

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

**2005-06**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on  
Agriculture and  
Insurance  
(SC-AI)**

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr\_AC-Ed\_RCP\_pt01a
- 05hr\_AC-Ed\_RCP\_pt01b
- 05hr\_AC-Ed\_RCP\_pt02

COMMITTEE NOTICES ...

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ \*\*

➤ Committee Reports ... CR

➤ \*\*

➤ Executive Sessions ... ES

➤ \*\*

➤ Record of Comm. Proceedings ... RCP

➤ \*\*

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INFORMATION COLLECTED BY COMMITTEE  
CLERK FOR AND AGAINST PROPOSAL

➤ Appointments ... Appt

➤ \*\*

Name:

➤ Clearinghouse Rules ... CRule

➤ \*\*

➤ Hearing Records ... HR (bills and resolutions)

➤ **05hr\_ab0635\_SC-AI\_pt02a**

➤ Miscellaneous ... Misc

➤ \*\*

# PACA FACT FINDER

<http://www.ams.usda.gov/fv/paca.htm>

## **What is the Perishable Agricultural Commodities Act?**

The Perishable Agricultural Commodities Act (PACA) establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. It protects growers, shippers, distributors, retailers and others who deal in those commodities by prohibiting unfair and fraudulent practices.

## **Why do businesses that buy or sell fruits and vegetables need more protection than businesses in other industries?**

The produce industry is unique. Dealers handle a product that is very perishable and a 1- or 2-day delay in marketing can mean the difference between profit and loss. By spelling out the responsibilities of all parties, the PACA helps to promote the prompt marketing of produce, while still protecting buyers' and sellers' rights in the event that a contract dispute occurs.

## **Is there a penalty for operating without a PACA license?**

Companies that operate without a valid PACA license are subject to fines of up to \$1,000 for each offense and \$250 each day the offense continues. Court injunctions can be issued against those who persist in operating without a license.

## **How is the PACA enforced?**

The PACA is enforced through a licensing system. Almost everyone involved in the marketing of commercial quantities of fresh and frozen fruits and vegetables in interstate or foreign commerce must maintain a valid PACA license. A produce trader found to have committed unfair trade practices may face a civil monetary penalty, license suspension or, in the most serious cases, license revocation.



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Fax 608-252-9243

**How do I get a PACA license?**

Anyone with license questions or needing assistance in applying for a license may call PACA's toll-free number, 1-800-495-PACA (7222).

**Is anyone exempt from licensing requirements?**

Yes, growers are exempt as long as they sell only products that they have grown. Retailers and frozen food brokers representing sellers are exempt until they purchase or act as an intermediary in making the sale of \$230,000 or more worth of fruits and vegetables in a calendar year. Truckers who are only contract carriers do not need a license.

**How is the PACA program financed?**

PACA license and complaint filing fees finance the administration of the program. No tax revenues are used to fund the PACA program.

**What responsibilities do I have as a PACA licensee?**

The law requires that produce traders comply with the terms of their contracts. Sellers must ship the quantity and quality of produce specified. Buyers must accept shipments that meet contract specifications and pay promptly after acceptance. Prompt payment means payment within 10 days unless the buyer and seller, prior to the sale, agree in writing to extend the payment time.

**What can I do if I have a dispute with a supplier or a buyer over a business transaction?**

The PACA Branch offers dispute resolution services to members of the produce industry. If a person has a dispute with a licensee over a produce transaction, that person may file an informal complaint against a licensee for damages if he or she believes that the licensee failed to abide by the law. The written complaint, accompanied by a \$60 filing fee, must be filed within 9 months from the date payment is due or damages are suffered.

One of PACA's informal complaint services includes mediation, where the PACA Branch attempts to help the parties resolve their differences. Informal mediation is an effective way to resolve disputes, since it places the resolution of the dispute directly in the hands of the interested parties by providing a forum where both sides can air their differences in a

neutral atmosphere.

If the parties cannot reach an informal resolution, the complainant may file a formal complaint. A formal complaint is handled by the Department of Agriculture (USDA) similar to how a lawsuit is handled in a court of law. However, instead of a judge, the Secretary of Agriculture can issue an award plus interest based on the evidence in the case. Although there is a \$300 filing fee for a formal complaint, the complainant can recover the filing fee if an order is issued in its favor.

If a licensee fails to satisfy a PACA award, USDA will suspend the firm's license and restrict it from operating in the produce industry for up to 3 years.

**What are some unfair trade practices that usually result in claims being filed?**

Rejecting without reasonable cause produce bought or contracted to be handled on consignment;

Failure to pay promptly the agreed price of produce that complies with contract terms;

Discarding, dumping, or destroying without reasonable cause any produce received to be sold on behalf of another firm;

Failure to deliver the contracted produce in a timely manner and at the price and quality level specified in the purchase agreement; and

Failure or refusal to account truly and correctly or to make full payment promptly for produce shipped on consignment or on joint account.

**Can I recover money from a firm that has gone out of business or has filed for bankruptcy protection?**

Yes. Under the PACA trust provisions, a buyer must hold its produce-related assets for the benefit of unpaid produce suppliers that have preserved their trust rights. This requires firms to place produce-related obligations above all others.

**What must sellers do to preserve their trust rights?**

Although the trust automatically goes into effect at the time the buyer receives the goods, sellers must properly preserve their rights by meeting specific notification requirements.

**What are the notification requirements?**

The law allows PACA licensees to qualify automatically for trust protection by including on their invoices or other billing documents the following statement: **"The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."**

Other produce sellers must provide the buyer -- the produce debtor -- with a written notice of their intent to preserve trust benefits under the PACA within 30 days from the date that payment was past due or notification was received that a payment instrument was dishonored.

**How long are a seller's rights preserved?**

Trust claimants who preserve their trust rights by providing proper notice remain beneficiaries until paid.

**How is payment from trust assets enforced?**

The trust is a self-help tool that is totally separate and unrelated to filing a complaint under PACA. Trust beneficiaries may file in the U.S. District Court to enforce payment from the trust immediately following a buyer's failure to pay promptly. In cases where the debtor is bankrupt, trust beneficiaries should file their claims for payment with the bankruptcy court.

**If I file a trust claim with the court, can I still file a PACA complaint?**

Yes, pursuing a trust action with the court does not impede you from pursuing a complaint under PACA.

**Can I agree to payment terms other than those in the PACA regulations and still qualify for protection under the trust?**

Although PACA prompt payment terms specify payment within 10 days from the date of acceptance, a buyer and seller may agree to extended terms as long as the agreement is made in writing prior to the transaction, and the terms are reflected on the invoice and all other billing documents. However, the agreed-upon payment terms cannot exceed 30 days from the date of acceptance to qualify for trust protection.

**What is a disciplinary action under the PACA?**

USDA may penalize a licensee that repeatedly and flagrantly violates the Act. A disciplinary action may result in a suspension or revocation of the firm's PACA license. In lieu of suspension or revocation, the Secretary of Agriculture may assess a civil penalty of up to \$2,000 for each violation or for each day the violation continues.

**How does the USDA decide if a PACA license should be suspended or revoked as the result of a disciplinary proceeding?**

USDA considers the seriousness and the nature of the violation(s), the number of violations that took place, the length of the time period in which the violations occurred, and the effect that the violations had on the produce industry. Revocation of the license is the most severe penalty that can be imposed.

**How does a PACA license suspension or license revocation restrict a firm and/or its principals?**

Following the suspension or revocation of a PACA license, the firm and its responsibly connected individuals are automatically subject to licensing and employment restrictions, which prohibit those individuals and firms from working or operating in the produce industry for a certain period of time. A person is considered to be responsibly connected if he/she is an owner, a partner in a partnership, a member or manager in a limited liability company, or an officer, director, or holder of more than 10 percent of the stock of a corporation or association.

As long as the license is suspended, the firm cannot conduct business in the produce industry. Furthermore, none of the persons responsibly connected with the firm can engage in business under the PACA, nor can another PACA licensee employ them.

**What are some of the common PACA violations that prompt USDA to take disciplinary action?**

Failure to pay for produce purchased;

Slow payment;

Failure of a commission merchant or grower's agent to render accurate accountings and pay promptly the net proceeds due the shippers and growers;

Flagrant misbranding or misrepresentation of produce shipped in interstate or foreign commerce;

Making false and misleading statements for a fraudulent purpose, including altering or otherwise falsifying official USDA inspection certificates; and

Employing a restricted person after receiving notice from the USDA that the employment is prohibited.

**This law puts strict regulations on the produce industry. Do you receive much industry resistance?**

The industry developed and sponsored this law, and the majority of industry members strongly support the PACA. The act has been amended several times over the years to keep pace with changing trade practices. The most recent revisions occurred in 1995.

**Where can I get more information about the PACA program?**

You can visit our website at <http://www.ams.usda.gov/fv/paca.htm> for more information about the PACA program. Here you can find information about licensing, resolving commercial disputes, mediation, PACA publications, a list of current PACA violators, a digest of recent disciplinary decisions, and an office directory.

We also offer a free Internet training program that covers the basic information you need to know to operate within the PACA. After reviewing the course material, you'll take on-line tests that are scored automatically so you'll get immediate feedback. To begin training, click on the link PACA Internet Training Program located on our homepage.

You may contact any of the following offices

if you have additional questions about the PACA program:

USDA, AMS, F&V Programs  
PACA Branch  
P.O. Box 96456  
Washington, DC 20090-6456  
Telephone: 877-622-4716 (toll-free)  
Fax: 202-690-4413

USDA, AMS, F&V Programs  
PACA Branch  
1200 East Copeland Road, Suite 404  
Arlington, TX 76011-4938  
Telephone: 888-901-6137 (toll-free)  
Fax: 817-276-1968

USDA, AMS, F&V Programs  
PACA Branch  
300 W. Congress Street, Box FB30  
Tucson, AZ 85701-1319  
Telephone: 888-639-0575 (toll-free)  
Fax: 520-670-4798

USDA, AMS, F&V Programs  
PACA Branch  
622 Georges Road, Suite 303  
North Brunswick, NJ 08920-3303  
Telephone: 877-471-7720 (toll-free)  
Fax: 732-846-0427

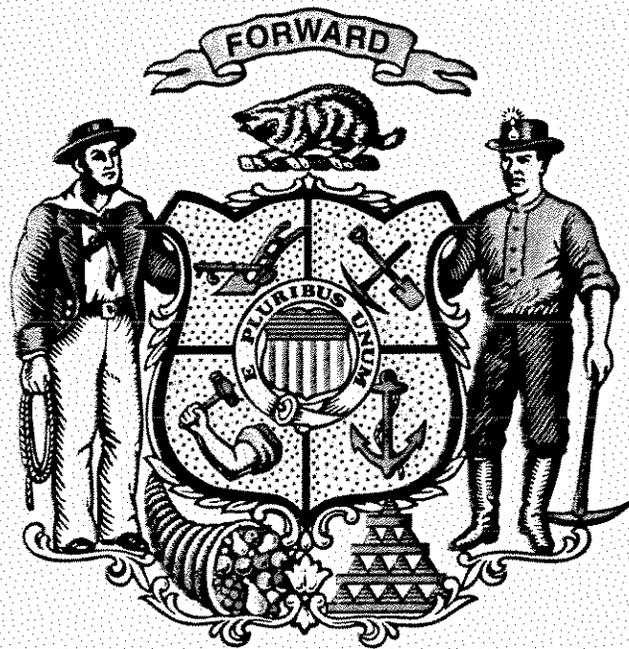
USDA, AMS, F&V Programs  
PACA Branch  
Building A, Suite 360  
Glen Ellyn, IL 60137-5832  
Telephone: 888-693-0423 (toll-free)  
Fax: 630-858-9304

USDA, AMS, F&V Programs  
PACA Branch  
8700 Centreville Road, Suite 206  
Manassas, VA 20110-8411  
Telephone: 888-639-9236 (toll-free)  
Fax 703-330-4856

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

Revised April 2000



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## Amendments to the Wisconsin Producer Security Act

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### A. Background

#### 1. State Law

The Wisconsin Producer Security Act ("PSA") (Wis. Stats. Chap 126) establishes an agricultural security program that helps protect commodity producers against catastrophic financial defaults by processors and handlers by allowing the DATCP to obtain a proprietary line of credit in case a processor defaults on an amount greater than the deductible amount for a particular commodity. The PSA covers dairy, grain and vegetable contracts.

#### 2. Federal Law

In addition to this state protection, the federal Perishable Agricultural Commodities Act ("PACA") of 1930 grants preferred trust fund protection to eligible unpaid sellers and suppliers of perishable agricultural commodities. Under PACA, if the purchaser of perishable agricultural commodities files for bankruptcy, eligible unpaid sellers and suppliers of commodities are entitled to a priority placement in bankruptcy court to collect full payment of their PACA trust claims before the secured and unsecured creditors' claims are paid.

#### 3. Existing State Exemptions

Current Wisconsin law exempts a vegetable contractor from having to purchase a Wisconsin PSA license (i.e., a license from DATCP through which the contractor pays into the Wisconsin fund) *if* the contractor is, "A vegetable contractor who procures vegetables primarily for unprocessed, fresh market use and is licensed under the federal Perishable Agricultural Commodities Act, 7 USC 499a to 499t." *See* Wis. Stat. § 126.56(2)(a) (2004) (*emphasis added*).

### B. The Problem

The federal PACA definition of "fresh fruits and vegetables" includes potato products such as frozen potatoes and potatoes that will be used for processing. However, the Wisconsin exemption from state producer security licenses is limited to, "vegetables primarily for unprocessed, fresh market use and is licensed under the federal Perishable Agricultural Commodities Act, 7 USC 499a to 499t." *See* Wis. Stat. § 126.56(2)(a).

Therefore, Wisconsin law requires a Wisconsin license for those who also have a PACA license, *if* they are purchasing primarily potatoes used for processing (i.e., potatoes that will be chipped, frozen or canned) while allowing an exemption for potatoes that will be purchased for the fresh market.

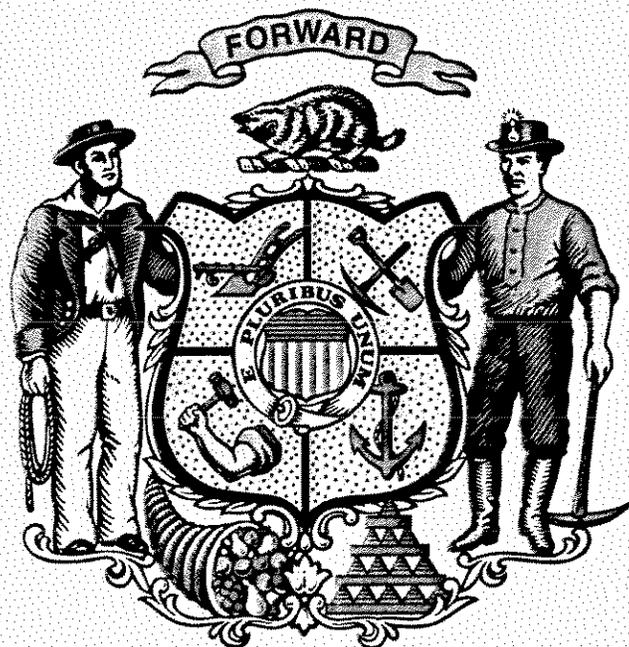
Wisconsin security fund fees, assessments and audited financial statements are uncompetitive when compared to similar program fees from other states. Since the 2003 amendment to PACA, processors purchasing potatoes from Wisconsin potato growers for chip production have been very reluctant to do business in Wisconsin. These processors are very reluctant to pay a Wisconsin producer security fund license fee when properly structured transactions can be

covered by PACA. Accordingly, several chip processors have indicated their intent to cease purchasing chip potatoes from Wisconsin producers.

**C. The Solution – LRB 1813/4**

Wisconsin potatoes sold for chips represent almost 1/3 of Wisconsin's potato crop. In order to prevent Wisconsin growers from losing access to the chip market, LRB 1813/4 authorizes certain licensed vegetable contractors who purchase only potatoes for processing to choose not to make contributions under the State producer security program if the buyer is licensed by the Federal government under the Perishable Agricultural Commodities Act (PACA) and maintains documentation that farmers from whom the potato buyer purchases potatoes qualify for protection under PACA.

If a potato buyer who opts out of the program defaults on a contract with a farmer, the farmer is not eligible for reimbursement under the State producer security program.



This could be  
used as an  
opening statement  
to explain the  
existing law and  
the need for this  
bill.

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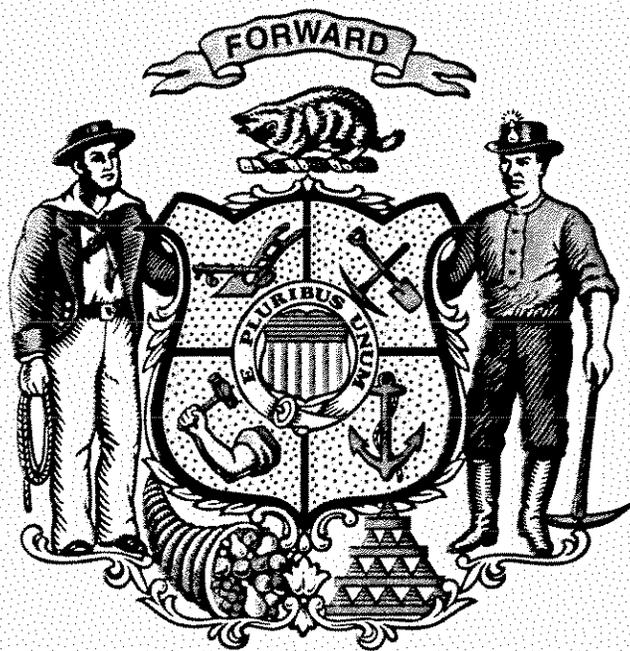
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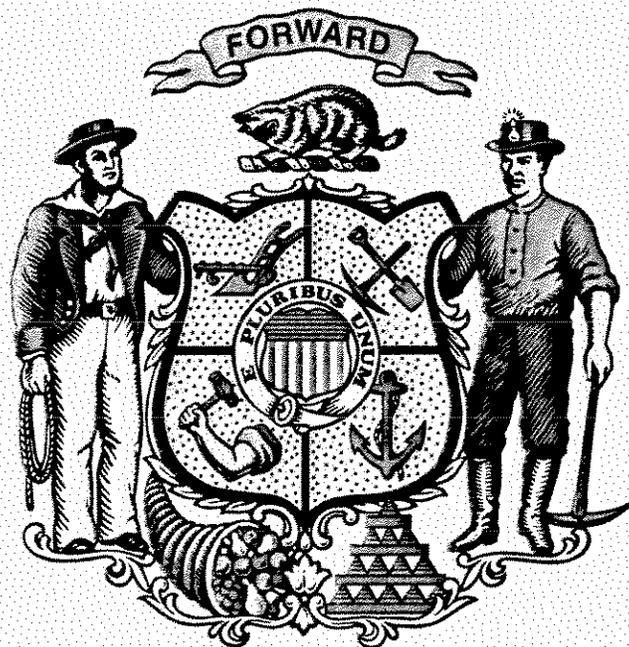
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Will you tree on  
AB6 35 today?

Joan Ballweg

Exec on 365 today?



PACA

Exp/planaxer

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Glen Ellyn, IL 60137-5832  
Telephone: 888-693-0423 (toll-free)  
Fax: 630-858-9304

USDA, AMS, F&V Programs  
PACA Branch  
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Manassas, VA 20110-8411  
Telephone: 888-639-9236 (toll-free)  
Fax 703-330-4856

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Revised April 2000

if you have additional questions about the PACA program:

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P.O. Box 96456  
Washington, DC 20090-6456  
Telephone: 877-622-4716 (toll-free)  
Fax: 202-690-4413

USDA, AMS, F&V Programs  
PACA Branch  
1200 East Copeland Road, Suite 404  
Arlington, TX 76011-4938  
Telephone: 888-901-6137 (toll-free)  
Fax: 817-276-1968

USDA, AMS, F&V Programs  
PACA Branch  
300 W. Congress Street, Box FB30  
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Fax: 520-670-4798

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