW SECTION. **202D.16 Civil penalty.**

20 A person who violates a provision of this chapter or rules
21 adopted or orders issued under this chapter is subject to a
22 civil penalty of fifty thousand dollars. Each day of a violation
23 constitutes a separate offense. Moneys imposed, assessed, and
24 collected by the attorney general will be credited to the general
25 fund of the state.

26 Sec. 10. NEW SECTION. **202D.17 Criminal offenses.**

27 1. Except as provided in subsection 2, a person who knowingly
28 violates a provision of this chapter or rules adopted or orders
29 issued under this chapter commits a class "D" felony.

30 2. A person who falsely swears to a fact by an affidavit
31 required in section 202D.13 commits perjury under section 720.2.

32 Sec. 11. NEW SECTION. **202D.21 Health and safety program.**

33 1. a. The department shall establish and administer a
34 program for processors who comply with fair labor practices with
35 financial incentives to support health and safety practices for

1 storefront or distribution center located in more than 20 states,
2 including this state. A covered good includes grocery items,
3 but excludes motor fuel, prescription drugs, tobacco products, or
4 alcoholic beverages. A processor is an establishment engaging
5 in the slaughter or preparation of meat or poultry products.
6 A producer is a person that has a legal interest in land or a
7 facility where livestock or poultry are produced.

8 PROHIBITION ON VERTICAL INTEGRATION — GENERAL. The bill
9 prohibits a dominant retailer from engaging in vertical
10 integration that includes (1) owning or controlling a processor
11 or (2) entering into an exclusive contract with a producer
12 that requires the sale of meat or poultry only to the dominant
13 retailer or a processor controlled by the dominant retailer.

14 PROHIBITION ON VERTICAL INTEGRATION — ADMINISTRATION OR
15 ENFORCEMENT. The bill is administered by the attorney general
16 in consultation with the department of agriculture and land
17 stewardship (DALS). The attorney general must investigate which
18 dominant retailers are engaging in vertical integration. Every
19 two years the attorney general must conduct an inquiry and make
20 a preliminary determination regarding whether a person is a
21 dominant retailer acting in violation of the bill's provisions
22 prohibiting vertical integration. The attorney general must make
23 a determination based on evidence submitted by the person and
24 interested persons. The evidence may include an affidavit form
25 signed by an authorized individual stating that a retailer is not
26 a dominant retailer acting in violation of the bill. However, a
27 person subject to the inquiry may instead demand a contested case
28 proceeding to decide the matter under the Iowa administrative
29 procedure Act (Code chapter 17A). In any case, the person has
30 a right to seek judicial review of the attorney general's final
31 decision. If the attorney general's final decision is not
32 overruled, the attorney general must include the name of the
33 dominant retailer on a list posted on the attorney general's
34 internet site.

35 PROHIBITION ON VERTICAL INTEGRATION — COMPLIANCE. A dominant

1 retailer determined to be engaged in vertical integration must
2 submit a compliance plan to the attorney general specifying how
3 the dominant retailer will comply with the law, including by
4 divesting an interest in a processor or relinquishing an interest
5 in a contract with a producer. The attorney general may apply to
6 the district court for injunctive relief in order to restrain a
7 person from acting in violation of the bill.

8 PROHIBITION ON VERTICAL INTEGRATION — CIVIL PENALTY. A person
9 who violates a provision of the bill prohibiting vertical
10 integration is subject to a civil penalty of \$50,000. Each day
11 that a violation continues constitutes a separate offense.

12 PROHIBITION ON VERTICAL INTEGRATION — CRIMINAL PENALTIES.
13 A person who knowingly violates a provision of the bill commits
14 a class "D" felony. A person who falsely swears to a fact by
15 an affidavit commits perjury and is also subject to a class "D"
16 felony. A class "D" felony is punishable by confinement for no
17 more than five years and a fine of at least \$1,025 but not more
18 than \$10,245.

19 HEALTH AND SAFETY PROGRAM. The bill requires DALs to establish
20 and administer a program for a processor that complies with
21 fair labor practices. A participating processor may be awarded
22 financial incentives to support health and safety practices for
23 the processor's employees. The department must implement the
24 program when the general assembly appropriates moneys required to
25 support its administration.