

AMENDMENTS TO LB 1174

Introduced by Agriculture.

1           1. Strike the original sections and insert the following  
2 sections:

3           Section 1. (1) The Legislature finds that it is in the  
4 public interest to encourage ownership and control of agricultural  
5 production and agricultural assets by individuals and families  
6 engaged in day-to-day labor and day-to-day management of farming  
7 or ranching operations to ensure the most socially desirable  
8 mode of agricultural production and to enhance and promote the  
9 stability and well-being of rural society. Communities surrounded  
10 by owner-operated farming or ranching operations have less poverty  
11 and score better on most measures of socioeconomic vitality than  
12 communities surrounded by farming or ranching operations owned  
13 by individuals and families that are not engaged in day-to-day  
14 labor and day-to-day management of such operations. Restricting  
15 the use of limited liability entities in the agriculture sector  
16 has been shown to result in rural communities with less poverty,  
17 less unemployment, and higher percentages of farming and ranching  
18 operations realizing cash gains. Therefor, it is in the public  
19 interest to limit the use of limited liability entities and  
20 their competitive benefits to farming and ranching operations  
21 owned by individuals or families engaged in day-to-day labor and  
22 day-to-day management of such operations. The Legislature finds  
23 that government has conferred liability limits on certain forms

1 of business organizations and thus government has a responsibility  
2 to ensure their benefits are used in the public interest by  
3 establishing involvement in day-to-day labor and day-to-day  
4 management as an essential eligibility requirement of individuals  
5 and families allowed to use limited liability entities in farming  
6 and ranching operations.

7 (2) Additionally, the Legislature finds that it is in the  
8 public interest to safeguard the health and productivity of natural  
9 resources. Owners of farming and ranching operations who are also  
10 engaged in the operation of such operations have historically been  
11 more responsible stewards of natural resources than uninvolved  
12 investors. Investors not intimately involved in the operation of  
13 farming or ranching operations are less likely to be responsible  
14 stewards of natural resources if they are allowed to shield  
15 themselves from liability for their negative environmental impacts  
16 through use of limited liability entities. Therefor, it is in the  
17 public interest to restrict the use of limited liability entities  
18 by investors not involved in day-to-day labor and day-to-day  
19 management of farming or ranching operations.

20 (3) The Legislature finds that it is in the public  
21 interest to allow a total of five or fewer owner-operated farming  
22 or ranching operations to combine to form limited liability  
23 entities that will conduct farming or ranching operations to  
24 enable owner-operated farming and ranching operations to achieve  
25 economies of size by pooling resources.

26 (4) The Legislature finds that the federal government  
27 has also found that it is in the public interest to foster and

1 encourage farming or ranching operations owned by the individuals  
2 or families that operate them and to limit certain benefits created  
3 by government to owner-operated farming or ranching operations.  
4 In 7 U.S.C. 2266(a), as such section existed on January 1, 2008,  
5 Congress states that "the maintenance of the family farm system of  
6 agriculture is essential to the social well-being of the Nation  
7 and the competitive production of adequate supplies of food and  
8 fiber. Congress further believes that any significant expansion  
9 of nonfamily owned large-scale corporate farming enterprises will  
10 be detrimental to the national welfare". Consistent with that  
11 policy, Congress requires recipients of federal loans for farming  
12 or ranching operations to be "primarily and directly" engaged in  
13 farming or ranching and in the case of entities, requires the  
14 individuals holding majority interest to become "owner-operators of  
15 not larger than family farms". In addition, Congress has limited  
16 farm commodity program payments to farm operators who are actively  
17 engaged in labor or management of their farming operations.

18           Sec. 2. For purposes of sections 1 to 5 of this act:

19           (1) Entity means any legal entity organized under the  
20 laws of any state of the United States or any country that limits  
21 the liability of the entity's owners for the liabilities of the  
22 entity. Entity includes a corporation; limited liability company;  
23 limited liability partnership; limited partnership; cooperative  
24 association, corporation, or company, with or without stock;  
25 or limited cooperative association. Entity also includes any  
26 partnership of which an entity is a partner;

27           (2) Family farm or ranch entity means an entity in which

1 majority ownership, and in the case of a corporation the majority  
2 of voting stock, is held by members of a family, or a trust or  
3 family trust as defined in section 76-1511 or 76-1512 created for  
4 the benefit of a member of that family, related to one another  
5 within the fourth degree of kindred according to the rules of  
6 civil law, or their spouses, at least one of whom is an individual  
7 actively engaged in the day-to-day labor and day-to-day management  
8 of the family farm or ranch entity's farming or ranching operation,  
9 and none of whose stockholders or members are nonresident aliens or  
10 entities or partnerships, unless all of the stockholders, members,  
11 or partners of such entities or partnerships are individuals, or  
12 spouses of individuals, related within the fourth degree of kindred  
13 to the majority of stockholders or members in the family farm or  
14 ranch entity;

15 (3) Farming or ranching means (a) the cultivation of  
16 land for the production of agricultural crops, fruit, or other  
17 horticultural products or (b) the ownership, keeping, or feeding of  
18 animals for the production of livestock or livestock products;

19 (4) Farming or ranching operation means all farming or  
20 ranching occurring on agricultural lands or within agricultural  
21 structures, regardless of whether such activities, lands, or  
22 structures are located within or outside of Nebraska; and

23 (5) Qualified owner-operator controlled farm or ranch  
24 entity means an entity in which all ownership is held by  
25 five or fewer individuals actively engaged in day-to-day labor  
26 and day-to-day management of farming or ranching operations, at  
27 least one of whom is actively engaged in the day-to-day labor

1 and day-to-day management of the entity's farming or ranching  
2 operation.

3           Sec. 3. Any interpretation or application of sections 1  
4 to 5 of this act involving a qualified individual with a disability  
5 shall include reasonable modifications required under the federal  
6 Americans with Disabilities Act of 1990.

7           Sec. 4. (1) No entity shall acquire or otherwise obtain  
8 an interest, whether legal, beneficial, or otherwise, in title to  
9 real estate used for farming or ranching in this state or engage in  
10 farming or ranching.

11           (2) Subsection (1) of this section shall not apply to:

12           (a) A family farm or ranch entity;

13           (b) A qualified owner-operator controlled farm or ranch  
14 entity;

15           (c) Nonprofit corporations;

16           (d) A farming or ranching operation conducted by an  
17 Indian tribal corporation within the bounds of its own reservation;

18           (e) Agricultural land which, as of the effective date of  
19 this act, is being farmed or ranched by an entity, is owned or  
20 leased by an entity, or in which there is a legal or beneficial  
21 interest in the title to such land directly or indirectly held  
22 by an entity, so long as such land or interest in such land is  
23 held in continuous ownership or under continuous lease by the same  
24 entity and including such additional ownership or leasehold as is  
25 reasonably necessary to meet the requirements of pollution control  
26 regulations. For the purposes of this subsection, land purchased on  
27 a contract signed as of the effective date of this act shall be

1 considered as owned on the effective date of this act;

2 (f) A farming or ranching operation conducted for  
3 research or experimental purposes if any commercial sales from  
4 such operation are only incidental to the research or experimental  
5 objectives of the operation;

6 (g) A farming or ranching operation conducted for the  
7 purpose of raising poultry for the production of poultry products,  
8 including eggs, or as a poultry hatchery;

9 (h) Land leased by alfalfa processors for the production  
10 of alfalfa;

11 (i) A farming or ranching operation conducted for the  
12 purpose of growing seed, nursery plants, or sod;

13 (j) Mineral rights on agricultural land;

14 (k) Agricultural land acquired or leased by an entity for  
15 immediate or potential use for nonfarming or nonranching purposes.

16 An entity may hold such agricultural land for a period not to  
17 exceed five years in such acreage as may be necessary to its  
18 nonfarm or nonranch business operation, but pending the development  
19 of such agricultural land for nonfarm or nonranch purposes, such  
20 land shall not be used for farming or ranching except under lease  
21 to farming operations that do not violate this section;

22 (l) Agricultural lands or livestock acquired by an entity  
23 by process of law in the collection of debts or by any procedures  
24 for the enforcement of a lien, encumbrance, or claim thereon,  
25 whether created by mortgage or otherwise. Any lands so acquired  
26 shall be disposed of within a period of five years and shall  
27 not be used for farming or ranching prior to being disposed of

1 except under a lease to farming operations that do not violate this  
2 section;

3 (m) A bona fide encumbrance taken for purposes of  
4 security;

5 (n) Custom spraying, fertilizing, or harvesting;

6 (o) Livestock futures contracts, livestock purchased for  
7 slaughter within two weeks, or livestock purchased and resold  
8 within two weeks; and

9 (p) The interest of an entity acting as trustee with  
10 regard to agricultural land held in a trust for the benefit of an  
11 individual or entity that qualifies to own such land under this  
12 section.

13 (3) If a family farm or ranch entity ceases to be a  
14 family farm or ranch entity, it shall have fifty years to either  
15 requalify as a family farm or ranch entity or dissolve and return  
16 to personal ownership if (a) majority ownership of such entity  
17 continues to be held by individuals related to one another within  
18 the fourth degree of kindred or their spouses or a trust created  
19 for the benefit of such individuals and (b) the landholdings of  
20 the family farm or ranch entity are not increased. With regard  
21 to agricultural land leased by the family farm or ranch entity at  
22 the time it ceases to be a family farm or ranch entity, a renewal  
23 of the entity's lease on such agricultural land or the entity's  
24 purchase of such agricultural land shall not constitute an increase  
25 in landholdings.

26 Sec. 5. (1) The Secretary of State shall monitor  
27 purchases of agricultural land by entities and the farming and

1 ranching operations of entities and notify the Attorney General  
2 of any possible violations. If the Attorney General has reason  
3 to believe that an entity is violating section 4 of this act,  
4 he or she shall commence an action in district court to enjoin  
5 any pending illegal land purchase or livestock operation or force  
6 divestiture of land held in violation of section 4 of this act.  
7 The court shall order any land held in violation of section 4 of  
8 this act to be divested within two years. If land so ordered by  
9 the court has not been divested within two years, the court shall  
10 declare the land escheated to the State of Nebraska.

11 (2) If the Secretary of State or Attorney General fails  
12 to perform his or her duties under this section, Nebraska citizens  
13 and entities shall have standing in district court to seek  
14 enforcement.

15 Sec. 6. Section 21-2602, Revised Statutes Cumulative  
16 Supplement, 2006, is amended to read:

17 21-2602 ~~(1)~~ A limited liability company may be organized  
18 pursuant to the Limited Liability Company Act for any lawful  
19 purpose other than for the purpose of being an insurer as described  
20 in section 44-102.

21 ~~(2)~~ A limited liability company organized pursuant to the  
22 act shall be deemed to be a syndicate for purposes of Article XII,  
23 section 8, of the Constitution of Nebraska, except that a limited  
24 liability company in which the members are members of a family, or  
25 a trust created for the benefit of a member of that family, related  
26 to one another within the fourth degree of kindred according to the  
27 rules of civil law, or their spouses, at least one of whom is a

1 person residing on or actively engaged in the day-to-day labor and  
2 management of the farm or ranch, and none of whom are nonresident  
3 aliens, shall not be deemed to be a syndicate for purposes of  
4 Article XII, section 8, of the Constitution of Nebraska.

5 Sec. 7. Section 67-409, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 67-409 (1) A partnership is an entity distinct from its  
8 partners.

9 (2) A limited liability partnership is a syndicate  
10 for purposes of Article XII, section 8, of the Constitution of  
11 Nebraska, except that a registered limited liability partnership  
12 in which the partners are members of a family, or a trust created  
13 for the benefit of a member of that family, related to one another  
14 within the fourth degree of kindred according to the rules of civil  
15 law, or their spouses, at least one of whom is a person residing  
16 on or actively engaged in the day-to-day labor and management of  
17 the farm or ranch and none of whom are nonresident aliens, is  
18 not a syndicate for purposes of Article XII, section 8, of the  
19 Constitution of Nebraska. A limited liability partnership continues  
20 to be the same entity that existed before the filing of a statement  
21 of qualification under section 67-454.

22 Sec. 8. Section 76-1520, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 76-1520 (1) A person serving as the president, a general  
25 partner, any other officer, or an authorized representative of a  
26 corporation, limited partnership, limited liability partnership, or  
27 limited liability company an entity as defined in section 2 of this

1 act or a corporate trustee of a trust shall report to the Secretary  
2 of State:

3 (a) Any interest in real estate held by ~~the corporation,~~  
4 ~~limited partnership,~~ ~~limited liability partnership,~~ ~~limited~~  
5 ~~liability company,~~ such entity or trust used for farming or  
6 ranching in this state as defined under ~~Article XII,~~ ~~section 8,~~ ~~of~~  
7 ~~the Constitution of Nebraska,~~ section 2 of this act;

8 (b) Any activity or enterprise performed, conducted,  
9 or engaged in by the ~~corporation,~~ ~~limited partnership,~~ ~~limited~~  
10 ~~liability partnership,~~ ~~limited liability company,~~ entity or trust  
11 defined as farming or ranching in this state under ~~Article XII,~~  
12 ~~section 8,~~ ~~of the Constitution of Nebraska,~~ and section 2 of this  
13 act;

14 (c) Whether the ~~corporation,~~ ~~limited partnership,~~ ~~limited~~  
15 ~~liability partnership,~~ ~~limited liability company,~~ entity or trust  
16 contracts with others engaged in farming or ranching for the care  
17 or production of agricultural commodities, including livestock;  
18 and-

19 (d) The names and addresses of the shareholders or  
20 members of an entity reporting under subdivision (a), (b), or (c)  
21 of this subsection.

22 (2) The reports required by this section shall be open to  
23 the public.

24 (3) For purposes of sections 76-1520 to 76-1524, interest  
25 in real estate used for farming or ranching includes legal,  
26 beneficial, and other interests, including interests held by a  
27 ~~corporation,~~ ~~limited partnership,~~ ~~limited liability partnership,~~

1 ~~limited liability company~~, an entity as defined in section 2 of  
2 this act or corporate trust in a general partnership holding real  
3 estate used for farming or ranching, but does not include an  
4 interest in real estate used for farming or ranching acquired by  
5 a ~~corporation~~, ~~limited partnership~~, ~~limited liability partnership~~,  
6 ~~limited liability company~~, such an entity or trust by process  
7 of law in the collection of debts or by any procedures for the  
8 creation or enforcement of a lien, encumbrance, or claim on the  
9 real estate, whether created by mortgage or otherwise.

10           Sec. 9. Section 76-1521, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           76-1521 (1) The report required by section 76-1520 shall  
13 be on a form provided by the Secretary of State. The Secretary  
14 of State may incorporate the form with other forms required to be  
15 filed by entities identified in subsection (1) of section 76-1520.  
16 If there has been no change in the information contained in the  
17 previous report filed by the reporting entity, the reporting entity  
18 may so indicate in a space provided on the reporting form for that  
19 purpose.

20           (2) The Secretary of State shall include a list of  
21 exemptions to the prohibitions contained in ~~Article XII, section 8,~~  
22 ~~of the Constitution of Nebraska~~ section 4 of this act and a means  
23 by which persons filing the form may indicate, if applicable, which  
24 exemptions apply to the reporting entity. The reporting entity may  
25 include or attach a statement indicating the basis upon which the  
26 reporting entity claims exemption from the prohibitions contained  
27 in ~~Article XII, section 8, of the Constitution of Nebraska.~~ section

1 4 of this act.

2 (3) The Secretary of State shall annually prepare a  
3 report indicating the total number of and types of entities and  
4 trusts reporting under sections 76-1520 to 76-1524, ~~the number of~~  
5 ~~entities reporting as a corporation, as a limited partnership, as~~  
6 ~~a limited liability partnership, as a limited liability company,~~  
7 ~~and as a trust~~ and the basis upon which the reporting entities and  
8 trusts claim exemption from the prohibitions contained in ~~Article~~  
9 ~~XII, section 8, of the Constitution of Nebraska.~~ section 4 of this  
10 act. The Secretary of State shall deliver the report to the Clerk  
11 of the Legislature on or before January 1 each year.

12 Sec. 10. Section 76-1523, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 76-1523 (1) The Secretary of State shall use reports  
15 generated under section 76-1517 to assist in the identification  
16 of trusts engaged in farming or ranching ~~activity~~ as defined in  
17 ~~Article XII, section 8, of the Constitution of Nebraska.~~ section 2  
18 of this act.

19 (2) Any corporate trustee failing to report the  
20 information required by section 76-1520 or filing false information  
21 shall be punished by a fine of not more than five hundred dollars.

22 (3) Any fines received pursuant to this section shall be  
23 remitted to the State Treasurer for ~~credit to the temporary school~~  
24 ~~fund.~~ distribution in accordance with Article VII, section 5, of  
25 the Constitution of Nebraska.

26 Sec. 11. Section 76-1524, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1           76-1524 The Secretary of State and the Attorney General,  
2 for the enforcement of both sections 76-1520 to 76-1524 and ~~Article~~  
3 ~~XII, section 8, of the Constitution of Nebraska,~~ section 4 of this  
4 act, shall have the authority to subpoena witnesses, compel their  
5 attendance, examine them under oath, and require the production  
6 of documents, records, or tangible things deemed relevant to the  
7 proper performance of their duties. Service of any subpoena shall  
8 be made in the manner prescribed by the rules of civil procedure.

9           Sec. 12. Section 77-5203, Revised Statutes Cumulative  
10 Supplement, 2006, is amended to read:

11           77-5203 For purposes of the Beginning Farmer Tax Credit  
12 Act:

13           (1) Agricultural assets means agricultural land,  
14 livestock, farming, or livestock production facilities or buildings  
15 and machinery used for farming or livestock production located in  
16 Nebraska;

17           (2) Board means the Beginning Farmer Board created by  
18 section 77-5204;

19           (3) Farm means any tract of land over ten acres in area  
20 used for or devoted to the commercial production of farm products;

21           (4) Farm product means those plants and animals useful  
22 to man and includes, but is not limited to, forages and sod  
23 crops, grains and feed crops, dairy and dairy products, poultry  
24 and poultry products, livestock, including breeding and grazing  
25 livestock, fruits, and vegetables;

26           (5) Farming or livestock production means the active use,  
27 management, and operation of real and personal property for the

1 production of a farm product;

2 (6) Financial management program means a program for  
3 beginning farmers or livestock producers which includes, but  
4 is not limited to, assistance in the creation and proper use  
5 of record-keeping systems, periodic private consultations with  
6 licensed financial management personnel, year-end monthly cash flow  
7 analysis, and detailed enterprise analysis;

8 (7) Owner of agricultural assets means:

9 (a) An individual or a trustee who (i) is a resident  
10 individual as defined in section 77-2714.01, (ii) in the case of an  
11 individual, has derived at least fifty percent of his or her gross  
12 annual income for income tax purposes from farming or livestock  
13 production, or in the case of a trustee, the trust has derived  
14 at least fifty percent of its income for income tax purposes from  
15 farming or livestock production, (iii) has provided the majority  
16 of the day-to-day physical labor and management of a farm over a  
17 period of time deemed sufficient to qualify for the granting of  
18 tax credits under the act by the board, and (iv) has other such  
19 qualifications as determined by the board;

20 (b) A spouse, child, or sibling who acquires an ownership  
21 interest in agricultural assets as a joint tenant, heir, or devisee  
22 of an individual or trustee who would qualify as an owner of  
23 agricultural assets under subdivision (7)(a) of this section;

24 (c) A partnership (i) which has at least one general  
25 partner that is a resident individual as defined in section  
26 77-2714.01, (ii) which derives at least fifty percent of its income  
27 from farming or livestock production, and (iii) in which one or

1 more partners have provided the majority of the day-to-day physical  
2 labor and management of a farm over a period of time deemed  
3 sufficient to qualify for the granting of tax credits by the board;  
4 or

5 (d) A family farm or ranch entity or a qualified  
6 owner-operator controlled farm or ranch entity as defined in  
7 section 2 of this act; corporation or syndicate qualified to own  
8 agricultural land under Article XII, section 8, of the Constitution  
9 of Nebraska;

10 (8) Qualified beginning farmer or livestock producer  
11 means an individual who is a resident individual as defined in  
12 section 77-2714.01, who has entered farming or livestock production  
13 or is seeking entry into farming or livestock production, who  
14 intends to farm or raise crops or livestock on land located  
15 within the state borders of Nebraska, and who meets the  
16 eligibility guidelines established in section 77-5209 and such  
17 other qualifications as determined by the board; and

18 (9) Share-rent agreement means a rental agreement  
19 in which the principal consideration given to the owner of  
20 agricultural assets is a predetermined portion of the production of  
21 farm products from the rented agricultural assets.

22 Sec. 13. If any section in this act or any part of any  
23 section is declared invalid or unconstitutional, the declaration  
24 shall not affect the validity or constitutionality of the remaining  
25 portions.

26 Sec. 14. Original sections 67-409, 76-1520, 76-1521,  
27 76-1523, and 76-1524, Reissue Revised Statutes of Nebraska,

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- 1 and sections 21-2602 and 77-5203, Revised Statutes Cumulative
- 2 Supplement, 2006, are repealed.