FARMER PROTECTION ACT

America's biggest banks have agreed to set emissions targets for their agricultural customers by 2024, meaning that farmers soon will be under enormous pressure to reduce their emissions or risk being frozen out of bank financing. Agriculture commissioners and attorneys general should be empowered to investigate this conduct and take action to protect farmers and consumers, who will suffer from even higher food prices if more farmers are forced out of business.

Summary: AN ACT relating to finance companies doing business in this state; prohibiting banks from restricting services to farmers based on environmental policies; empowering the agriculture commissioner and attorney general to investigate and penalize violations; setting penalties; and providing an effective date.

SECTION 1. Legislative Findings.

The State of **[name of state]** finds that:

• In the past two decades, farmers worldwide have fed an ever-growing global population by increasing their crop yields by more than 50%, while simultaneously helping reduce agriculture's share of global emissions.

• The number of U.S. farms continues to decline, and small-scale farm operators, which comprise 89% of U.S. farmers, now typically rely on off-farm employment for most of their income.

• Activists have made clear that agriculture emissions targets for food-and-beverage companies "must cover scope 3 emissions," which are emissions from suppliers, or in other words, farmers. Food-and-beverage companies that set these targets must then force farmers to measure, report, and reduce their emissions, which may put small, struggling farmers out of business for good.

• ESG activists have announced that the food-and-beverage industry must reduce its land-based emissions by 85%, while admitting that farmers will have to increase food yields by 56% from 2010 levels in order to feed nearly 10 billion people in 2050.

• ESG activists acknowledge that food security may be a "tradeoff" for emissions mitigation. Decreases in food production and corresponding increases in food prices invariably have the biggest impact on the poorest people.

• ESG activists have declared that the United States must cut its beef consumption in half and that "global per capita meat consumption must be reduced to around 1.5 burgers per person per week by 2050 to align with a 1.5°C scenario." This could lead to the loss of 19 million livestock jobs worldwide, including many in the United States, which is the top producer of beef and the largest exporter of agricultural goods globally.

• Three billion people are alive today because of nitrogen fertilizer, yet ESG activists want to reduce its use. Their proposed "green fertilizer" will be more expensive, leading to millions of people going hungry or dying worldwide. Already, the United Nations Environmental Programme's (UNEP) demands for reduced use of nitrogen fertilizer helped push Sri Lanka to stop using chemical fertilizer, leading to a devastating crop yield decrease, skyrocketing food prices, and an economic and humanitarian disaster. UNEP has informed banks that it will review their emissions reduction targets for agriculture.

• America's six biggest banks joined the Net-Zero Banking Alliance in 2021, which means they all must set UN-approved agriculture targets for their portfolios by 2024 at the latest. Net-Zero Banking Alliance members control more than 40% of global banking assets.

• ESG activists demand "zero emissions on-farm machinery," but ignore that electric heavy farm machinery would be far larger than diesel counterparts, would require extensive charging infrastructure on farms to meet harvesting demands, may struggle in cold weather, and simply "isn't feasible."

• Farmers in **[name of state]** depend on the availability of financing, and consumers depend on farmers for food. Reducing financing, restricting fertilizer usage, or forcing farmers to purchase electric farm machinery may put farmers out of business and raise food prices for consumers; and

• State governments should take steps to ensure that finance companies do not unfairly discriminate against agriculture producers.

SECTION 2. Definitions.

• "Agriculture producer" means a natural person or company engaged in the production of goods derived from plants or animals including, but not limited to, the growing of crops, animal husbandry, or the production of livestock or dairy products..

• "Company" means a for-profit organization, association, corporation, partnership, joint venture, sole proprietorship, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations.

• "Denies or restricts" means refusing to provide services, terminating existing services, or otherwise restricting or burdening the scope or nature of services offered or provided.

• "Discriminate in the provision of financial services" means to directly or indirectly deny or restrict services and thereby decline to provide full and equal enjoyment in the provision of financial services.

• "ESG commitment" means –

• a public or private commitment by –
  – the financial institution,
  – a subsidiary or affiliate of the financial institution,
  – the financial institution's board of directors, or
  – the financial institutions officers

to use its
  – market position,
  – market power,
  – influence, or
  – ability to withhold or provide business or credit

to eliminate, reduce, offset, or disclose greenhouse gas emissions or achieve other environmental standards or objectives beyond those imposed by applicable laws;

(2) a financial institution's decision to join any initiative or organization that has a purpose for its signatories' or members' customers to be aligned with any environmental, social, or political goals.

• "Financial institution" means a company that –
  – offers financial services,
  – has total assets over $100 billion, including the assets of any subsidiaries and affiliate companies, and
  – financial services account for at least ten percent of the company's revenues.

• "Financial service" means any product or service that is of a financial nature including, but not limited to, banking services, lending, credit card or debit card services, investment banking services, securities brokerage or securities dealing, investment advice, insurance, electronic payment services, or money transfer services.

SECTION 3. Prohibition on Unlawful Discrimination in Agriculture Financing.

• A financial institution shall not discriminate in the provision of financial services to an agriculture producer based, in whole or in part, upon the agriculture producer's greenhouse gas emissions, use of fossil-fuel derived fertilizer, or use of fossil-fuel powered machinery.

(B) If a financial institution has made any ESG commitment, there shall be a rebuttable presumption that the institution's denial or restriction of a financial service to an agriculture producer violates subsection (A). Evidence of an ESG commitment includes, but is not limited to, any of the following: (i) advertising, (ii) public or private statements, resolutions, explanations, reports, memoranda or other communications (iii) participation in, affiliation with, or status as a signatory to, any coalition, initiative, joint statement of principles, or agreement, the purpose of which is to use business activity to further environmental, social, or political goals.

(C) A financial institution may overcome the rebuttable presumption in subsection (B) by demonstrating, through clear and convincing evidence, that its denial or restriction of a financial service was based solely on a documented ordinary business purpose, and not on any ESG commitment. "Ordinary business purpose" does not include any purpose to further environmental, social, or political interests.

SECTION 4. Enforcement.

• Section 3 of this Act may be enforced by the attorney general. Any violation of Section 3 of this Act shall constitute a violation of **[state civil rights law, public accommodation statute or common carrier statute]**, and the attorney general may investigate and seek remedies as provided in that law. Any violation of Section 3 of this Act also shall constitute an unfair act in violation of **[state UDAP statute]**, and the attorney general may investigate and seek remedies as provided in that law.

• Section 3 of this Act also may be enforced by the commissioner of agriculture.

• If the commissioner of agriculture has reasonable cause to believe that a financial institution has engaged in or is engaging in a violation of this Act, the commissioner of agriculture may:

• Require the financial institution to file on forms the commissioner of agriculture prescribes a statement or report in writing, under oath, as to all the facts and circumstances concerning the violation, as well as other data and information the commissioner of agriculture deems necessary;

• Examine under oath any person in connection with the violation; and

• Examine any record, book, document, account, or paper the commissioner of agriculture deems necessary.

• The commissioner of agriculture may conduct hearings, make recommendations, issue orders, and adopt such rules and regulations, pursuant to the **[state administrative procedure act]**, as the commissioner determines are reasonable and necessary to accomplish the purpose and intent of this Act.

• The commissioner of agriculture may conduct statistical studies or surveys in order to collect data related to the existence and impact of ESG commitments or ESG policies that are related to agriculture, and may prepare and disseminate the information thus gathered, or any other information related to the existence and impact of those ESG commitments or ESG policies, in a manner of his or her choosing.

• The commissioner of agriculture may bring a civil action for:
  – preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order as is necessary to enforce the requirements of this Act, and
  – civil penalties of up to $10,000 per violation.

SECTION 5. Severability.

Each section, paragraph, and portion of each paragraph of this Act is severable. If one or more sections, paragraphs, or portions of one or more paragraphs of this Act are held invalid on their face or as applied to particular facts, then the remaining portions and applications of the Act shall be given full effect to the greatest extent practicable.

SECTION 6. Applicability and Effective Date.