

Senate File 504 - Reprinted

SENATE FILE _____
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 1001)

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:
4 TLSB 1603SV 82
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1 1 Section 1. Section 22.7, Code 2007, is amended by adding
1 2 the following new subsection:
1 3 NEW SUBSECTION. 58. A record obtained by the department
1 4 of agriculture and land stewardship or the office of attorney
1 5 general as a result of an inspection of a covered packer
1 6 conducted by the department pursuant to section 202D.6.
1 7 Sec. 2. NEW SECTION. 202D.1 PURPOSE.
1 8 The purpose of this chapter is to increase competition and
1 9 transparency among packers that purchase in=state=produced
1 10 swine from producers in this state.
1 11 Sec. 3. NEW SECTION. 202D.2 DEFINITIONS.
1 12 1. "Base price" means the price paid for in=state=produced
1 13 swine, delivered to a packer, before the application of any
1 14 premiums or discounts.
1 15 2. "Business association" means the same as defined in
1 16 section 202B.102.
1 17 3. "Controlling interest" means actual control of a
1 18 business or the exercise of material participation, directly
1 19 or indirectly, in the management and policies of a business,
1 20 whether through the ownership of voting securities, by
1 21 contract, or otherwise.
1 22 4. "Covered packer" means a packer that has a controlling
1 23 interest in an in=state processing plant.
1 24 5. "Custom slaughter agreement" means an agreement under
1 25 which in=state=produced swine are slaughtered by a packer for
1 26 another person in which the packer does not have a controlling
1 27 interest, and the packer does not or will not own the pork or
1 28 pork products produced by the slaughter of such
1 29 in=state=produced swine.
1 30 6. "Department" means the department of agriculture and
1 31 land stewardship.
1 32 7. "Federal Meat Inspection Act" means the same as defined
1 33 in section 189A.2.
1 34 8. "In=state processing plant" means the premises located
1 35 in this state where swine are slaughtered or otherwise
2 1 prepared for food, if all of the following apply:
2 2 a. The premises is subject to inspection by the United
2 3 States department of agriculture pursuant to federal law
2 4 including the federal Meat Inspection Act, and is not
2 5 generally subject to inspection by the department of
2 6 agriculture and land stewardship under chapter 189A.
2 7 b. An average of at least one hundred thousand swine per
2 8 year are slaughtered on the premises during the immediately
2 9 preceding five calendar years or the premises had the capacity
2 10 to slaughter that number of swine in any one of those years.
2 11 9. "In=state=produced swine" means a porcine animal raised
2 12 in this state for slaughter for at least one month before the
2 13 date of slaughter including on the date of slaughter.
2 14 10. "In=state swine operation" means the premises located
2 15 in this state where swine are fed or otherwise maintained,
2 16 including a building, lot, yard, or corral; and swine fed or
2 17 otherwise maintained at the premises.
2 18 11. "Nonaffiliated producer" means a producer who sells

2 19 in=state=produced swine to a packer. In addition, all of the
2 20 following must apply:

- 2 21 a. The producer has less than a one percent equity
2 22 interest in the packer, including but not limited to as a
2 23 shareholder, partner, member, or beneficiary.
- 2 24 b. If the producer is a business association, the packer
2 25 has less than a one percent equity interest in the producer,
2 26 including but not limited to as a shareholder, partner,
2 27 member, or beneficiary.
- 2 28 c. The producer does not hold a controlling interest in
2 29 the packer, and is not an officer, director, or employee of
2 30 the packer. If the producer is a business association, an
2 31 officer, director, or employee of the producer is not also an
2 32 officer, director, or employee of the packer.
- 2 33 d. The producer does not owe a fiduciary responsibility to
2 34 the packer.
- 2 35 e. If the producer is a business association, the packer
3 1 does not have an equity interest in the producer.
- 3 2 f. The producer must not have a relationship with the
3 3 packer in which the packer does any of the following:
 - 3 4 (1) (a) Directly or indirectly owns, controls, or
3 5 operates the producer's in=state swine operation.
 - 3 6 (b) Finances the producer's in=state swine operation or
3 7 finances a person who directly or indirectly contracts for the
3 8 care and feeding of in=state=produced swine kept at the
3 9 producer's in=state swine operation.

3 10 For purposes of subparagraph subdivision (a) and this
3 11 subparagraph subdivision, all of the following apply:

- 3 12 (i) "Finance" means an action by a packer to directly or
3 13 indirectly loan money or to guarantee or otherwise act as a
3 14 surety.
- 3 15 (ii) "Finance" or "control" does not include executing a
3 16 contract for the purchase of in=state=produced swine by a
3 17 packer, including but not limited to a contract that contains
3 18 an unsecured ledger balance or other price risk sharing
3 19 arrangement. "Finance" also does not include providing an
3 20 unsecured open account or an unsecured loan, if the unsecured
3 21 open account or unsecured loan is used for the purchase of
3 22 feed for the in=state=produced swine and the outstanding
3 23 amount due by the producer does not exceed five hundred
3 24 thousand dollars. However, the outstanding amount due to
3 25 support a single in=state swine operation shall not exceed two
3 26 hundred fifty thousand dollars.
- 3 27 (c) Obtains a benefit of production associated with
3 28 feeding or otherwise maintaining the in=state=produced swine,
3 29 by directly or indirectly assuming a morbidity or mortality
3 30 production risk, if the in=state=produced swine are fed or
3 31 otherwise maintained as part of the producer's in=state swine
3 32 operation or by the producer who contracts for the care and
3 33 feeding of the in=state=produced swine in this state.
- 3 34 (d) Directly or indirectly receives the net revenue
3 35 derived from the producer's in=state swine operation or from a
4 1 person who contracts with the producer for the care and
4 2 feeding of the in=state=produced swine in this state.

- 4 3 (2) Directly or indirectly contracts for the care and
4 4 feeding of in=state=produced swine maintained in the
4 5 producer's in=state swine operation.

4 6 12. "Packer" means a business association engaged in
4 7 buying in=state=produced swine in commerce for purposes of
4 8 slaughter, of manufacturing or preparing meats or meat food
4 9 products from in=state=produced swine for sale or shipment in
4 10 commerce, or of marketing meats or meat food products from
4 11 in=state=produced swine in an unmanufactured form and acting
4 12 as a wholesale broker, dealer, or distributor in commerce.

4 13 13. "Producer" means a person who holds an ownership
4 14 interest in a business or controlling interest in a business
4 15 association that operates an in=state swine operation.

4 16 14. "Reasonable competitive bidding opportunity" means
4 17 circumstances in which all of the following apply:

- 4 18 a. A written or oral agreement does not preclude a
4 19 producer from soliciting or receiving bids from other packers.
- 4 20 b. No circumstances, customs, or practices exist that do
4 21 any of the following:
 - 4 22 (1) Establish the existence of an implied contract.
 - 4 23 (2) Preclude the producer from soliciting or receiving
4 24 bids from other packers.

4 25 15. "Record" means information stored or preserved in any
4 26 medium, including in an electronic or paper format. A record
4 27 includes but is not limited to documents, books, publications,
4 28 accounts, correspondence, memoranda, agreements, computer
4 29 files, film, microfilm, photographs, and audio or visual

4 30 tapes.

4 31 16. "Spot market sale" means the purchase of
4 32 in=state=produced swine by a packer from a producer according
4 33 to an oral or written agreement by the packer and producer, if
4 34 all of the following apply:

4 35 a. The in=state=produced swine are located in this state
5 1 at the time the packer and producer enter into the agreement.

5 2 b. The in=state=produced swine are purchased at a base
5 3 price which is a fixed dollar amount expressed per hundred
5 4 weight in pounds as calculated using a live weight basis
5 5 method or hot carcass method provided in the agreement.

5 6 c. The in=state=produced swine are slaughtered at an
5 7 in=state processing plant not more than fourteen days after
5 8 the date that the packer and producer enter into the
5 9 agreement, under circumstances in which the producer has a
5 10 reasonably competitive bidding opportunity on the date of
5 11 entering into the agreement.

5 12 Sec. 4. NEW SECTION. 202D.4 PURCHASE REQUIREMENTS ==
5 13 SPOT MARKET SALE AND NONAFFILIATED PRODUCERS.

5 14 1. For each business day that a covered packer purchases
5 15 in=state=produced swine in this state, the covered packer
5 16 shall purchase at least twenty=five percent of all
5 17 in=state=produced swine from nonaffiliated producers.

5 18 2. a. For each business day that a covered packer
5 19 purchases in=state=produced swine in this state, the covered
5 20 packer shall purchase at least twenty percent of all
5 21 in=state=produced swine from nonaffiliated producers by spot
5 22 market sale.

5 23 b. Notwithstanding the requirement of paragraph "a", the
5 24 spot market purchase requirement shall be implemented as
5 25 follows:

5 26 (1) By July 1, 2007, at least ten percent of all
5 27 in=state=produced swine purchased in this state shall be
5 28 purchased from nonaffiliated producers by spot market sale.

5 29 (2) By July 1, 2009, at least fifteen percent of all
5 30 in=state=produced swine purchased in this state shall be
5 31 purchased from nonaffiliated producers by spot market sale.

5 32 (3) By July 1, 2011, at least twenty percent of all
5 33 in=state=produced swine purchased in this state shall be
5 34 purchased from nonaffiliated producers by spot market sale.

5 35 c. Paragraph "b" and this paragraph "c" are repealed on
6 1 July 1, 2012.

6 2 3. In=state=produced swine which are received by a covered
6 3 packer pursuant to a custom slaughter agreement shall not be
6 4 used to calculate a percentage of in=state=produced swine that
6 5 the packer is required to purchase under this section.

6 6 Sec. 5. NEW SECTION. 202D.5 ADMINISTRATION ==
6 7 RULEMAKING.

6 8 The department may adopt rules as necessary to administer
6 9 this chapter.

6 10 Sec. 6. NEW SECTION. 202D.6 ADMINISTRATION == INSPECTION
6 11 OF RECORDS.

6 12 1. To every extent permitted by 7 U.S.C. } 1635 et seq.,
6 13 and 7 C.F.R., pt. 59, the department may provide for the
6 14 inspection and reproduction of records maintained by a covered
6 15 packer necessary to ensure compliance with this chapter. The
6 16 department may enter onto the premises of a covered packer
6 17 during regular business hours to inspect and reproduce such
6 18 records, provide for the inspection and reproduction of such
6 19 records maintained outside of this state, or otherwise provide
6 20 for the inspection and reproduction of such records.

6 21 2. A record of a covered packer obtained by the department
6 22 under this section is confidential and is not subject to
6 23 disclosure except as follows:

6 24 a. Upon the waiver by the covered packer.

6 25 b. Upon request by the office of attorney general which
6 26 shall maintain confidentiality of the records in the same
6 27 manner as required by the department.

6 28 c. In an enforcement action commenced by the attorney
6 29 general as provided in section 202D.9.

6 30 d. When required by subpoena or court order, including as
6 31 part of a civil action as provided in section 202D.7.

6 32 Sec. 7. NEW SECTION. 202D.7 CIVIL ACTION.

6 33 If a nonaffiliated producer cannot make a spot market sale
6 34 to a covered packer on a business day because a covered packer
6 35 violates section 202D.4, the nonaffiliated producer may bring
7 1 a civil action against the covered packer. The nonaffiliated
7 2 producer may bring the civil action in district court for Polk
7 3 county, the district court of the covered packer's principal
7 4 place of business in this state, or in the county where the
7 5 nonaffiliated producer resides in this state or if the

7 6 nonaffiliated producer is a business association, in the
7 7 county of its principal place of business in this state. A
7 8 covered packer who is guilty of violating section 202D.4 shall
7 9 be liable to the nonaffiliated producer for three times the
7 10 amount of the spot market sales price for the
7 11 in-state-produced swine that the nonaffiliated producer would
7 12 have received if the violation had not occurred. The court
7 13 shall award the nonaffiliated producer who prevails in the
7 14 civil action reasonable attorney fees and expert witness fees
7 15 incurred by the nonaffiliated producer, to be paid by the
7 16 covered packer and taxed as part of the costs of the civil
7 17 action.

7 18 Sec. 8. NEW SECTION. 202D.8 PENALTIES.

7 19 A covered packer who violates a provision of section 202D.4
7 20 is subject to a civil penalty of not more than twenty-five
7 21 thousand dollars. The civil penalties collected under this
7 22 chapter shall be deposited into the general fund of the state.

7 23 Sec. 9. NEW SECTION. 202D.9 ENFORCEMENT ACTION.

7 24 1. a. The attorney general's office is the primary agency
7 25 responsible for enforcing this chapter.

7 26 b. The department shall notify the attorney general's
7 27 office if the department has reason to believe that a
7 28 violation of section 202D.4 has occurred.

7 29 2. The attorney general's office may bring an enforcement
7 30 action in district court in Polk county, in the county where
7 31 the violation occurs, or in the county where the covered
7 32 packer has its principal place of business. The attorney
7 33 general's office may do all of the following:

7 34 a. Apply to the district court for an injunction to do any
7 35 of the following:

8 1 (1) Restrain a covered packer from engaging in conduct or
8 2 practices in violation of this chapter.

8 3 (2) Require a covered packer to comply with a provision of
8 4 this chapter.

8 5 b. Apply to district court for the issuance of a subpoena
8 6 to obtain contracts, documents, or other records of a covered
8 7 packer for purposes of enforcing this chapter.

8 8 c. Bring an action in district court to enforce civil
8 9 penalties as provided in section 202D.8, including the
8 10 imposition, assessment, and collection of the civil penalties.

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