

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 176

FINAL READING

Introduced by Schilz, 47.

Read first time January 12, 2015

Committee: Agriculture

1 A BILL FOR AN ACT relating to the Competitive Livestock Markets Act; to
2 amend sections 54-2601, 54-2602, 54-2604, and 54-2627.01, Reissue
3 Revised Statutes of Nebraska; to define terms; to change provisions
4 relating to prohibited acts; to change provisions relating to
5 contract swine operations; to change and eliminate provisions
6 relating to legislative findings; to harmonize provisions; to repeal
7 the original sections; and to outright repeal section 54-2603,
8 Reissue Revised Statutes of Nebraska.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 54-2601, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 54-2601 Sections 54-2601 to 54-2631 and section 4 of this act shall
4 be known and may be cited as the Competitive Livestock Markets Act.

5 Sec. 2. Section 54-2602, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 54-2602 For purposes of the Competitive Livestock Markets Act:

8 (1) Animal unit means one head of cattle, three calves under four
9 hundred fifty pounds, or five swine;

10 (2) Contract swine operation means a livestock operation in which
11 swine owned or controlled by a packer are produced according to a written
12 agreement that does not contain a confidentiality clause and that is
13 agreed to by the packer and a person other than the packer who owns,
14 leases, or holds a legal interest in the livestock operation;

15 (3 2) Department means the Department of Agriculture;

16 (4 3) Director means the Director of Agriculture or his or her
17 designee;

18 (5 4) Livestock means live cattle or swine;

19 (6) Livestock operation means a location, including buildings, land,
20 lots, yard corrals, and improvements, adapted to and utilized for the
21 purpose of feeding, keeping, or otherwise providing for the care and
22 maintenance of livestock;

23 (7 5) Packer means a person, or agent of such person, engaged in the
24 business of slaughtering livestock in Nebraska in excess of one hundred
25 fifty thousand animal units per year; and

26 (8 6) Person includes individuals, firms, associations, limited
27 liability companies, and corporations and officers or limited liability
28 company members thereof.

29 Sec. 3. Section 54-2604, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 54-2604 (1) Except as provided in subsection (2) of this section, a

1 packer shall not:

2 (a) Directly or indirectly own, control, or operate a livestock
3 operation in this state; or

4 (b) Directly or indirectly be engaged in the ownership, keeping, or
5 feeding of livestock, other than temporary ownership, keeping, and
6 feeding not to exceed fourteen days which is necessary and incidental to,
7 and immediately prior to, the process of slaughter.

8 (2) Subdivision (1)(b) of this section does not apply to the
9 ownership, keeping, or feeding of swine by a packer at one or more
10 contract swine operations in this state if the packer does not own, keep,
11 or feed swine in this state except for the purpose of the slaughtering of
12 swine or the manufacturing or preparation of carcasses of swine or goods
13 originating from the carcasses in one or more processing facilities owned
14 or controlled by the packer. Any agreement that establishes such a
15 contract swine operation shall be subject to section 4 of this act.

16 (3) For purposes of this section, indirectly own, control, or
17 operate a livestock operation and indirectly be engaged in the ownership,
18 keeping, or feeding of livestock includes:

19 (a) Receiving the net revenue or a share of the net revenue derived
20 from a livestock operation or from a person who contracts for the care
21 and feeding of livestock in this state, unless the packer is not involved
22 in the management of the livestock operation;

23 (b) Assuming a morbidity or mortality production risk if the
24 livestock are fed or otherwise maintained as part of a livestock
25 operation in this state, unless the packer is not involved in the
26 management of the livestock operation; and

27 (c) Loaning money for or guaranteeing, acting as a surety for, or
28 otherwise financing a livestock operation in this state or a person who
29 contracts for the care and feeding of livestock in this state. For
30 purposes of this subdivision, loaning money for or guaranteeing, acting
31 as a surety for, or otherwise financing a livestock operation does not

1 include executing a contract for the purchase of livestock by a packer,
2 including, but not limited to, forward contracts, marketing agreements,
3 long-term arrangements, formula arrangements, other noncash sales
4 arrangements, contracts that contain a ledger balance unsecured by
5 collateral of the debtor or other price-risk-sharing arrangements, or
6 providing an open account or loan unsecured by collateral of the debtor
7 or a ledger balance or loan secured by collateral of the debtor so long
8 as the amount due from the debtor does not exceed one million dollars.

9 ~~After May 27, 1999, it is unlawful for a packer to directly or~~
10 ~~indirectly be engaged in the ownership, keeping, or feeding of livestock~~
11 ~~for the production of livestock or livestock products, other than~~
12 ~~temporary ownership, keeping, and feeding, not to exceed five days,~~
13 ~~necessary and incidental to the process of slaughter.~~

14 Sec. 4. (1) For purposes of this section:

15 (a) Swine production contract means the agreement between a packer
16 and a swine production contract grower which establishes a contract swine
17 operation; and

18 (b) Swine production contract grower means the person who enters
19 into a swine production contract with a packer to establish a contract
20 swine operation.

21 (2) A swine production contract grower may cancel a swine production
22 contract by mailing a cancellation notice to the packer not later than
23 the later of:

24 (a) Three business days after the date on which the swine production
25 contract is executed; or

26 (b) Any cancellation date specified in the swine production
27 contract.

28 (3) A swine production contract shall clearly disclose:

29 (a) The right of the swine production contract grower to cancel the
30 swine production contract;

31 (b) The method by which the swine production contract grower may

1 cancel the swine production contract; and

2 (c) The deadline for canceling the swine production contract.

3 (4) A swine production contract shall contain on the first page a
4 statement identified as the Additional Capital Investments Disclosure
5 Statement, which shall conspicuously state that additional large capital
6 investments may be required of the swine production contract grower
7 during the term of the swine production contract. This subsection shall
8 apply to any swine production contract entered into, amended, altered,
9 modified, renewed, or extended after the effective date of this act.

10 (5) The forum for resolving any dispute among the parties to a swine
11 production contract shall be a court of competent jurisdiction within the
12 state in which the principal part of the performance takes place under
13 the swine production contract.

14 (6) Any swine production contract that contains a provision
15 requiring the use of arbitration to resolve any controversy that may
16 arise under the contract shall contain a provision that allows a swine
17 production contract grower, prior to entering the contract, to decline to
18 be bound by the arbitration provision.

19 (7) Any swine production contract grower that declines a requirement
20 of arbitration pursuant to subsection (6) of this section has the right
21 to seek to resolve any controversy that may arise under the swine
22 production contract using arbitration if, after the controversy arises,
23 both parties consent in writing to use arbitration to settle the
24 controversy.

25 (8) Subsections (6) and (7) of this section shall apply to any swine
26 production contract entered into, amended, altered, modified, renewed, or
27 extended after the effective date of this act.

28 (9) A swine production contract shall not contain any obligations of
29 confidentiality, or any other provisions, that limit a swine production
30 contract grower from sharing and reviewing the swine production contract
31 with anyone, including, but not limited to, his or her business partners,

1 employees, or agents, his or her financial and legal advisors, and his or
2 her spouse and family members.

3 (10) Whenever the Attorney General has reason to believe that a
4 packer is violating this section, he or she shall commence an action in
5 district court to enjoin the violation. The court, upon determination
6 that such packer is in violation of this section, shall assess the packer
7 a fine of not less than one thousand dollars for each day of violation.

8 (11) The Department of Agriculture may adopt and promulgate such
9 rules and regulations regarding swine production contracts as are needed
10 to further protect swine production contract growers from unfair business
11 practices and coercion.

12 Sec. 5. Section 54-2627.01, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 54-2627.01 (1) Sections 54-2607 to 54-2627 are preempted by the
15 federal Livestock Mandatory Reporting Act of 1999, 7 U.S.C. 1635 to
16 1636h, when such federal act is in effect.

17 (2) The Legislature finds that the mandatory reporting of price and
18 other terms in negotiated or contract procurement of livestock that has
19 been in place under the federal Livestock Mandatory Reporting Act of 1999
20 is an important reform of livestock markets that contributes to greater
21 market transparency, enhances the ability of livestock sellers to more
22 competently and confidently market livestock, and lessens the existence
23 of conditions under which market price manipulation and unfair preference
24 or advantage in packer procurement practices can occur. It is a purpose
25 of the Competitive Livestock Markets Act to provide for the continuation
26 of mandatory price reporting for the benefit of Nebraska producers and
27 protection of the integrity of livestock markets in Nebraska in the event
28 of termination of the federal Livestock Mandatory Reporting Act of 1999
29 and its preemption of similar state price reporting laws as well as to
30 provide for an orderly implementation of the state price reporting system
31 authorized by the Competitive Livestock Markets Act, should Congress fail

1 to reauthorize the federal Livestock Mandatory Reporting Act of 1999.

2 (3 2)(a) If Congress does not reauthorize the federal Livestock
3 Mandatory Reporting Act of 1999 before December 1, 2006, the director
4 shall, on December 1, 2006, or as soon before or after as practicable,
5 prepare a budget and an appropriation request from the General Fund, from
6 the Competitive Livestock Markets Cash Fund, or from other cash funds
7 under the control of the director, for submission to the Legislature in
8 an amount sufficient to enable the department to carry out its duties
9 under sections 54-2607 to 54-2627, and such sections shall become
10 applicable on October 1, 2007.

11 (b) If, on or after December 1, 2006, Congress does not reauthorize
12 the federal Livestock Mandatory Reporting Act of 1999, the director shall
13 prepare such budget and appropriation request on or before a date that is
14 twelve calendar months after the date such federal act expires or is
15 terminated, and sections 54-2607 to 54-2627 shall become applicable on
16 the first day of the calendar quarter that is eighteen months after the
17 date such sections are not preempted by the federal act. No General Funds
18 shall be appropriated for implementation of sections 54-2607 to 54-2627
19 after the date of commencement provided for in this section of reporting
20 of price and other data regarding livestock transactions pursuant to
21 sections 54-2613 and 54-2623. It is the intent of the Legislature that
22 any General Funds appropriated for purposes of this section shall be
23 reimbursed to the General Fund.

24 Sec. 6. Original sections 54-2601, 54-2602, 54-2604, and
25 54-2627.01, Reissue Revised Statutes of Nebraska, are repealed.

26 Sec. 7. The following section is outright repealed: Section
27 54-2603, Reissue Revised Statutes of Nebraska.