

107TH CONGRESS
1ST SESSION

H. R. 230

To amend the Agricultural Fair Practices Act of 1967 to provide for the accreditation of associations of agricultural producers, to promote good faith bargaining between such accredited associations and the handlers of agricultural products, and to strengthen the enforcement authorities to respond to violations of the Act.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2001

Ms. KAPTUR (for herself, Mr. HINCHEY, Mr. LEWIS of Georgia, and Mr. BOSWELL) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Agricultural Fair Practices Act of 1967 to provide for the accreditation of associations of agricultural producers, to promote good faith bargaining between such accredited associations and the handlers of agricultural products, and to strengthen the enforcement authorities to respond to violations of the Act.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Family Farmer Cooperative Marketing Amendments Act
4 of 2001”.

5 (b) TABLE OF CONTENTS.—The table of contents of
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. Definitions.
- Sec. 4. Prohibited practices.
- Sec. 5. Bargaining in good faith.
- Sec. 6. Accreditation of associations and designation of handlers.
- Sec. 7. Assignment of association dues, fees, or retains.
- Sec. 8. Investigative powers of Secretary.
- Sec. 9. Administrative proceedings to prevent prohibited practices.
- Sec. 10. Other enforcement activities.
- Sec. 11. Preemption.

7 **SEC. 2. FINDINGS AND PURPOSE.**

8 Congress finds the following:

9 (1) The Agricultural Fair Practices Act of 1967
10 was enacted to establish standards of fair practices
11 for handlers of agricultural products in order to en-
12 sure that family farmers could join together in au-
13 thorized cooperative associations of producers with-
14 out interference.

15 (2) Despite the enactment of such Act, many
16 family farmers do not enjoy full freedom of associa-
17 tion or real liberty of contract and thus continue to
18 suffer from an inequality of bargaining power with
19 the semi-monopolistic agribusiness corporations that
20 contract for their services, and this inequality of bar-

1 gaining power substantially burdens interstate com-
2 merce by driving some farmers from their farms and
3 depressing the income and purchasing power of
4 other farmers.

5 (3) Tens of thousands of family farmers
6 produce commodities and provide services under con-
7 tract arrangements with processing firms or han-
8 dlers. The types of agricultural commodities pro-
9 duced under such contracts include fruits and vege-
10 tables, turkeys, chickens, hogs, beef, milk, popcorn,
11 and genetically engineered plants and animals.

12 (4) Production of contract commodities usually
13 requires large fixed investments in highly specialized
14 equipment, or in the case of many fruit producers,
15 a long-term commitment of their land to the crop.
16 Poultry farmers invest more than half of the total
17 capital in the poultry industry.

18 (5) On the other hand, processing firms and
19 handlers are better capitalized than producers and
20 often have plants located in different production
21 areas. While processing firms and handlers are not
22 constrained by growing conditions or producer re-
23 sistance in any one geographic area, farmers usually
24 have access to very few processors and are tied to
25 the family farm by capital investments.

1 (6) Farmer efforts to advance their own inter-
2 ests through cooperative marketing associations have
3 been thwarted by processing firms and handlers that
4 threaten to terminate contracts with association
5 members, threaten to move out of their State, or
6 manipulate the incomes of association members to
7 disastrously low levels.

8 (7) Because agricultural products are produced,
9 and agricultural services are provided, by numerous
10 individual farmers, their ability to market their
11 products or services and to bargain effectively for
12 fair prices and terms of sale of their products or
13 services is adversely affected unless they are free to
14 join together in cooperative associations of producers
15 as authorized by law. Interference with this right, or
16 the failure of any handler of agricultural products to
17 bargain in good faith with a cooperative association
18 of producers as the representative and agent of such
19 producers, is contrary to the public interest and ad-
20 versely affects the free and orderly flow of goods in
21 interstate and foreign commerce.

22 (b) PURPOSE.—It is the purpose of this Act to rein-
23 force the Agricultural Fair Practices Act of 1967 by—

24 (1) establishing standards of fair practices for
25 the handlers of agricultural products and for asso-

1 ciations of producers in their dealings in agricultural
2 products or services;

3 (2) providing standards for the accreditation of
4 cooperative associations of producers of agricultural
5 products or services for the purpose of bargaining;

6 (3) defining the mutual obligations of handlers
7 and associations of producers to bargain with re-
8 spect to the production, sale, and marketing of agri-
9 cultural products or services; and

10 (4) providing appropriate mechanisms for the
11 enforcement of such obligations.

12 **SEC. 3. DEFINITIONS.**

13 (a) PRODUCER.—Subsection (b) of section 3 of the
14 Agricultural Fair Practices Act of 1967 (7 U.S.C. 2302)
15 is amended—

16 (1) by inserting “poultryman,” after “dairy-
17 man,”; and

18 (2) by adding at the end the following: “The
19 term includes a person furnishing labor, production
20 management, facilities, or other services for the pro-
21 duction of an agricultural product.”.

22 (b) ASSOCIATION OF PRODUCERS.—Subsection (c) of
23 such section is amended by inserting “that engages in the
24 marketing of such agricultural products or of agricultural

1 services described in the second sentence of subsection (b),
2 including associations” before “engaged in”.

3 (c) ADDITIONAL DEFINITIONS.—Such section is fur-
4 ther amended by striking subsection (e) and inserting the
5 following new subsections:

6 “(e) The term ‘accredited association’ means an asso-
7 ciation of producers accredited by the Secretary of Agri-
8 culture in accordance with section 6.

9 “(f) The term ‘designated handler’ means a handler
10 that is designated pursuant to section 6.

11 “(g) The terms ‘bargain’ and ‘bargaining’ mean the
12 performance of the mutual obligation of a handler and an
13 accredited association to meet at reasonable times and for
14 reasonable periods of time for the purpose of negotiating
15 in good faith with respect to the price, terms of sale, com-
16 pensation for products produced or services rendered
17 under contract, or other provisions relating to the prod-
18 ucts marketed, or the services rendered, by the members
19 of the accredited association or by the accredited associa-
20 tion as agent for the members.”.

21 **SEC. 4. PROHIBITED PRACTICES.**

22 Section 4 of the Agricultural Fair Practices Act of
23 1967 (7 U.S.C. 2303) is amended—

1 (1) in the matter preceding the subsections, by
2 striking “the following practices;” and inserting
3 “any of the following practices:”

4 (2) in subsection (a), by inserting “interfere
5 with, restrain, or” before “coerce”;

6 (3) by striking “or” at the end of subsections
7 (a), (b), (c), (d), and (e) and inserting a period; and

8 (4) by adding at the end the following new sub-
9 sections:

10 “(g) To refuse to bargain in good faith with an ac-
11 credited association, if the handler is designated pursuant
12 to section 6.

13 “(h) To dominate or interfere with the formation or
14 administration of any association of producers or to con-
15 tribute financial or other support to an association of pro-
16 ducers.”.

17 **SEC. 5. BARGAINING IN GOOD FAITH.**

18 Section 5 of the Agricultural Fair Practices Act of
19 1967 (7 U.S.C. 2304) is amended to read as follows:

20 **“SEC. 5. BARGAINING IN GOOD FAITH.**

21 “(a) CLARIFICATION OF OBLIGATION.—The obliga-
22 tion of a designated handler to bargain in good faith shall
23 apply with respect to an accredited association and the
24 products or services for which the accredited association
25 is accredited to bargain. The good-faith bargaining re-

1 quired between a handler and an accredited association
2 does not require either party to agree to a proposal or
3 to make a concession.

4 “(b) EXTENSION OF SAME TERMS TO ACCREDITED
5 ASSOCIATION.—If a designated handler purchases a prod-
6 uct or service from producers under terms more favorable
7 to such producers than the terms negotiated with an ac-
8 credited association for the same type of product or serv-
9 ices, the handler shall offer the same terms to the accred-
10 ited association. Failure to extend the same terms to the
11 accredited association shall be considered to be a violation
12 of section 4(g). In comparing terms, the Secretary of Agri-
13 culture shall take into consideration (in addition to the
14 stipulated purchase price) any bonuses, premiums, hauling
15 or loading allowances, reimbursement of expenses, or pay-
16 ment for special services of any character which may be
17 paid by the handler, and any sums paid or agreed to be
18 paid by the handler for any other designated purpose than
19 payment of the purchase price.

20 “(c) MEDIATION AND ARBITRATION.—The Secretary
21 of Agriculture may provide mediation services with respect
22 to bargaining between an accredited association and a des-
23 igned handler at the request of either the accredited as-
24 sociation or the handler. If an impasse in bargaining has
25 occurred (as determined by the Secretary), the Secretary

1 shall provide assistance in proposing and implementing ar-
2 bitration agreements between the accredited association
3 and the handler. The Secretary may establish a procedure
4 for compulsory and binding arbitration if the Secretary
5 finds that an impasse in bargaining exists and such im-
6 passe will result in a serious interruption in the flow of
7 an agricultural product to consumers or will cause sub-
8 stantial economic hardship to producers or handlers in-
9 volved in the bargaining.”.

10 **SEC. 6. ACCREDITATION OF ASSOCIATIONS AND DESIGNA-**
11 **TION OF HANDLERS.**

12 The Agricultural Fair Practices Act of 1967 is
13 amended—

14 (1) by redesignating sections 6 and 7 (7 U.S.C.
15 2305, 2306) as sections 10 and 12, respectively; and

16 (2) by inserting after section 5 (7 U.S.C. 2304)
17 the following new section:

18 **“SEC. 6. ACCREDITATION OF ASSOCIATIONS AND DESIGNA-**
19 **TION OF HANDLERS.**

20 “(a) ACCREDITATION PETITION.—An association of
21 producers seeking accreditation to bargain on behalf of
22 producers of an agricultural product or service shall sub-
23 mit to the Secretary of Agriculture a petition for accredi-
24 tation. The petition shall—

1 “(1) specify the agricultural product or service
2 (or products or services) for which the association
3 seeks accreditation to bargain on behalf of pro-
4 ducers;

5 “(2) designate the handlers, individually or by
6 production or marketing area or by some other ap-
7 propriate classification, with whom the association
8 seeks to be accredited to bargain; and

9 “(3) contain such other information and docu-
10 ments as may be required by the Secretary.

11 “(b) NOTICE OF PETITION; PROCEEDINGS.—Upon
12 receiving a petition under subsection (a) and any sup-
13 porting material, the Secretary of Agriculture shall give
14 notice of the petition to all handlers designated in the peti-
15 tion pursuant to subsection (a)(2). Handlers who have
16 been designated individually shall receive personal notice.
17 Handlers who have been designated by production or mar-
18 keting area or by some other general classification shall
19 be given notice through the Federal Register. Both the
20 association of producers seeking accreditation and the
21 handlers shall have an opportunity to submit written evi-
22 dence, views, and arguments to the Secretary. The Sec-
23 retary may conduct an informal proceeding on the peti-
24 tion, except that the Secretary shall hold a formal hearing
25 for the reception of testimony and evidence if the Sec-

1 retary finds that there are substantial unresolved issues
2 of material fact.

3 “(c) ISSUANCE ACCREDITATION ORDER.—Upon the
4 petition of an association of producers, the Secretary of
5 Agriculture may issue an order designating the association
6 of producers as an accredited association for purposes of
7 this Act if the Secretary determines that—

8 “(1) under the charter documents or bylaws of
9 the association, it is owned and controlled by pro-
10 ducers;

11 “(2) the association has contracts, binding
12 under State law, with its members empowering the
13 association to sell or negotiate terms of sale of the
14 products or services of its members;

15 “(3) the association represents a sufficient
16 number of producers, or its members produce a suf-
17 ficient quantity of agricultural products or render a
18 sufficient level of services, to enable the association
19 to function as an effective agent for producers in
20 bargaining with designated handlers; and

21 “(4) the functions of the association include
22 acting as principal or agent for its members in nego-
23 tiations with handlers for prices and other terms of
24 trade with respect to the production, sale, and mar-
25 keting of their products or services.

1 “(d) SPECIAL RULE FOR ACCREDITATION.—In mak-
2 ing the finding required under subsection (c)(3), the Sec-
3 retary of Agriculture shall exclude any quantity of the ag-
4 ricultural products or services contracted by producers
5 with a producer owned and controlled processing coopera-
6 tive and any quantity of such products produced or serv-
7 ices rendered by a handler.

8 “(e) NOTIFICATION OF ACCREDITATION ORDER.—
9 The Secretary of Agriculture shall notify the petitioning
10 association of producers, and each handler to be des-
11 igned as part of the petition, of the Secretary’s decision
12 regarding the petition, together with a concise statement
13 of basis for the decision. The Secretary shall also give no-
14 tice of any accreditation to all other associations that have
15 been accredited to bargain with respect to the product or
16 service with any of the designated handlers.

17 “(f) ANNUAL REPORT.—Each accredited association
18 shall submit an annual report to the Secretary of Agri-
19 culture in such form and including such information as
20 the Secretary by regulation may require so as to enable
21 the Secretary to determine whether the association con-
22 tinues to meet the standards for accreditation.

23 “(g) LOSS OF ACCREDITATION.—If the Secretary of
24 Agriculture determines that an accredited association has
25 ceased to meet the standards for accreditation set forth

1 in subsection (c), the Secretary shall notify the association
2 of the respects in which it has ceased to maintain such
3 standards and allow it a reasonable time to answer or to
4 correct the deficiencies noted. Thereafter, if the Secretary
5 is not satisfied that the association is then in compliance
6 with subsection (c), the Secretary shall notify the associa-
7 tion and hold a hearing to consider the revocation of ac-
8 creditation. If, based upon the evidence submitted at the
9 hearing, the Secretary finds that the association has
10 ceased to maintain the standards for accreditation, the
11 Secretary shall revoke the accreditation of such associa-
12 tion.

13 “(h) AMENDMENT.—At the discretion of the Sec-
14 retary of Agriculture or upon the petition of an accredited
15 association or a designated handler, the Secretary may
16 amend an accreditation order with respect to the product
17 or service specified in the accreditation order. The Sec-
18 retary shall give notice of any proposed amendment and
19 the reasons therefor to all accredited associations and han-
20 dlers that would be directly affected by the amendment
21 and shall provide an opportunity for a public hearing.
22 Thereafter, the Secretary may amend the order if the Sec-
23 retary finds such amendment will be conducive to more
24 effective bargaining and orderly marketing by the accred-

1 ited association of the product or services of its mem-
2 bers.”.

3 **SEC. 7. ASSIGNMENT OF ASSOCIATION DUES, FEES, OR RE-**
4 **TAINS.**

5 The Agricultural Fair Practices Act of 1967 (7
6 U.S.C. 2301 et seq.) is amended by inserting after section
7 6 (as added by section 6) the following new section:

8 **“SEC. 7. ASSIGNMENT OF ASSOCIATION DUES, FEES, OR RE-**
9 **TAINS.**

10 “(a) ASSIGNMENT AUTHORIZED.—A producer of a
11 agricultural product or service may execute, either as a
12 clause in a sales contract or in another written instrument,
13 an assignment of dues or fees to, or the deduction of a
14 sum to be retained by, an association of producers author-
15 ized by contract to represent the producer, by which as-
16 signment a handler is directed—

17 “(1) to deduct a portion of the amount to be
18 paid for products or services of the producer under
19 a growing contract; and

20 “(2) to pay, on behalf of the producer, the por-
21 tion over to the association as dues or fees or funds
22 to be retained by the association.

23 “(b) DUTY OF HANDLER.—After a handler receives
24 notice from a producer of an assignment under subsection
25 (a), the handler shall deduct the amount authorized by

1 the assignment from the amount paid for any agricultural
2 product being sold by the producer or for any service ren-
3 dered under any growing contract and, upon payment to
4 producers for such product or service, pay the amount over
5 to the association or its assignee.”.

6 **SEC. 8. INVESTIGATIVE POWERS OF SECRETARY.**

7 The Agricultural Fair Practices Act of 1967 (7
8 U.S.C. 2301 et seq.) is amended by inserting after section
9 7 (as added by section 7) the following new section:

10 **“SEC. 8. INVESTIGATIVE POWERS OF SECRETARY.**

11 “(a) INVESTIGATIVE POWERS.—The Secretary of Ag-
12 riculture shall have the following powers to carry out the
13 objectives of this Act, including the conduct of any inves-
14 tigation or hearings:

15 “(1) The Secretary may require any person to
16 establish and maintain such records, make such re-
17 ports, and provide such other information as the
18 Secretary may reasonably require.

19 “(2) The Secretary and any officer or employee
20 of the Department of Agriculture, upon presentation
21 of credentials and a warrant or such other order of
22 a court as may be required by the Constitution—

23 “(A) shall have a right of entry to, upon,
24 or through any premises in which records re-

1 required to be maintained under paragraph (1)
2 are located, and

3 “(B) may at reasonable times have access
4 to and copy any records, which any person is
5 required to maintain or which relate to any
6 matter under investigation or in question.

7 “(b) TREATMENT OF RECORDS.—

8 “(1) IN GENERAL.—Except as provided in para-
9 graph (2), any records, reports, or information ob-
10 tained under this section shall be available to the
11 public.

12 “(2) EXCEPTION.—Upon a showing satisfactory
13 to the Secretary of Agriculture that records, reports,
14 or information acquired under this section, if made
15 public, would divulge confidential business informa-
16 tion, the Secretary shall consider such record, re-
17 port, or information or particular portion thereof
18 confidential in accordance with section 1905 of title
19 18, United States Code, except that the Secretary
20 may disclose such record, report, or information to
21 other officers, employees, or authorized representa-
22 tives of the United States concerned with carrying
23 out this Act or when relevant in any proceeding
24 under this Act.

25 “(c) POWERS RELATED TO HEARINGS.—

1 “(1) ATTENDANCE OF WITNESSES.—In making
2 inspections and investigations under this Act, the
3 Secretary of Agriculture may require the attendance
4 and testimony of witnesses and the production of
5 evidence under oath.

6 “(2) SUBPOENA POWER.—The Secretary, upon
7 application of any party to a hearing held under sec-
8 tion 9, shall forthwith issue to such party subpoenas
9 requiring the attendance and testimony of witnesses
10 or the production of evidence requested in such ap-
11 plication. Within five days after the service of a sub-
12 poena on any person requiring the production of any
13 evidence in the possession of the person or under the
14 control of the person, the person may petition the
15 Secretary to revoke such subpoena. The Secretary
16 shall revoke such subpoena if in the opinion of the
17 Secretary the evidence whose production is required
18 does not relate to any matter in question, or if such
19 subpoena does not describe with sufficient particu-
20 larity the evidence whose production is required.

21 “(3) OATHS AND OTHER MATTERS.—The Sec-
22 retary, or any officer or employee of the Department
23 of Agriculture designated for such purpose, shall
24 have power to administer oaths, sign and issue sub-
25 poenas, examine witnesses, and receive evidence.

1 Witnesses shall be paid the same fees and mileage
 2 allowance as are paid witnesses in the courts of the
 3 United States.

4 “(d) FAILURE TO COMPLY.—In the case of any fail-
 5 ure or refusal of any person to obey a subpoena or order
 6 of the Secretary of Agriculture under this section, any dis-
 7 trict court of the United States, within the jurisdiction of
 8 which such person is found or resides or transacts busi-
 9 ness, upon the application by the Secretary shall have ju-
 10 risdiction to issue to such person an order requiring such
 11 person to appear to produce evidence if, as, and when so
 12 ordered to give testimony relating to the matter under in-
 13 vestigation or in question. Any failure to obey such order
 14 of the court may be punished by the court as a contempt
 15 of court.”.

16 **SEC. 9. ADMINISTRATIVE PROCEEDINGS TO PREVENT PRO-**
 17 **HIBITED PRACTICES.**

18 The Agricultural Fair Practices Act of 1967 (7
 19 U.S.C. 2301 et seq.) is amended by inserting after section
 20 8 (as added by section 8) the following new section:

21 **“SEC. 9. ADMINISTRATIVE PROCEEDINGS TO PREVENT**
 22 **PROHIBITED PRACTICES.**

23 “(a) PETITION.—Any person complaining of any vio-
 24 lation of section 4 or other provision of this Act may apply
 25 to the Secretary of Agriculture by petition, which shall

1 briefly state the facts serving as the basis for the com-
2 plaint. If, in the opinion of the Secretary, the facts con-
3 tained in the petition warrant further action, the Secretary
4 shall forward a copy of the petition to the accredited asso-
5 ciation or handler named in the petition, who shall be
6 called upon to satisfy the complaint, or to answer it in
7 writing, within a reasonable time to be prescribed by the
8 Secretary.

9 “(b) INVESTIGATION AND COMPLAINT.—If there ap-
10 pears to be, in the opinion of the Secretary, reasonable
11 grounds for investigating a complaint made under sub-
12 section (a), the Secretary of Agriculture shall investigate
13 such complaint or notification. In the opinion of the Sec-
14 retary, if the investigation substantiates the existence of
15 a violation of section 4 or other provision of this Act, the
16 Secretary may cause a complaint to be issued. The Sec-
17 retary shall have the complaint served by registered mail
18 or certified mail or otherwise on the person concerned and
19 afford such person an opportunity for a hearing thereon
20 before a duly authorized examiner of the Secretary in any
21 place in which the subject of the complaint is engaged in
22 business.

23 “(c) HEARING.—The person complained of shall have
24 the right to file an answer to the original and any amend-
25 ed complaint and to appear in person or otherwise and

1 give testimony. The person who filed the charge shall also
2 have the right to appear in person or otherwise and give
3 testimony. Any such proceeding shall, as far as prac-
4 ticable, be conducted in accordance with the rules of evi-
5 dence and the rules of civil procedure applicable in the
6 district courts of the United States.

7 “(d) ORDERS.—If, upon a preponderance of the evi-
8 dence, the Secretary of Agriculture is of the opinion that
9 the person subject to the complaint has violated section
10 4 or other provision of this Act, the Secretary shall issue
11 an order containing the Secretary’s findings of fact and
12 requiring the person to cease and desist from such viola-
13 tion. The Secretary may order such further affirmative ac-
14 tion, including an award of damages to compensate the
15 person filing the petition for the damages sustained, as
16 will effectuate the policies of this Act and make the person
17 filing the petition whole.

18 “(e) COMPLAINTS INSTITUTED BY SECRETARY.—The
19 Secretary of Agriculture may at any time institute an in-
20 vestigation under subsection (b) if there appears to be,
21 in the opinion of the Secretary, reasonable grounds for
22 the investigation and the matter to be investigated is such
23 that a petition is authorized to be made to the Secretary.
24 The Secretary shall have the same power and authority
25 to proceed with any investigation instituted under this

1 subsection as though a petition had been filed under sub-
2 section (a), including the power to make and enforce any
3 order.

4 “(f) JUDICIAL REVIEW.—

5 “(1) OBTAINING REVIEW.—Any person ag-
6 grieved by a final order of the Secretary of Agri-
7 culture issued under subsection (d) may obtain re-
8 view of such order in the United States Court of Ap-
9 peals for the District of Columbia by submitting to
10 such court within 30 days from the date of such
11 order a written petition praying that such order be
12 modified or set aside.

13 “(2) TREATMENT OF FINDINGS.—The findings
14 of the Secretary with respect to questions of fact, if
15 supported by substantial evidence on the record,
16 shall be conclusive.

17 “(3) EFFECT OF FAILURE TO SEEK TIMELY RE-
18 VIEW.—If no petition for review, as provided in
19 paragraph (1), is filed within 30 days after service
20 of the Secretary’s order, the order shall not be sub-
21 ject to review in any civil or criminal proceeding for
22 enforcement, and the findings of fact and order of
23 the Secretary shall be conclusive in connection with
24 any petition for enforcement which is filed by the
25 Secretary after the expiration of such period. In any

1 such case, the clerk of the court, unless otherwise
2 ordered by the court, shall forthwith enter a decree
3 enforcing the order and shall transmit a copy of
4 such decree to the Secretary and the person named
5 in the complaint.

6 “(4) EFFECT ON ORDERS OF THE SEC-
7 RETARY.—The commencement of proceedings under
8 this section shall not operate as a stay of an order
9 of the Secretary under subsection (d), unless specifi-
10 cally ordered by the court.”.

11 **SEC. 10. OTHER ENFORCEMENT ACTIVITIES.**

12 Section 10 of the Agricultural Fair Practices Act of
13 1967 (7 U.S.C. 2305), as redesignated by section 6(1),
14 is amended—

15 (1) by striking the undesignated paragraph at
16 the end of the section;

17 (2) in subsection (d), by striking “and shall ex-
18 ercise” and all that follows through the period and
19 inserting a period and the following: “No action may
20 be commenced under subsection (a) or (c)—

21 “(1) prior to 60 days after the plaintiff has
22 given notice of the alleged violation to the Secretary
23 of Agriculture under section 9(a); or

24 “(2) if the Secretary has commenced and is
25 diligently prosecuting an action (administrative or

1 judicial) dealing with the same violation to require
2 compliance with the Act.”; and

3 (3) by adding at the end the following new sub-
4 section:

5 “(e) Orders of the Secretary of Agriculture with re-
6 spect to which review could have been obtained under sec-
7 tion 9(f) shall not be subject to judicial review in any pro-
8 ceeding for enforcement under this section.”.

9 **SEC. 11. PREEMPTION.**

10 The Agricultural Fair Practices Act of 1967 (7
11 U.S.C. 2301 et seq.) is amended by inserting after section
12 10 (as redesignated by section 6(1)) the following new sec-
13 tion:

14 **“SEC. 11. PREEMPTION.**

15 “‘This Act shall not invalidate the provisions of any
16 existing or future State law dealing with the same subjects
17 as this Act, except that such State law may not permit
18 any action that is prohibited by this Act. This Act shall
19 not deprive the proper State courts of jurisdiction under
20 State laws dealing with the same subjects as this Act.’”.

○