

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1174

Introduced by Dierks, 40; Chambers, 11; Dubas, 34; Karpisek, 32;
Preister, 5; Wallman, 30.

Read first time January 23, 2008

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 67-409,
2 76-1520, 76-1521, 76-1523, and 76-1524, Reissue Revised
3 Statutes of Nebraska, and sections 21-2602 and 77-5203,
4 Revised Statutes Cumulative Supplement, 2006; to state
5 intent; to define terms; to restrict entity ownership
6 of agricultural land and farm or ranch operations; to
7 harmonize provisions; to provide for severability; and to
8 repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) The Legislature finds that it is in the
2 public interest to encourage ownership and control of agricultural
3 production and agricultural assets by people engaged in day-to-day
4 labor and day-to-day management on their farms and ranches.
5 Communities surrounded by owner-operated farms and ranches have
6 less poverty and score better on most measures of socioeconomic
7 vitality than communities surrounded by nonfamily owned and
8 operated farms and ranches. Restricting the use of limited
9 liability entities in the agriculture sector has been shown to
10 result in rural communities with less poverty, less unemployment,
11 and higher percentages of farms realizing cash gains.

12 (2) The Legislature finds that it is in the public
13 interest to encourage and protect owner-operated family farms and
14 ranches to ensure the most socially desirable mode of agricultural
15 production and to enhance and promote the stability and well-being
16 of rural society. Therefore, it is in the public interest to
17 limit the use of limited liability entities and their competitive
18 benefits to owner-operated family farms. The Legislature finds
19 that government has conferred liability limits on certain forms of
20 business organizations and thus government has a responsibility to
21 ensure their benefits are used in the public interest.

22 (3) Additionally, the Legislature finds that it is in the
23 public interest to safeguard the health and productivity of natural
24 resources. Owner operators of family farms have historically been
25 more responsible stewards of natural resources than uninvolved

1 investors. Investors not intimately involved in the operation of
2 their farm or ranch are less likely to be responsible stewards of
3 natural resources if they are allowed to shield themselves from
4 liability for their negative environmental impacts through use of
5 limited liability entities. Therefore it is in the public interest
6 to restrict the use of limited liability entities by investors not
7 involved in day-to-day labor and day-to-day management on their
8 farms and ranches.

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

1 management of their farming operations.

2 Sec. 2. For purposes of sections 1 to 4 of this act:

3 (1) Entity means a corporation, limited liability
4 company, limited liability partnership, cooperative association,
5 limited cooperative association, and any other legal business
6 entity that limits the liability of business owners for the
7 liabilities of the business, organized under the laws of any state
8 of the United States or any country, or any partnership of which a
9 business entity that limits the liability of business owners for
10 the liabilities of the business is a partner;

11 (2) Farming or ranching means (a) the cultivation of
12 land for the production of agricultural crops, fruit, or other
13 horticultural products or (b) the ownership, keeping or feeding of
14 animals for the production of livestock or livestock products;

15 (3) Farm or ranch means all agricultural production
16 activities, whether within or outside of Nebraska, and all
17 agricultural land and agricultural structures, whether owned or
18 leased by an entity, the use of which contributes to the
19 agricultural production activities of the farm or ranch;

20 (4) Family farm or ranch entity means an entity engaged
21 in farming or ranching or the ownership of agricultural land, in
22 which majority ownership, and in the case of a corporation the
23 majority of voting stock, is held by members of a family, or a
24 trust created for the benefit of a member of that family, related
25 to one another within the fourth degree of kindred according to

1 the rules of civil law, or their spouses, at least one of whom is
2 a person actively engaged in the day-to-day labor and day-to-day
3 management on the farm or ranch, and none of whose stockholders are
4 nonresident aliens or entities or partnerships, unless all of the
5 owners or partners of such entities or partnerships are persons, or
6 spouses of persons, related within the fourth degree of kindred to
7 the majority of stockholders in the family farm or ranch entity;
8 and

9 (5) Actively engaged in day-to-day labor and day-to-day
10 management includes reasonable accommodations for, but only for,
11 individuals who would otherwise provide day-to-day labor and
12 day-to-day management but are prevented from providing day-to-day
13 labor or day-to-day management as a result of physical or mental
14 impairment that substantially limits major life activities.

15 Sec. 3. (1) No entity shall acquire or otherwise obtain
16 an interest, whether legal, beneficial, or otherwise, in title to
17 real estate used for farming or ranching in this state or engage in
18 farming or ranching.

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

20 (a) A family farm or ranch entity;

21 (b) Nonprofit corporations;

22 (c) A farm or ranch owned or leased by an Indian tribal
23 corporation within the bounds of its own reservation;

24 (d) Agricultural land which, as of the effective date of
25 this act, is being farmed or ranched, is owned or leased, or in

1 which there is a legal or beneficial interest in the title to such
2 land directly or indirectly by an entity, so long as such land
3 or interest in such land is held in continuous ownership or under
4 continuous lease by the same entity and including such additional
5 ownership or leasehold as is reasonably necessary to meet the
6 requirements of pollution control regulations. For the purposes of
7 this subdivision, land purchased on a contract signed as of the
8 effective date of this act shall be considered as owned on the
9 effective date of this act;

10 (e) A farm or ranch operated for research or experimental
11 purposes if any commercial sales from such farm or ranch are
12 only incidental to the research or experimental objectives of the
13 entity;

14 (f) A farm or ranch operated for the purpose of raising
15 poultry;

16 (g) Land leased by alfalfa processors for the production
17 of alfalfa;

18 (h) A farm or ranch operated for the purpose of growing
19 seed, nursery plants, or sod;

20 (i) Mineral rights on agricultural land;

21 (j) Agricultural land acquired or leased by an entity for
22 immediate or potential use for nonfarming or nonranching purposes.
23 An entity may hold such agricultural land for a period not to
24 exceed five years in such acreage as may be necessary to its
25 nonfarm or nonranch business operation, but pending the development

1 of such agricultural land for nonfarm or nonranch purposes, such
2 land shall not be used for farming or ranching except under lease
3 to farming operations that do not violate this section;

4 (k) Agricultural lands or livestock acquired by an entity
5 by process of law in the collection of debts or by any procedures
6 for the enforcement of a lien, encumbrance, or claim thereon,
7 whether created by mortgage or otherwise. Any lands so acquired
8 shall be disposed of within a period of five years and shall
9 not be used for farming or ranching prior to being disposed of
10 except under a lease to farming operations that do not violate this
11 section;

12 (l) A bona fide encumbrance taken for purposes of
13 security;

14 (m) Custom spraying, fertilizing, or harvesting;

15 (n) Livestock futures contracts, livestock purchased for
16 slaughter within two weeks, or livestock purchased and resold
17 within two weeks;

18 (o) Contracts for the care or feeding of livestock signed
19 less than one year prior to the effective date of this act, but
20 only through a period ending one year after such date; and

21 (p) The interest of an entity acting as trustee with
22 regard to agricultural land held in a trust for the benefit of a
23 natural person or entity that qualifies to own such land under this
24 section.

25 (3) If a family farm or ranch entity ceases to be a

1 family farm or ranch entity, it shall have fifty years, if majority
2 ownership of such entity continues to be held by persons related to
3 one another within the fourth degree of kindred or their spouses
4 or a trust created for the benefit of such persons, and the
5 landholdings of the family farm or ranch entity are not increased,
6 to either requalify as a family farm or ranch entity or dissolve
7 and return to personal ownership.

8 Sec. 4. (1) The Secretary of State shall monitor
9 purchases of agricultural land by entities and the farming and
10 ranching operations of entities and notify the Attorney General
11 of any possible violations. If the Attorney General has reason
12 to believe that an entity is violating section 3 of this act,
13 he or she shall commence an action in district court to enjoin
14 any pending illegal land purchase or livestock operation or force
15 divestiture of land held in violation of section 3 of this act.
16 The court shall order any land held in violation of section 3 of
17 this act to be divested within two years. If land so ordered by
18 the court has not been divested within two years, the court shall
19 declare the land escheated to the State of Nebraska.

20 (2) If the Secretary of State or Attorney General fails
21 to perform his or her duties as directed by this amendment,
22 Nebraska citizens and entities shall have standing in district
23 court to seek enforcement.

24 (3) The Secretary of State shall adopt and promulgate
25 rules and regulations to provide reasonable accommodations only

1 to individuals who would otherwise provide day-to-day labor and
2 day-to-day management for a farming or ranching operation but are
3 prevented from providing day-to-day labor or day-to-day management
4 as a result of a physical or mental impairment that substantially
5 limits major life activities. The Secretary of State shall
6 establish a registry whereby a farm or ranch can be certified
7 as a family farm or ranch entity through reasonable accommodations
8 provided to the entity's owners under such rules and regulations.

9 Sec. 5. Section 21-2602, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 21-2602 ~~(1)~~ A limited liability company may be organized
12 pursuant to the Limited Liability Company Act for any lawful
13 purpose other than for the purpose of being an insurer as described
14 in section 44-102.

15 ~~(2)~~ A limited liability company organized pursuant to the
16 act shall be deemed to be a syndicate for purposes of Article XII,
17 section 8, of the Constitution of Nebraska, except that a limited
18 liability company in which the members are members of a family, or
19 a trust created for the benefit of a member of that family, related
20 to one another within the fourth degree of kindred according to the
21 rules of civil law, or their spouses, at least one of whom is a
22 person residing on or actively engaged in the day-to-day labor and
23 management of the farm or ranch, and none of whom are nonresident
24 aliens, shall not be deemed to be a syndicate for purposes of
25 Article XII, section 8, of the Constitution of Nebraska.

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

3 67-409 ~~(1)~~ A partnership is an entity distinct from its
4 partners.

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

18 Sec. 7. Section 76-1520, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 76-1520 (1) A person serving as the president, a general
21 partner, any other officer, or an authorized representative of a
22 corporation, limited partnership, limited liability partnership, or
23 limited liability company an entity as defined in section 2 of this
24 act or a corporate trustee of a trust shall report to the Secretary
25 of State:

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

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

12 (c) Whether the ~~corporation,~~ ~~limited partnership,~~ ~~limited~~
13 ~~liability partnership,~~ ~~limited liability company,~~ entity or trust
14 contracts with others engaged in farming or ranching for the care
15 or production of agricultural commodities, including livestock.

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

18 (3) For purposes of sections 76-1520 to 76-1524, interest
19 in real estate used for farming or ranching includes legal,
20 beneficial, and other interests, including interests held by a
21 ~~corporation,~~ ~~limited partnership,~~ ~~limited liability partnership,~~
22 ~~limited liability company,~~ an entity as defined in section 2 of
23 this act or corporate trust in a general partnership holding real
24 estate used for farming or ranching, but does not include an
25 interest in real estate used for farming or ranching acquired by

1 a corporation, ~~limited partnership, limited liability partnership,~~
2 ~~limited liability company,~~ such an entity or trust by process
3 of law in the collection of debts or by any procedures for the
4 creation or enforcement of a lien, encumbrance, or claim on the
5 real estate, whether created by mortgage or otherwise.

6 Sec. 8. Section 76-1521, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 76-1521 (1) The report required by section 76-1520 shall
9 be on a form provided by the Secretary of State. The Secretary
10 of State may incorporate the form with other forms required to be
11 filed by entities identified in subsection (1) of section 76-1520.
12 If there has been no change in the information contained in the
13 previous report filed by the reporting entity, the reporting entity
14 may so indicate in a space provided on the reporting form for that
15 purpose.

16 (2) The Secretary of State shall include a list of
17 exemptions to the prohibitions contained in ~~Article XII, section 8,~~
18 ~~of the Constitution of Nebraska~~ section 3 of this act and a means
19 by which persons filing the form may indicate, if applicable, which
20 exemptions apply to the reporting entity. The reporting entity may
21 include or attach a statement indicating the basis upon which the
22 reporting entity claims exemption from the prohibitions contained
23 in ~~Article XII, section 8, of the Constitution of Nebraska.~~ section
24 3 of this act.

25 (3) The Secretary of State shall annually prepare a

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

10 Sec. 9. Section 76-1523, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 76-1523 (1) The Secretary of State shall use reports
13 generated under section 76-1517 to assist in the identification
14 of trusts engaged in farming or ranching activity as defined in
15 ~~Article XII,~~ ~~section 8,~~ ~~of the Constitution of Nebraska.~~ section 3
16 of this act.

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

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

24 Sec. 10. Section 76-1524, Reissue Revised Statutes of
25 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 3 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. 11. 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;

1 (5) Farming or livestock production means the active use,
2 management, and operation of real and personal property for the
3 production of a farm product;

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

10 (7) Owner of agricultural assets means:

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

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

1 (c) A partnership (i) which has at least one general
2 partner that is a resident individual as defined in section
3 77-2714.01, (ii) which derives at least fifty percent of its income
4 from farming or livestock production, and (iii) in which one or
5 more partners have provided the majority of the day-to-day physical
6 labor and management of a farm over a period of time deemed
7 sufficient to qualify for the granting of tax credits by the board;
8 or

9 (d) A family farm or ranch entity corporation or
10 syndicate qualified to own agricultural land under Article XII,
11 section 8, of the Constitution of Nebraska; sections 2 and 3 of
12 this act;

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

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

25 Sec. 12. If any section in this act or any part of any

1 section is declared invalid or unconstitutional, the declaration
2 shall not affect the validity or constitutionality of the remaining
3 portions.

4 Sec. 13. Original sections 67-409, 76-1520, 76-1521,
5 76-1523, and 76-1524, Reissue Revised Statutes of Nebraska,
6 and sections 21-2602 and 77-5203, Revised Statutes Cumulative
7 Supplement, 2006, are repealed.