

LEGISLATIVE BILL 176

Approved by the Governor February 11, 2016

Introduced by Schilz, 47.

A BILL FOR AN ACT relating to the Competitive Livestock Markets Act; to amend sections 54-2601, 54-2602, 54-2604, and 54-2627.01, Reissue Revised Statutes of Nebraska; to define terms; to change provisions relating to prohibited acts; to change provisions relating to contract swine operations; to change and eliminate provisions relating to legislative findings; to harmonize provisions; to repeal the original sections; and to outright repeal section 54-2603, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

(3) Department means the Department of Agriculture;

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

(5) Livestock means live cattle or swine;

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

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

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

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

54-2604 (1) Except as provided in subsection (2) of this section, a packer shall not:

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

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

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

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

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

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

(c) Loaning money for or guaranteeing, acting as a surety for, or otherwise financing a livestock operation in this state or a person who contracts for the care and feeding of livestock in this state. For purposes of this subdivision, loaning money for or guaranteeing, acting as a surety for, or otherwise financing a livestock operation does not include executing a contract for the purchase of livestock by a packer, including, but not limited to, forward contracts, marketing agreements, long-term arrangements, formula arrangements, other noncash sales arrangements, contracts that contain a ledger

balance unsecured by collateral of the debtor or other price-risk-sharing arrangements, or providing an open account or loan unsecured by collateral of the debtor or a ledger balance or loan secured by collateral of the debtor so long as the amount due from the debtor does not exceed one million dollars.

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

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

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

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

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

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

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

(3) A swine production contract shall clearly disclose:

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

(b) The method by which the swine production contract grower may cancel the swine production contract; and

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

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

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

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

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

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

(9) A swine production contract shall not contain any obligations of confidentiality, or any other provisions, that limit a swine production contract grower from sharing and reviewing the swine production contract with anyone, including, but not limited to, his or her business partners, employees, or agents, his or her financial and legal advisors, and his or her spouse and family members.

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

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

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

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

(2) The Legislature finds that the mandatory reporting of price and other terms in negotiated or contract procurement of livestock that has been in place under the federal Livestock Mandatory Reporting Act of 1999 is an important reform of livestock markets that contributes to greater market transparency, enhances the ability of livestock sellers to more competently and confidently market livestock, and lessens the existence of conditions under which market price manipulation and unfair preference or advantage in packer procurement practices can occur. It is a purpose of the Competitive Livestock Markets Act to provide for the continuation of mandatory price reporting for the benefit of Nebraska producers and protection of the integrity of livestock markets in Nebraska in the event of termination of the federal Livestock Mandatory Reporting Act of 1999 and its preemption of similar state price reporting laws

as well as to provide for an orderly implementation of the state price reporting system authorized by the Competitive Livestock Markets Act, should Congress fail to reauthorize the federal Livestock Mandatory Reporting Act of 1999.

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

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

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

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