

LEGISLATIVE BILL 835

Approved by the Governor May 26, 1999

Introduced by Agriculture Committee: Dierks, 40, Chairperson; Chambers, 11; Cudaback, 36; Hilgert, 7; Robak, 22; Schellpeper, 18; Schrock, 38; Vrtiska, 1; and Connealy, 16; Jones, 43; Schmitt, 41; Bromm, 23

AN ACT relating to livestock; to adopt the Competitive Livestock Markets Act; and to declare an emergency.

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

Section 1. Sections 1 to 31 of this act shall be known and may be cited as the Competitive Livestock Markets Act.

Sec. 2. 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) Department means the Department of Agriculture;

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

(4) Livestock means live cattle or swine;

(5) 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

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

Sec. 3. The Legislature finds that family farmers and ranchers have been experiencing, with greater frequency, severely depressed livestock market prices. These market conditions are disproportionately affecting independent producers, which make up the majority of farms and ranches, and are threatening the economic stability of Nebraska's rural communities. The Legislature further finds that packer concentration, vertical integration, and contractual arrangements are undermining the system of price discovery. In the absence of any meaningful federal response to the conditions described, the purpose of the Competitive Livestock Markets Act is to increase livestock market price transparency, ensuring that producers can compete in a free and open market. This is accomplished by establishing minimum price and contract reporting requirements, eliminating volume premiums and volume-based incentives, scrutinizing livestock production contracts and marketing agreements, and statutorily reinforcing the constitutional prohibition against the ownership, keeping, or feeding of livestock by packers for the production of livestock or livestock products.

Sec. 4. After the effective date of this act, 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. 5. Whenever the Attorney General has reason to believe that a packer is violating section 4 of this act, he or she shall commence an action in district court to enjoin the livestock operation. The court, upon determination that such packer is in violation of section 4 of this act, shall order such livestock to be removed and sold and shall assess the packer a fine of not less than one thousand dollars for each day of violation.

Sec. 6. The proceeds from any livestock ordered to be sold pursuant to section 5 of this act shall not be distributed until all fines and costs associated with such action have been paid. All money collected as a fine shall be remitted to the State Treasurer for credit to the permanent school fund. All fines levied under this section remaining unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the State of Nebraska, in the district court of the county in which the violation occurred.

Sec. 7. Except as provided in sections 8 and 9 of this act, it is unlawful for a packer purchasing or entering into a contract to purchase swine to pay or enter into a contract to pay different prices to the sellers of the swine. This section shall not be construed to mean that a price or payment method must remain fixed throughout any marketing period.

Sec. 8. Section 7 of this act does not apply to any direct, spot, or cash purchase of swine if the following requirements are met:

(1) The difference in price is based on: (a) A payment method specifying prices paid for criteria relating to carcass merit; or (b) actual and quantifiable costs related to transporting and acquiring the swine by the packer; and

(2) After making the payment to a seller, the packer reports the payment information required under section 13 of this act, including the payment method specifying prices paid for criteria relating to carcass merit and transportation and acquisition costs.

Sec. 9. Section 7 of this act does not apply to any contract to purchase swine at a certain date or time if the following requirements are met:

(1) The difference in price is based on: (a) A payment method specifying prices paid for criteria relating to carcass merit; or (b) actual and quantifiable costs related to transporting and acquiring the swine by the packer;

(2) The packer reports the payment information required under section 13 of this act, including the payment method specifying prices paid for criteria relating to carcass merit and transportation and acquisition costs;

(3) The packer reports the information required under section 13 of this act, including the price to be paid for swine to be delivered on specified delivery dates or times; and

(4) An offer to enter into a contract for the delivery of swine, according to the same terms and conditions, is made to other sellers.

Sec. 10. Any contract made by a packer in violation of section 7 of this act is voidable by the seller.

Sec. 11. A seller may bring an action against any packer violating section 7 of this act to recover damages sustained by reason of such violation.

Sec. 12. Any packer acting in violation of section 7 of this act is guilty of a Class IV misdemeanor and shall be fined five hundred dollars per violation.

Sec. 13. Beginning February 15, 2000, a packer shall, two times each day during which swine are purchased, report to the department and to the United States Department of Agriculture, agricultural market service livestock news branch, all swine that are purchased in the cash, spot, or direct market since the last report. A packer shall, one time each day during which swine are purchased, report to the department and to the United States Department of Agriculture, agricultural market service livestock news branch, all swine that are purchased by contract that day. Such reports shall be completed on forms prepared by the department, in consultation with the agricultural market service livestock news branch, and shall include:

(1) The cash price paid and the number of swine purchased in the cash, spot, or direct market at price intervals representative of the day's trade;

(2) The base price paid and premium and discount payment adjustments for quality characteristics including grade, yield, and backfat;

(3) Base price and premium and discount factors for swine purchased using a formula-based pricing system; and

(4) The number of swine purchased under contract, in which the date of delivery is set for more than fourteen days after the making of the contract, and the base price to be paid or the formula that will be used to determine the base price to be paid.

The report shall not include information regarding the identity of a seller.

Sec. 14. The department shall make report information received under section 13 of this act available to the public in a timely manner to permit the use of the information while it is still relevant.

Sec. 15. The failure of a packer to report information to the department as required in section 13 of this act is punishable by a civil penalty not to exceed one thousand dollars for each day that a complete report is not made available to the department. The intentional reporting of false information by a packer in the report to the department required in section 13 of this act is a Class IV misdemeanor.

Sec. 16. The Attorney General shall enforce the provisions of sections 7 to 15 of this act, and the director shall refer any violations of these provisions to the Attorney General. The Attorney General or any person injured by a violation of these provisions may bring an action in district court to restrain a packer from violating these provisions.

Sec. 17. It is unlawful for a packer to enter into a contract to purchase cattle for slaughter if:

(1) The contract specifies that the seller is not allowed to report

the terms of the contract; or

(2) The date of delivery of such cattle is not specified.

Sec. 18. Section 17 of this act does not apply to any contract to purchase cattle for slaughter if the following conditions are met:

(1) The contract to purchase cattle for slaughter specifies the month of delivery and allows the seller to set the week for delivery within such month; and

(2) The packer reports the contract information as required under section 23 of this act, including specified delivery dates or times.

Sec. 19. It is unlawful for a packer to enter into a contract to purchase cattle for slaughter using a formula or grid pricing mechanism if the packer fails to negotiate a base price prior to the cattle being committed or scheduled for slaughter.

Sec. 20. Any contract to purchase cattle for slaughter that is in violation of section 17 or 19 of this act is voidable by the seller.

Sec. 21. A seller may bring an action against any packer violating section 17 or 19 of this act to recover damages sustained by reason of such violation.

Sec. 22. Any packer acting in violation of section 17 or 19 of this act shall be guilty of a Class IV misdemeanor and shall be fined five hundred dollars per violation.

Sec. 23. Beginning February 15, 2000, a packer shall, two times each day during which cattle are purchased, report to the department and to the United States Department of Agriculture, agricultural market service livestock news branch, all cattle that are purchased in the cash, spot, or direct market since the last report. A packer shall, one time each day during which cattle are purchased, report to the department and to the United States Department of Agriculture, agricultural market service livestock news branch, all cattle that are purchased by contract that day. Such reports shall be completed on forms prepared by the department, in consultation with the agricultural market service livestock news branch, and shall include:

(1) The cash price paid and the number of cattle purchased at price intervals representative of the day's trade;

(2) Quality characteristics, including sex of the cattle, estimated percentage of the meat which will be graded choice or better upon inspection based upon the United States Department of Agriculture official grades, and estimated live weight, as well as premium and discount factors that may apply to these characteristics;

(3) Base price and premium and discount factors for cattle purchased using a formula or grid pricing mechanism; and

(4) The delivery month, volume, and applicable basis level for all cattle purchased under basis contract.

The report shall not include information regarding the identity of a seller.

Sec. 24. The department shall make report information received under section 23 of this act available to the public in a timely manner to permit the use of the information while it is still relevant.

Sec. 25. The failure of a packer to report information to the department as required in section 23 of this act is punishable by a civil penalty not to exceed one thousand dollars for each day that a complete report is not made available to the department. The intentional reporting of false information by a packer in the report to the department required in section 23 of this act is a Class IV misdemeanor.

Sec. 26. The Attorney General shall enforce the provisions of sections 17 to 25 of this act, and the director shall refer any violations of these provisions to the Attorney General. The Attorney General or any person injured by a violation of these provisions may bring an action in district court to restrain a packer from violating these provisions.

Sec. 27. The department shall assess a fee not to exceed two cents per animal unit reported under sections 13 and 23 of this act as direct-purchased or contract-purchased.

Sec. 28. The Competitive Livestock Markets Cash Fund is created. The fund shall be administered by the department. The fund shall consist of investigative and enforcement expense assessments against violators of the Competitive Livestock Markets Act and fees paid by a packer pursuant to section 27 of this act. The money in the fund shall be used to defray the investigative, enforcement, and reporting expenses of the department in administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 29. The department shall adopt and promulgate rules and regulations to carry out sections 7 to 28 of this act.

Sec. 30. The Attorney General, for the enforcement of the Competitive Livestock Markets Act, shall have the authority to subpoena witnesses, compel their attendance, examine them under oath, and require the production of documents, records, or tangible things deemed relevant to the proper performance of his or her duties. Service of any subpoena shall be made in the manner prescribed by the rules of civil procedure.

Sec. 31. The Attorney General shall have the power and authority to enter into reciprocal agreements with the duly authorized representatives of other jurisdictions, federal or state, for the exchange of information on a cooperative basis which may assist in the proper administration of the Competitive Livestock Markets Act.

Sec. 32. Since an emergency exists, this act takes effect when passed and approved according to law.