

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1269

To amend the National School Lunch Act to protect school districts and the Department of Agriculture from anti-competitive activities of suppliers that sell commodities to schools that participate in the school lunch program, the school breakfast program, the special milk program, and the summer food service program for children, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 20 (legislative day, JUNE 30), 1993

Mr. LEAHY (for himself and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To amend the National School Lunch Act to protect school districts and the Department of Agriculture from anti-competitive activities of suppliers that sell commodities to schools that participate in the school lunch program, the school breakfast program, the special milk program, and the summer food service program for children, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “School Lunch Protec-  
5 tion Act of 1993”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) in recent years, there has been an alarming  
4 number of instances of price-fixing and bid-rigging  
5 regarding foods purchased for—

6 (A) the school lunch program established  
7 under the National School Lunch Act (42  
8 U.S.C. 1751 et seq.); and

9 (B) the school breakfast program estab-  
10 lished under the Child Nutrition Act of 1966  
11 (42 U.S.C. 1771 et seq.);

12 (2) during the past several years, the Antitrust  
13 Division of the Department of Justice has filed over  
14 95 criminal cases against persons accused of bid-rig-  
15 ging conspiracies, false statements, mail fraud,  
16 price-fixing, and similar activities involving dairy  
17 products sold to schools or the Department of De-  
18 fense;

19 (3) over 30 grand juries in States are inves-  
20 tigating similar activities, especially in connection  
21 with activities involving the dairy industry;

22 (4) 45 corporations and 48 individuals have  
23 been convicted by Federal courts of similar activi-  
24 ties, and total fines and civil damages of approxi-  
25 mately \$100,000,000 have been assessed in Federal  
26 and State actions for similar activities;

1           (5) a report of the Comptroller General of the  
2 United States noted that, as of March 1992, the  
3 Secretary of Agriculture had neither suspended nor  
4 debarred any of the 13 dairy companies or 28 indi-  
5 viduals convicted, as of March 1992, of milk con-  
6 tract bid-rigging from participating in the school  
7 lunch and breakfast programs;

8           (6) effective educational and monitoring pro-  
9 grams can greatly reduce the incidence of price-fix-  
10 ing and bid-rigging by companies that sell products  
11 to schools;

12           (7) reducing the incidence of price-fixing and  
13 bid-rigging in connection with the school lunch and  
14 breakfast programs could save school districts, par-  
15 ents, and taxpayers millions of dollars per year;

16           (8) the Comptroller General of the United  
17 States has noted that bid-rigging awareness training  
18 is an effective means of deterring improper collusion  
19 and bid-rigging; and

20           (9) the Comptroller General of the United  
21 States in a General Accounting Office report ad-  
22 dressed many of the concerns described in this sec-  
23 tion with respect to bid rigging in the school lunch  
24 program.

1 **SEC. 3. DUTIES OF THE SECRETARY RELATING TO ANTI-**  
2 **COMPETITIVE ACTIVITIES.**

3 The National School Lunch Act (42 U.S.C. 1751 et  
4 seq.) is amended by adding at the end the following new  
5 section:

6 **“SEC. 25. DUTIES OF THE SECRETARY RELATING TO ANTI-**  
7 **COMPETITIVE ACTIVITIES.**

8 “(a) IN GENERAL.—The Secretary shall—

9 “(1) provide advice, training, technical assist-  
10 ance, and guidance to representatives of States, con-  
11 tracting entities, and school food service authorities  
12 regarding means of identifying and preventing anti-  
13 competitive activities relating to the acquisition of  
14 commodities for—

15 “(A) the school lunch program established  
16 under this Act;

17 “(B) the school breakfast program estab-  
18 lished under the Child Nutrition Act of 1966  
19 (42 U.S.C. 1771 et seq.);

20 “(C) the special milk program established  
21 under section 3 of the Child Nutrition Act of  
22 1966 (42 U.S.C. 1772); and

23 “(D) the summer food service program for  
24 children established under section 13 of this  
25 Act;

1           “(2) provide information to, and fully cooperate  
2 with, the Attorney General and State attorneys gen-  
3 eral regarding investigations of anticompetitive ac-  
4 tivities relating to the acquisition of commodities for  
5 the programs referred to in paragraph (1);

6           “(3) provide awareness training, training films,  
7 technical advice, troubleshooting advice, and other  
8 guidance related to avoiding or detecting bid-rigging,  
9 price-fixing, or other anticompetitive activities con-  
10 cerning the acquisition of commodities for the pro-  
11 grams; and

12           “(4) debar or suspend a person under section  
13 12A, applicable regulations issued by the Secretary  
14 (such as part 3017 of chapter XXX of subtitle B of  
15 title 7, Code of Federal Regulations), and other ap-  
16 plicable Federal laws (including regulations).

17           “(b) FOOD SERVICE MANAGEMENT INSTITUTE.—  
18 The Secretary may request assistance from the food serv-  
19 ice management institute authorized under section 21 in  
20 carrying out this section. The Secretary may contract with  
21 the institute to carry out all or part of the duties described  
22 in paragraphs (1) and (3) of subsection (a).

23           “(c) FUNDING.—The Secretary shall make available  
24 to carry out this section not less than  $\frac{1}{2}$  of 1 percent of

1 the funds made available for the salaries and expenses of  
2 the Food and Nutrition Service for each fiscal year.

3 “(d) TERMINATION.—The authority provided by this  
4 section shall terminate on September 30, 1999.”.

5 **SEC. 4. NONPROCUREMENT DEBARMENT.**

6 (a) IN GENERAL.—The National School Lunch Act  
7 is amended by inserting after section 12 (42 U.S.C. 1760)  
8 the following new section:

9 **“SEC. 12A. NONPROCUREMENT DEBARMENT.**

10 “(a) IN GENERAL.—Except as provided in sub-  
11 sections (b) and (c), the Secretary shall debar a person,  
12 and each principal and affiliate of the person, for at least  
13 1 year from supplying, providing, or selling a product or  
14 commodity to a school, school district, school food service  
15 authority, or school district consortium participating in  
16 the school lunch program established under this Act, the  
17 school breakfast program established under the Child Nu-  
18 trition Act of 1966 (42 U.S.C. 1771 et seq.), the special  
19 milk program established under section 3 of the Child Nu-  
20 trition Act of 1966 (42 U.S.C. 1772), or the summer food  
21 service program for children established under section 13  
22 of this Act if the person, or a principal or affiliate of the  
23 person, is convicted, in connection with supplying, provid-  
24 ing, or selling a product or commodity to any school,  
25 school district, school food service authority, or school dis-

1 trict consortium participating in any of the programs, or  
2 to any Federal agency, of—

3 “(1) an anticompetitive activity, including bid-  
4 rigging, price-fixing, the allocation of customers be-  
5 tween competitors, or other violation of Federal or  
6 State law related to protecting competition;

7 “(2) mail fraud, bribery, theft, or embezzle-  
8 ment;

9 “(3) making a false statement or claim;

10 “(4) making a false declaration before a grand  
11 jury; or

12 “(5) other obstruction of justice.

13 “(b) SUBSEQUENT CONVICTIONS.—Except as pro-  
14 vided in subsection (c), if a person, or a principal or affili-  
15 ate of the person, is convicted of an activity described in  
16 subsection (a) after having been previously debarred under  
17 this section, the person, and each principal and affiliate  
18 of the person, shall be debarred for at least 3 years from  
19 supplying, providing, or selling a product or commodity  
20 to any school, school district, school food service authority,  
21 or school district consortium participating in a program  
22 described in subsection (a) or to any Federal agency.

23 “(c) WAIVERS.—The Secretary may waive a debar-  
24 ment imposed under subsection (a) or (b) if the Secretary  
25 determines that debarment would—

1           “(1) likely have a significant adverse effect on  
2 competition or prices in the relevant market or na-  
3 tionally;

4           “(2) seriously interfere with the ability of a  
5 school, school district, school food service authority,  
6 or school district consortium to procure a needed  
7 product or commodity for a program described in  
8 subsection (a);

9           “(3) be unfair to a person, subsidiary corpora-  
10 tion, affiliate, parent company, or local division of a  
11 corporation that is not involved in the improper ac-  
12 tivity that would otherwise result in the debarment;  
13 or

14           “(4) not be in the public interest.

15           “(d) RELATIONSHIP TO OTHER AUTHORITY.—A de-  
16 barment imposed under this section shall not reduce or  
17 diminish the authority of a Federal, State, or local govern-  
18 ment agency or court to—

19           “(1) penalize, fine, suspend, debar, or otherwise  
20 punish, in a civil or criminal action, a person or a  
21 principal or affiliate of the person; or

22           “(2) imprison, debar, suspend, fine, or other-  
23 wise punish a person or a principal or affiliate of the  
24 person.

1       “(e) REGULATIONS.—The Secretary shall issue such  
2 regulations as are necessary to carry out this section.”.

3       (b) IMPLEMENTATION.—

4           (1) APPLICATION.—The amendment made by  
5 subsection (a) shall not apply to a conviction that is  
6 based on an activity that took place prior to the date  
7 of enactment of this Act.

8           (2) REGULATIONS.—Not later than July 1,  
9 1994, the Secretary of Agriculture shall amend the  
10 nonprocurement regulations established under part  
11 3017 of chapter XXX of subtitle B of title 7, Code  
12 of Federal Regulations, to conform with section 12A  
13 of the National School Lunch Act (as added by sub-  
14 section (a)).

15           (3) CONSISTENT DEBARMENT POLICY.—Not  
16 later than 90 days after the date of enactment of  
17 this Act, the Secretary of Agriculture, in consulta-  
18 tion with the Director of the Office of Management  
19 and Budget, the Secretary of Defense, and such  
20 other officials as the Secretary of Agriculture deter-  
21 mines are appropriate, shall advise the appropriate  
22 committees of Congress and the Comptroller General  
23 of the United States as to the appropriateness and  
24 usefulness of a consistent debarment policy under—

1 (A) the Federal acquisition regulations is-  
2 sued under title 48, Code of Federal Regula-  
3 tions; and

4 (B) Federal nonprocurement regulations.

5 (4) NO REDUCTION IN AUTHORITY.—

6 (A) IN GENERAL.—The authority of the  
7 Secretary of Agriculture that exists on the date  
8 of enactment of this Act to debar or suspend a  
9 person, or a principal or affiliate of the person,  
10 from Federal financial and nonfinancial assist-  
11 ance and benefits under Federal programs and  
12 activities, on a government-wide basis, shall not  
13 be diminished or reduced by this section or the  
14 amendment made by this section.

15 (B) DEBARMENT OR SUSPENSION.—The  
16 Secretary may continue, after the date of enact-  
17 ment of this Act, to debar or suspend a person  
18 (or a principal or affiliate of the person), on a  
19 government-wide basis, from Federal financial  
20 and nonfinancial assistance and benefits for any  
21 cause for debarment or suspension that is speci-  
22 fied in part 3017 of chapter XXX of subtitle B  
23 of title 7, Code of Federal Regulations, or as  
24 otherwise permitted by law (including regula-  
25 tions).

1 **SEC. 5. PREVENTION AND CONTROL OF ANTICOMPETITIVE**  
2 **ACTIVITIES.**

3 The National School Lunch Act (as amended by sec-  
4 tion 3) is further amended by adding at the end the follow-  
5 ing new section:

6 **“SEC. 26. PREVENTION AND CONTROL OF ANTICOMPETI-**  
7 **TIVE ACTIVITIES.**

8 “(a) ASSISTANCE.—The Secretary shall provide fi-  
9 nancial assistance and other support to States, State at-  
10 torneys general, law enforcement organizations, school  
11 food contracting agents, and school food service authori-  
12 ties to assist in the prevention and control of anticompeti-  
13 tive activities relating to—

14 “(1) the school lunch program established  
15 under this Act;

16 “(2) the school breakfast program established  
17 under the Child Nutrition Act of 1966 (42 U.S.C.  
18 1771 et seq.);

19 “(3) the special milk program established under  
20 section 3 of the Child Nutrition Act of 1966 (42  
21 U.S.C. 1772); and

22 “(4) the summer food service program for chil-  
23 dren established under section 13 of this Act.

24 “(b) INFORMATION.—On request, the Secretary shall  
25 present to the appropriate committees of Congress infor-  
26 mation regarding the administration of sections 12A and

1 25 and this section, any waiver granted under section  
2 12A(c), and efforts to reduce the incidence of anticompeti-  
3 tive activity (such as price-fixing and bid-rigging), in con-  
4 nection with the programs referred to in subsection (a).

5 “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
6 are authorized to be appropriated to carry out subsection  
7 (a) \$4,000,000 for each fiscal year.”.

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