

**ONE HUNDREDTH LEGISLATURE - SECOND SESSION -  
2008**

**COMMITTEE STATEMENT**

**LB1174**

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**Hearing Date:** February 12, 2008

**Committee On:** Agriculture

**Introducer(s):** (Dierks)

**Title:** Restrict entity ownership of agricultural land and farm and ranch operations

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**Roll Call Vote - Final Committee Action:**

Placed on General File with Amendments

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**Vote Results:**

7	Yes	Senators Chambers, Dierks, Dubas, Karpisek, McDonald, Preister, Wallman
1	No	Senator Erdman
0	Absent	
0	Present, not voting	

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**Testifiers on Page 2**

**Proponents:**

Senator Dierks  
 Rick Welsh  
 Roger McEowen  
 Michael Stumo  
 Joe Fryman  
 Norma Hall  
 Brian Brandt  
 Dan Owens  
 Vern Jantzen  
 Jim Cunningham  
 Ken Maas  
 David Wright  
 Conrad Grothen  
 David Hansen  
 Harry Muhlbach  
 Don Reeves  
 Lou Allgayer  
 John Hansen

**Opponents:**

Michael Kelsey  
 Scott Spilker  
 Russell Vering  
 Geoffrey Ruth  
 Brandon Hunnicutt  
 Brad Koehn  
 William Bevans  
 Walter Radcliffe  
 David Grimes  
 Lynn Chrisp

**Neutral:**

Steve Grasz  
 Anthony Schutz  
 David Jarecke  
 David Bracht

**Representing:**

Introducer – District 40  
 Clark University  
 Iowa State University  
 Organization for Competative Markets  
 Nebraska State Grange  
 Women Involved in Farm Economics  
 Self  
 Center For Rural Affairs  
 Self  
 Nebraska Catholic Conference  
 Nebraska State AFL-CIO  
 Independent Cattlemen of Nebraska  
 American Corn Growers  
 Self  
 Self  
 Center for Rural Affairs  
 Self  
 Nebraska Farmers Union

**Representing:**

Nebraska Cattlemen  
 Nebraska Farm Bureau  
 Nebraska Pork Producers  
 Nebraska Soybean Association  
 Nebraska Corn Growers  
 Nebraska Bankers Association  
 Nebraska Poultry Industries  
 Nebraska Realtors Association  
 Self  
 Self

**Representing:**

Self  
 Self  
 Nebraska Cooperative Council  
 Self

**Summary of purpose and/or change:**

LB 1174 would install as statutory law many of the familiar qualifications on the use of limited liability business entities to own agricultural land or to engage in farming and ranching found at Article XII, Section 8 of the constitution (I-300) [currently enjoined by federal court order] in combination with other provisions of statute. The restrictions contained in LB 1174 incorporate certain modifications to respond to dormant commerce clause defect and violation of the Americans with Disabilities Act found by federal courts with the constitutional provisions.

Specifically, LB 1174 contains the following substantive elements:

Statement of intent and findings

- Section 1 of the bill contains an extensive statement of Legislative findings and intent, including the following:

- Declares a public interest in encouraging ownership and control of agricultural production and assets by owner-operators and finds social and economic benefits accruing from such pattern of ownership of agricultural enterprise
- Declares a public interest and duty in ensuring that the benefits of limited liability business entities are utilized in the public interest
- Declares a public interest in safeguarding natural resources and finds a preference for owner-operator stewardship of productive natural resources in safeguarding this interest, further finding contradiction to that end in stewardship by entities that shield passive investors from environmental liability
- Finds that an array of federal farm policies encourage and preserve benefits to individuals and entities who are owner-operators of family farms.

#### Definitions:

- Section 2 of the bill defines key terms utilized throughout the bill. The following terms are defined:
  - Entity – Defined to mean corporations and other limited liability business entities or any partnership of which an entity is a partner
  - Farming and ranching – defined to mean the cultivation of crops and the ownership, keeping or feeding of animals for the production of livestock or livestock products
  - Farm or ranch – defined to mean all agricultural activities and agricultural real estate without geographical restriction to Nebraska
  - Family Farm or Ranch entity – defined to mean an entity meeting requirements of majority ownership or membership in related individuals and provision of labor and management thresholds provided on the farm or ranch by at least one representative of the ownership majority.
  - Actively engaged in day-to-day labor & management – defined to include accommodation for individuals prevented from meeting the requirements for qualification as a family farm or ranch entity due to mental or physical impairment.

#### Agricultural ownership and operation restrictions

- Section 3(1) states a general prohibition against entities from acquiring or obtaining interest in title to real estate utilized for farming or ranching or engaging in farming or ranching.
- Subsection (2) of Section 3 enumerates exceptions to the prohibition in subsection (1) for certain entities, ownership interests, circumstances of ownership, activity or manner of utilization as follows:
  - Family farm or ranch entities
  - Entities that are non-profit corporations
  - A farm or ranch owned by an entity that is a tribal corporation located within reservation boundaries
  - Lands and interests in lands held by a farming entity on the effective date of the bill (grandfathering provision), while the grandfathered interest is continuous. Expansion of ownership in lands is limited to reasonably necessary acquisitions to comply with pollution control regulations. Grandfathered interests are clarified to include land being purchased on contract upon the effective date of the bill.
  - Research or experimental farming operations where commercial sales of agricultural commodities are merely incidental
  - Farms or ranches operated for raising poultry
  - Land leased by alfalfa processors for producing alfalfa
  - Farms and ranches operated for seed, nursery stock or sod
  - Mineral rights
  - Agricultural land acquired for non-farming purpose provided ownership does not exceed five years and provided farming operations pending development are leased to a farming operations not prohibited from engaging in farming and ranching
  - Land and livestock acquired in the collection of debts, provided acquiring entity divests of property within five years and pending disposition, the land is leased to a farming operations not prohibited from engaging in farming and ranching
  - Encumbrances taken for security

- Custom spraying, fertilizing or harvesting activities
- Livestock futures contracts, ownership of livestock incidental to acquisition for slaughter, and temporary ownership of livestock incidental to intent to resale
- Production contracts entered into within one year prior to the effective date of the act but the exemption extends only to one year after the effective date of the act.
- Trustee interests in agricultural land held for benefit of a natural person or entity not disqualified from owning land under this section.

### Ownership succession

Section 3, subsection (3) provides for a period of transition of ownership of a family farm entity to minority shareholders where the majority shareholders no longer provide threshold measures of personal engagement in the operation of the farm or ranch. Provided that majority ownership remains vested in qualifying family majority ownership, and the entity's landholdings are not increased, this section provides that an entity shall have fifty years to requalify as a family farm entity (i.e. unrelated minority shareholder providing day-to-day labor and management given 50 years to acquire majority ownership).

### Enforcement:

Enforcement provisions are set forth in Section 4 of the bill as follows:

- Assigns a duty to the Secretary of State to monitor entity agricultural land acquisitions and farming activities and to notify the Attorney General of potential violations
- Authorizes the Attorney General to commence actions to enjoin noncompliant land acquisitions or production activity. Prescribes divestiture as a remedy and declares land not divested in compliance with court order escheats to the state.
- Grants standing to Nebraska citizens and entities to seek enforcement in the absence of enforcement by state officials

### Americans with Disabilities:

Subsection (3) of section 4 directs the Secretary of State to promulgate rules for providing accommodation of individuals prevented from meeting threshold management and labor contributions to qualify as a family farm entity due to physical or mental impairment. The Secretary of State is directed to maintain a registry of entities qualified as a family farm or ranch entity by virtue of reasonable accommodation.

### Harmonizing provisions:

A series of harmonizing revisions to related sections of statute are made in section 5 - 11 of the bill, primarily to remove internal reference and coordination of such provisions to Article XII, Section 8 of the constitution. Specifically, the following revisions are made:

- Section §21-2602 and §67-409 are amended by Sections 5 & 6 of the bill respectively to strike existing provisions declaring LLCs and limited liability partnerships to be syndicates for purposes of Article XII, Section 8 unless meeting certain ownership and threshold requirements for day-to-day labor and management. The stricken provisions are redundant and unnecessary since LLC's and limited are included in the definition of entity restricted by Section 3 of the bill and provisions for qualifying an LLC or a limited partnership as a family farm entity are contained in section 2.
- Sections 7 – 10 of the bill amend provisions of reporting requirements of certain entities relating to compliance with Article XII, Section 8 found at §§76-1520 et seq. LB 1174 corrects internal references in these sections to apply reporting requirements as relating to Section 3 of the bill

and utilizes terminology for identifying entities subject to reporting provisions to be consistent with those utilized by the bill

- §77-5203 of the Beginning Farmer Tax Credit Act is amended by section 11 of the bill to conform internal references within the definition of qualified owners of agricultural assets to the bill.

#### Miscellaneous:

- A revisors amendment is made to §76-1523(3) to clarify disposition of fines received under this section to conform with constitutional Article VII, Section 5. Current law directs a specific disposition of deposit in the temporary school fund.
- Legislative intent of severability is declared by section 12.

### **Explanation of amendments, if any:**

The committee amendment (AM 2319) strikes the original provisions and becomes the bill. The amendment makes largely clarifying and technical changes but adds a significant substantive revision by adding a new exception to the bill's restrictions for certain entities formed by nonrelated agricultural producers. The bill as modified by the committee amendment contains the following revisions to LB1174 as introduced:

- Consolidates legislative findings and intent currently in subsections (1) & (2) of section 1 into new subsection (1) of what becomes section 1 of the bill as amended. The revisions are for style, logical progression and avoidance of redundancy of concepts embedded in the original subsections (1) & (2). The revisions further reinforce the reservation of the use of limited liability business entities in agricultural production to owner-operators as evidenced by provision of day-to-day management and labor. The amendment also replaces the term "farm & ranch" with the operational term "farming & ranching operation" consistent with similar changes throughout the bill contained in the amendment.
- Inserts a new findings subsection stating legislative findings of public interest in allowing limited use of limited liability business entities formed by owner-operated farming and ranching operations to pool resources and achieve economies of scale. The additional statement of legislative findings parallels an additional exception for "qualified owner-operator controlled farm or ranch entity" to the general prohibition in section 4 of the bill as amended.
- Modifies the definition of "entity," the substantive effect of which is to clarify that cooperative associations included in the term encompasses both stock and nonstock cooperative associations. The amendment also rearranges sentence order for style & clarity.
- Replaces the defined term "farm or ranch" with a new defined term "farming and ranching operation." The new defined term, substituted throughout the bill as revised by the amendment, reinforces the concept of farming and ranching as an enterprise utilizing agricultural resources wherever located as opposed to a geographically defined entity.
- Modifies the defined term "family farming or ranching entity" by substituting the term "farming & ranching operation" for the term "farm or ranch" to reinforce that qualifying contribution of management and labor is to the entity's farming and ranching enterprise as opposed to being provided upon geographically-defined assets. Additionally, the amendment specifies that trusts that are permitted as a part of a qualifying majority ownership are trusts or family trusts as defined in §76-1511 or §76-1512.
- A new defined term "qualified owner-operator controlled farm or ranch entity" is inserted. The term is defined as an entity in which ownership is exclusively held by farmers or ranchers meeting thresholds of personal engagement in farming or ranching operations and where a member of the ownership group provides day-to-day management and labor to the entity's farming or ranching operation.
- The amendment omits "actively engaged in day-to-day labor and management" as a defined term. The substantive purpose of this term in the bill as introduced is effected in a new section 3 of the bill as amended. Section 3 of the bill as amended instructs that interpretation and application of the bill's restrictions on use of a business entity to conduct farming and ranching shall include reasonable accommodation for qualified individuals with a disability to comply with the Americans with Disabilities Act (ADA). Qualified individual with a disability is substituted for the bill's original designation of disabled individuals as those "having physical or mental impairment that substantially limits major life activities." The substituted term utilizes more accurate ADA terminology to designate individuals for whom reasonable accommodation is to be provided.

- The general prohibition to entity ownership of agricultural land and engaging in farming and ranching, and enumerated exceptions to this prohibition contained in Section 3 of the bill as introduced becomes section 4 of LB 1174 as amended. The Committee amendment makes the following revisions to this section:
  - Inserts “qualified owner-operator controlled farm or ranch entity” as an enumerated exception to the prohibition stated in subsection (1) of this section.
  - Clarifies that the exception for operations raising poultry includes operations raising poultry for poultry products, eggs, or as a poultry hatchery.
  - Omits the exemption for production contracts included as subdivision 2(o) of section 3 of the bill as introduced. The purpose of the exception in LB 1174 as introduced was to grandfather production contracts that may have been entered into with an entity that would be prohibited by LB 1174 from engaging in farming and ranching, a defined term that includes the owning, feeding or keeping livestock to avoid potential impairment of contract. Omission of the exception removes the express grandfathering of production contracts in existence on the effective date of the bill and defers to prosecutorial discretion in enforcing the bill’s prohibitions where an impairment of existing contracts may occur. Omission of this subdivision also avoids a potential unintended conflict with other enumerated exceptions.
  - Substitutes the term “farming and ranching operation” for the term “farm or ranch” as appropriate throughout the enumerated exceptions to the general prohibition of farming activities owned or conducted by entities.
- Modifies provisions contained in Subsection 3(3) of the introduced bill providing for a 50-year period for entities to requalify as a family farm or ranch entity. The requalification period is contained in what becomes subsection 3 of Section 4 of the bill as amended. The committee amendment rearranges sentence order for clarity. The amendment further clarifies that renewal of an entity’s lease of agricultural land, or the entity’s purchase of land leased at the time it falls out of qualification as a family farm entity, do not constitute an increase in landholdings.
- Omits the provisions of subsection 3 of section 4 of the bill as introduced. Coupled with changes elsewhere in the amendment, the allowance of reasonable accommodation for qualified persons with disability is deferred to as an element of enforcement rather than assigned as a duty of the Secretary of State.
- Adds a new reporting element to information currently required to be reported by entities pursuant to §76-1520 that the reporting entity report names and addresses of shareholders and members. The harmonizing revisions to this section contained in section 7 of the bill as introduced are carried over in the amendment.
- An additional harmonizing revision to changes elsewhere in the amendment is made within §77-5203 of the Beginning Farmer Tax Credit Act to include owner-operator controlled farm or ranch entities as qualified owners of agricultural assets.

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Senator Philip Erdman, Chairperson