



AMENDMENT NO. _____

Calendar No. _____

Purpose: To prohibit certain practices relating to certain commodity promotion programs and require greater transparency by those programs.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

H. R. 2**AMENDMENT N^o 3074**

By Lee of agricultural
To: _____ of Agriculture
_____ purposes.

HA 212

Page(s)

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LEE (for him-
self and Mr. BOOKER) to the amendment (No.
_____) proposed by and Ms. Hassan

Viz:

appropriate place

1 At the ~~end of subtitle E of title XII~~, add the fol-

2 lowing:

3 ~~SEC. 1225~~. **OPPORTUNITIES FOR FAIRNESS IN FARMING.**

4 (a) SHORT TITLE.—This section may be cited as the
5 “Opportunities for Fairness in Farming Act of 2018”.

6 (b) FINDINGS.—Congress finds that—

7 (1) the generic programs to promote and pro-
8 vide research and information for an agricultural
9 commodity (commonly known as “checkoff pro-
10 grams”) are intended to increase demand for all of

1 that agricultural commodity and benefit all assessed
2 producers of that agricultural commodity;

3 (2) although the laws establishing checkoff pro-
4 grams broadly prohibit the use of funds in any man-
5 ner for the purpose of influencing legislation or gov-
6 ernment action, checkoff programs have repeatedly
7 been shown to use funds to influence policy directly
8 or by partnering with organizations that lobby;

9 (3) the unlawful use of checkoff programs funds
10 benefits some agricultural producers while harming
11 many others;

12 (4) to more effectively prevent Boards from
13 using funds for unlawful purposes, strict separation
14 of engagement between the Boards and policy enti-
15 ties is necessary;

16 (5) conflicts of interest in the checkoff pro-
17 grams allow special interests to use checkoff pro-
18 gram funds for the benefit of some assessed agricul-
19 tural producers at the expense of many others;

20 (6) prohibiting conflicts of interest in checkoff
21 programs is necessary to ensure the proper and law-
22 ful operation of the checkoff programs;

23 (7) checkoff programs are designed to promote
24 agricultural commodities, not to damage other types

1 of agricultural commodities through anticompetitive
2 conduct or otherwise;

3 (8) prohibiting anticompetitive and similar con-
4 duct is necessary to ensure proper and lawful oper-
5 ation of checkoff programs;

6 (9) lack of transparency in checkoff programs
7 enables abuses to occur and conceals abuses from
8 being discovered; and

9 (10) requiring transparency in the expenditure
10 of checkoff program funds is necessary to prevent
11 and uncover abuses in checkoff programs.

12 (c) DEFINITIONS.—In this section:

13 (1) BOARD.—The term “Board” means a
14 board, committee, or similar entity established to
15 carry out a checkoff program or an order issued by
16 the Secretary under a checkoff program.

17 (2) CHECKOFF PROGRAM.—The term “checkoff
18 program” means a program to promote and provide
19 research and information for a particular agricul-
20 tural commodity without reference to specific pro-
21 ducers or brands, including a program carried out
22 under any of the following:

23 (A) The Cotton Research and Promotion
24 Act (7 U.S.C. 2101 et seq.).

1 (B) The Potato Research and Promotion
2 Act (7 U.S.C. 2611 et seq.).

3 (C) The Egg Research and Consumer In-
4 formation Act (7 U.S.C. 2701 et seq.).

5 (D) The Beef Research and Information
6 Act (7 U.S.C. 2901 et seq.).

7 (E) The Wheat and Wheat Foods Re-
8 search and Nutrition Education Act (7 U.S.C.
9 3401 et seq.).

10 (F) The Floral Research and Consumer
11 Information Act (7 U.S.C. 4301 et seq.).

12 (G) Subtitle B of the Dairy Production
13 Stabilization Act of 1983 (7 U.S.C. 4501 et
14 seq.).

15 (H) The Honey Research, Promotion, and
16 Consumer Information Act (7 U.S.C. 4601 et
17 seq.).

18 (I) The Pork Promotion, Research, and
19 Consumer Information Act of 1985 (7 U.S.C.
20 4801 et seq.).

21 (J) The Watermelon Research and Pro-
22 motion Act (7 U.S.C. 4901 et seq.).

23 (K) The Pecan Promotion and Research
24 Act of 1990 (7 U.S.C. 6001 et seq.).

1 (L) The Mushroom Promotion, Research,
2 and Consumer Information Act of 1990 (7
3 U.S.C. 6101 et seq.).

4 (M) The Lime Research, Promotion, and
5 Consumer Information Act of 1990 (7 U.S.C.
6 6201 et seq.).

7 (N) The Soybean Promotion, Research,
8 and Consumer Information Act (7 U.S.C. 6301
9 et seq.).

10 (O) The Fluid Milk Promotion Act of 1990
11 (7 U.S.C. 6401 et seq.).

12 (P) The Fresh Cut Flowers and Fresh Cut
13 Greens Promotion and Information Act of 1993
14 (7 U.S.C. 6801 et seq.).

15 (Q) The Sheep Promotion, Research, and
16 Information Act of 1994 (7 U.S.C. 7101 et
17 seq.).

18 (R) Section 501 of the Federal Agriculture
19 Improvement and Reform Act of 1996 (7
20 U.S.C. 7401).

21 (S) The Commodity Promotion, Research,
22 and Information Act of 1996 (7 U.S.C. 7411 et
23 seq.).

1 (T) The Canola and Rapeseed Research,
2 Promotion, and Consumer Information Act (7
3 U.S.C. 7441 et seq.).

4 (U) The National Kiwifruit Research, Pro-
5 motion, and Consumer Information Act (7
6 U.S.C. 7461 et seq.).

7 (V) The Popcorn Promotion, Research,
8 and Consumer Information Act (7 U.S.C. 7481
9 et seq.).

10 (W) The Hass Avocado Promotion, Re-
11 search, and Information Act of 2000 (7 U.S.C.
12 7801 et seq.).

13 (3) CONFLICT OF INTEREST.—The term “con-
14 flict of interest” means a direct or indirect financial
15 interest in a person or entity that performs a service
16 for, or enters into a contract or agreement with, a
17 Board for anything of economic value.

18 (4) SECRETARY.—The term “Secretary” means
19 the Secretary of Agriculture.

20 (d) REQUIREMENTS OF CHECKOFF PROGRAMS.—

21 (1) PROHIBITIONS.—

22 (A) INFLUENCING GOVERNMENT POLICY
23 OR ACTION.—

24 (i) IN GENERAL.—A Board shall not
25 enter into any contract or agreement to

1 carry out checkoff program activities with
2 a party that engages in activities for the
3 purpose of influencing any government pol-
4 icy or action that relates to agriculture.

5 (ii) SAVINGS CLAUSE.—Nothing in
6 clause (i) prohibits a contract or agree-
7 ment entered into between a Board and an
8 institution of higher education for the pur-
9 pose of research, extension, or education.

10 (B) CONFLICT OF INTEREST.—A Board
11 shall not engage in, and shall prohibit the em-
12 ployees and agents of the Board, acting in their
13 official capacity, from engaging in, any act that
14 may involve a conflict of interest.

15 (C) OTHER PROHIBITIONS.—A Board shall
16 not engage in, and shall prohibit the employees
17 and agents of the Board, acting in their official
18 capacity, from engaging in—

19 (i) any anticompetitive activity;

20 (ii) any unfair or deceptive act or
21 practice; or

22 (iii) any act that may be disparaging
23 to, or in any way negatively portray, an-
24 other agricultural commodity or product.

1 (2) AUTHORITY TO ENTER INTO CONTRACTS.—

2 Notwithstanding any other provision of law, on ap-
3 proval of the Secretary, a Board may enter directly
4 into contracts and agreements to carry out generic
5 promotion, research, or other activities authorized by
6 law.

7 (3) PRODUCTION OF RECORDS.—

8 (A) IN GENERAL.—Each contract or agree-
9 ment of a checkoff program shall provide that
10 the entity that enters into the contract or
11 agreement shall produce to the Board accurate
12 records that account for all funds received
13 under the contract or agreement, including any
14 goods or services provided or costs incurred in
15 connection with the contract or agreement.

16 (B) MAINTENANCE OF RECORDS.—A
17 Board shall maintain any records received
18 under subparagraph (A).

19 (4) PUBLICATION OF BUDGETS AND DISBURSE-
20 MENTS.—

21 (A) IN GENERAL.—The Board shall pub-
22 lish and make available for public inspection all
23 budgets and disbursements of funds entrusted
24 to the Board that are approved by the Sec-

1 retary, immediately on approval by the Sec-
2 retary.

3 (B) REQUIRED DISCLOSURES.—In carrying
4 out subparagraph (A), the Board shall dis-
5 close—

6 (i) the amount of the disbursement;

7 (ii) the purpose of the disbursement,
8 including the activities to be funded by the
9 disbursement;

10 (iii) the identity of the recipient of the
11 disbursement; and

12 (iv) the identity of any other parties
13 that may receive the disbursed funds, in-
14 cluding any contracts or subcontractors of
15 the recipient of the disbursement.

16 (5) AUDITS.—

17 (A) PERIODIC AUDITS BY INSPECTOR GEN-
18 ERAL OF USDA.—

19 (i) IN GENERAL.—Not later than 2
20 years after the date of enactment of this
21 Act, and not less frequently than every 5
22 years thereafter, the Inspector General of
23 the Department of Agriculture shall con-
24 duct an audit to determine the compliance
25 of each checkoff program with this section

1 during the period of time covered by the
2 audit.

3 (ii) REVIEW OF RECORDS.—An audit
4 conducted under clause (i) shall include a
5 review of any records produced to the
6 Board under paragraph (3)(A).

7 (iii) SUBMISSION OF REPORTS.—On
8 completion of each audit under clause (i),
9 the Inspector General of the Department
10 of Agriculture shall—

11 (I) prepare a report describing
12 the audit; and

13 (II) submit the report described
14 in subclause (I) to—

15 (aa) the appropriate com-
16 mittees of Congress, including
17 the Subcommittee on Antitrust,
18 Competition Policy and Con-
19 sumer Rights of the Committee
20 on the Judiciary of the Senate;
21 and

22 (bb) the Comptroller Gen-
23 eral of the United States.

24 (B) AUDIT BY COMPTROLLER GENERAL.—

1 (i) IN GENERAL.—Not earlier than 3
2 years, and not later than 5 years, after the
3 date of enactment of this Act, the Comp-
4 troller General of the United States shall—

5 (I) conduct an audit to assess—

6 (aa) the status of actions
7 taken for each checkoff program
8 to ensure compliance with this
9 section; and

10 (bb) the extent to which ac-
11 tions described in item (aa) have
12 improved the integrity of a
13 checkoff program; and

14 (II) prepare a report describing
15 the audit conducted under subclause
16 (I), including any recommendations
17 for—

18 (aa) strengthening the effect
19 of actions described in subclause
20 (I)(aa); and

21 (bb) improving Federal leg-
22 islation relating to checkoff pro-
23 grams.

24 (ii) CONSIDERATION OF INSPECTOR
25 GENERAL REPORTS.—The Comptroller

1 General of the United States shall consider
2 reports described in subparagraph (A)(iii)
3 in preparing any recommendations in the
4 report under clause (i)(II).

5 (e) SEVERABILITY.—If any provision of this section
6 or the application of such provision to any person or cir-
7 cumstance is held to be unconstitutional, the remainder
8 of this section, and the application of the provision to any
9 other person or circumstance, shall not be affected.