

ONE HUNDRED FOURTH LEGISLATURE - FIRST SESSION - 2015
COMMITTEE STATEMENT
LB176

Hearing Date: Tuesday February 10, 2015
Committee On: Agriculture
Introducer: Schilz
One Liner: Change the Competitive Livestock Markets Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	5	Senators Harr, Johnson, Kolterman, Larson, Schilz
Nay:	2	Senators Bloomfield, Chambers
Absent:		
Present Not Voting:	1	Senator Riepe

Verbal Testimony:

Proponents:

Senator Ken Schilz
Scott Spilker
Russ Vering
Greg Ibach
Kevin Peterson
Todd Wegener
Steve Stanton
Tom Huntley
Nathan Huntley

Representing:

Introducer
Nebraska Pork Producers
Nebraska Pork Producers
Nebraska Department of Agriculture
Nebraska Farm Bureau
TMK Farms
Rabo AgriFinance
Self
Self

Opponents:

Jim Pappas
Kevin Cooksley
Vern Jantzen
Ted Genoways
Traci Bruckner
Don Goebel
John Hansen
Robert Bernt
Ron Meyer
Kenneth Winston
Ben Gotschall
Jim Knopik
Rick Hammond
Robert Hendrickson

Representing:

Independent Cattlemen of Nebraska
Nebraska State Grange
Self
Self
Center for Rural Affairs
Goebel Farms, Inc.
Nebraska Farmers Union
Self
Self
Nebraska Chapter of the Sierra Club
Self
Self
Self
Self

Neutral:

Representing:

Summary of purpose and/or changes:

LB176 narrows a restriction under the Competitive Livestock Markets Act that prohibits livestock packers from directly or indirectly owning or feeding livestock. LB176 would in effect remove the restriction on packers owning swine during production stages. The bill also inserts a definition of acts that constitute an indirect violation of the prohibition.

The primary substantive provision of LB176 is found in section 2 which amends Sec. 54-2604 of the Competitive Livestock Markets Act. This section currently prohibits packers from directly or indirectly engaging in the feeding and keeping of livestock for the production of livestock or livestock products, except for incidental feeding just prior to slaughter. Livestock is defined by Sec. 54-2602 to mean cattle and swine. LB176 strikes the existing provisions and rewrites the prohibition in new subsection (1) by defining a general prohibition against packers engaging in livestock production to include the elements of a) directly or indirectly owning, controlling or operating a livestock operation in this state. Livestock operation is inserted as a new defined term in 54-2602, and b) directly or indirectly being engaged in the ownership, keeping or feeding of livestock except ownership and feeding for the five days preceding the process of slaughter.

New subsection (2) provides that the general prohibition in subsection (1) does not apply to the ownership of swine by a packer provided ownership is confined to swine raised for slaughter at the packer's facilities.

New subsection (3) inserts definition of indirect ownership, control or operation of a livestock operation, to include the elements of:

- a) receiving or sharing revenue derived from a livestock operation or intermediary contractor,
 - b) obtaining a benefit of feeding or maintaining livestock, or assuming mortality risk, or
 - c) loaning money, acting as a surety or otherwise financing a livestock operation or an intermediary contractor.
- Financing is clarified to exclude contract terms that provide for an unsecured ledger balance or unsecured loan or open account for the purchase of feed provided the amount of unsecured balance does not exceed \$250,000.

Section 5 of the bill outright repeals 54-2603 which contains legislative intent language on the topic of vertical coordination and integration in livestock production that is in conflict with the changes made in section 2 of the bill. Existing text in 54-2603 stating legislative findings and purposes relating to state level mandatory price reporting are relocated to 54-2627.01 by section 3 of the bill. 54-2627.01 provides a mechanism for orderly implementation of state price reporting in the event the federal preemption of state price reporting laws were ever lifted.

Explanation of amendments:

The committee amendment (AM495) strikes original section 2 and substitutes a revised section 2 with the following changes: The differences are explained below.

AM495 clarifies that the permitted exemption in subsection (2) to the packer ownership provision as defined by subsection (1) is only for the element of ownership of swine as described in subsection (1)(b), not the entirety of Subsection (1). The revision is intended to remove any ambiguity, and be consistent with intent, that the exemption applies only to the ownership of swine, and does not encompass ownership of livestock production facilities. The amendment also expands the period of ownership and feeding by packers incidental to slaughter that is excluded from the prohibition from five days to fourteen days.

The committee amendment further makes a series of revisions to Subsection (3). First, the amendment clarifies that the activities included as an indirect violation of the packer restriction declared in subsection (1) includes both elements of prohibited activity, i.e. ownership of livestock operations and ownership of livestock.

In subdivisions (3)(a)(b) & (c), inserts clarification that the elements precluded to packers as indirect ownership of operations or engagement in livestock production does not preclude transactions or contractual relations where the packer is not involved in management of the operation.

Subdivision (3)(b) is revised to omit an ambiguous phrase obtaining the benefit of production . . . The amendment is

intended to avoid ambiguity that the bill precludes contractual relationships not precluded under current law or under LB176 solely because benefits may motivate or accrue to contracting parties such as surety of supply, price risk management, etc.

Subdivision (3)(c) is revised to list types of forward marketing arrangements between producers and packers that are excluded from being included in the prohibited act of loaning money, guaranteeing, acting as a surety for or otherwise financing an operation. The bill as introduced excluded forward marketing relationships that provide for certain unsecured account balance arrangements, or unsecured advances for feed purchase that are settled when negotiating net payment upon delivery of finished livestock provided such advance does not exceed \$250,000. AM495 adds clarification that unsecured means unsecured by collateral of the debtor, and increases the threshold of unsecured feed advances to \$1 million.

Jerry Johnson, Chairperson