

**House File 2734 - Introduced**

HOUSE FILE 2734

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:

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

2 This chapter be 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  
7 impaired competition, eroding the bargaining power of Iowa  
8 farmers, independent processors, and workers, while foreclosing  
9 market access through captive supply arrangements, vertical  
10 integration, and dominant retailer ownership of meat processing  
11 facilities.

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

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

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

27 Sec. 3. NEW SECTION. 202D.3 Definitions.

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

30 1. a. *“Covered good”* means a grocery item, including  
31 packaged food or unpackaged food.

32 b. *“Covered good”* does not include motor fuel, prescription  
33 drugs, tobacco products, or alcoholic beverages.

34 2. *“Department”* means the department of agriculture and land  
35 stewardship.

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

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

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

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

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

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

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

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

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

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

35 Sec. 5. NEW SECTION. 202D.12 Rulemaking.

1 The attorney general, in consultation with the department,  
2 shall adopt rules pursuant to chapter 17A to administer and  
3 enforce this chapter.

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

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

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

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

19 3. Not later than October 1, 2027, and every two years  
20 thereafter, if necessary, the attorney general, in consultation  
21 with the department, shall conduct an inquiry regarding whether  
22 a person is a dominant retailer acting in violation of section  
23 202D.11.

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

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

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

1 standard as provided in section 17A.4.

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

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

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

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

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

35     *a.* Divest itself of any interest in a processor owned or

1 controlled by the dominant retailer.

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

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

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

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

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

20 Sec. 9. NEW SECTION. 202D.16 Civil penalty.

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

27 Sec. 10. NEW SECTION. 202D.17 Criminal offenses.

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

31 2. A person who falsely swears to a fact by an affidavit  
32 required in section 202D.13 commits perjury under section  
33 720.2.

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

35 1. *a.* The department shall establish and administer a

1 program for processors who comply with fair labor practices  
2 with financial incentives to support health and safety  
3 practices for their employees.

4 *b.* As used in paragraph "a", "fair labor practices" includes  
5 a processor's commitment to bargain with unions or associations  
6 representing the processor's employees.

7 2. The department shall implement this program when the  
8 general assembly appropriates moneys required to support its  
9 administration of a health and safety program to be implemented  
10 by participating processors.

11 Sec. 12. CODE EDITOR DIRECTIVE. The Code editor shall  
12 divide chapter 202D, as enacted in this Act, into subchapters  
13 and shall designate sections 202D.1 through 202D.10 as  
14 subchapter I, sections 202D.11 through 202D.20 as subchapter  
15 II, and section 202D.21 as subchapter III.

16 EXPLANATION

17 The inclusion of this explanation does not constitute agreement with  
18 the explanation's substance by the members of the general assembly.

19 GENERAL. This bill creates new Code chapter 202D,  
20 providing for the processing and marketing of meat and poultry  
21 products. The new Code chapter is divided into subchapter  
22 I, which includes general provisions including definitions,  
23 subchapter II, which prohibits certain retailers of food items  
24 from engaging in vertical integration, and subchapter III,  
25 which provides a health and safety program for participating  
26 processors.

27 FINDINGS AND DECLARATION. The bill finds that concentration  
28 in the meat industry has materially impaired competition,  
29 eroding the bargaining power of Iowa farmers, independent  
30 processors, and workers, while foreclosing market access  
31 through captive supply arrangements, vertical integration, and  
32 dominant retailer ownership of meat processing facilities.  
33 The bill declares the necessity to extend state enforcement  
34 mechanisms to further deter the specific threat posed by  
35 dominant retailer ownership of meat processing facilities

1 within this state.

2     TERMS. Under the bill, a dominant retailer is a person  
3 that meets one of two criteria: (1) has annual retail sales  
4 of covered goods exceeding \$18 billion or (2) operates at  
5 least one storefront or distribution center located in more  
6 than 20 states, including this state. A covered good includes  
7 grocery items, but excludes motor fuel, prescription drugs,  
8 tobacco products, or alcoholic beverages. A processor is an  
9 establishment engaging in the slaughter or preparation of meat  
10 or poultry products. A producer is a person that has a legal  
11 interest in land or a facility where livestock or poultry are  
12 produced.

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

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

1 of the attorney general's final decision. If the attorney  
2 general's final decision is not overruled, the attorney general  
3 must include the name of the dominant retailer on a list posted  
4 on the attorney general's internet site.

5 PROHIBITION ON VERTICAL INTEGRATION — COMPLIANCE. A  
6 dominant retailer determined to be engaged in vertical  
7 integration must submit a compliance plan to the attorney  
8 general specifying how the dominant retailer will comply with  
9 the law, including by divesting an interest in a processor or  
10 relinquishing an interest in a contract with a producer. The  
11 attorney general may apply to the district court for injunctive  
12 relief in order to restrain a person from acting in violation  
13 of the bill.

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

19 PROHIBITION ON VERTICAL INTEGRATION — CRIMINAL PENALTIES.  
20 A person who knowingly violates a provision of the bill commits  
21 a class "D" felony. A person who falsely swears to a fact by an  
22 affidavit commits perjury and is also subject to a class "D"  
23 felony. A class "D" felony is punishable by confinement for no  
24 more than five years and a fine of at least \$1,025 but not more  
25 than \$10,245.

26 HEALTH AND SAFETY PROGRAM. The bill requires DALs to  
27 establish and administer a program for a processor that  
28 complies with fair labor practices. A participating processor  
29 may be awarded financial incentives to support health  
30 and safety practices for the processor's employees. The  
31 department must implement the program when the general assembly  
32 appropriates moneys required to support its administration.