

COMPETITIVE LIVESTOCK MARKETS ACT

Administration: The Attorney General is responsible for enforcing this Act. The Nebraska Department of Agriculture is given certain duties under the Act. These include adopting certain regulations (see below), making report information available to the public, referring violations of sections 54-2607 to 54-2615 and 54-2617 to 54-2625 to the Attorney General and assessing a fee. The Nebraska Department of Agriculture, Administration Division is located in the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-2341.

Revisions: The provisions of this Act were initiated during the 1999 session of the Nebraska Legislature, LB 835. This Act was revised during the 2006 session of the Nebraska Legislature.

Rules: The Nebraska Department of Agriculture is authorized to promulgate regulations for sections 54-2607 to 54-2628 only. Regulations have not yet been promulgated under this Act.

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54-2601. Act, how cited. Sections 54-2601 to 54-2631 shall be known and may be cited as the Competitive Livestock Markets Act.

54-2602. Terms, defined. 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.

54-2603. Legislative findings. 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.

(2) The Legislature further 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.

54-2604. Packers; acts prohibited. 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.

54-2605. Violations by packer; enforcement; penalty. Whenever the Attorney General has reason to believe that a packer is violating section 54-2604, 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 54-2604, 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.

54-2606. Packer violation; proceeds of livestock sale; fines; distribution. The proceeds from any livestock ordered to be sold pursuant to section 54-2605 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.

54-2607. Sales of swine; packers; prohibited acts. Except as provided in sections 54-2608 and 54-2609, 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.

54-2608. Sales of swine; authorized; when. Section 54-2607 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 54-2613, including the payment method specifying prices paid for criteria relating to carcass merit and transportation and acquisition costs.

54-2609. Sales of swine; contracts allowed; conditions.

Section 54-2607 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 54-2613, 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 54-2613, 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.

54-2610. Sales of swine; contract voidable by seller. Any contract made by a packer in violation of section 54-2607 is voidable by the seller.

54-2611. Sales of swine; recovery of damages. A seller may bring an action against any packer violating section 54-2607 to recover damages sustained by reason of such violation.

54-2612. Sales of swine; violation; penalty. Any packer acting in violation of section 54-2607 is guilty of a Class IV misdemeanor and shall be fined five hundred dollars per violation.

54-2613. Sales of swine; packer; reporting requirements. 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.

54-2614. Sales of swine; reports available to public; department; duty. The department shall make report information received under section 54-2613 available to the public in a timely manner to permit the use of the information while it is still relevant.

54-2615. Sales of swine; packer; failure to make reports; false information; penalties. The failure of a packer to report information to the department as required in section 54-2613 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 54-2613 is a Class IV misdemeanor.

54-2616. Sales of swine; enforcement of provisions; restraining order. The Attorney General shall enforce the provisions of sections 54-2607 to 54-2615, 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.

54-2617. Sales of cattle; packer; prohibited acts. 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.

54-2618. Sales of cattle; contracts allowed; conditions.

Section 54-2617 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 54-2623, including specified delivery dates or times.

54-2619. Sales of cattle; pricing mechanisms; restrictions.

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.

54-2620. Sales of cattle; contract voidable by seller. Any contract to purchase cattle for slaughter that is in violation of section 54-2617 or 54-2619 is voidable by the seller.

54-2621. Sales of cattle; recovery of damages. A seller may bring an action against any packer violating section 54-2617 or 54-2619 to recover damages sustained by reason of such violation.

54-2622. Sales of cattle; violation; penalty. Any packer acting in violation of section 54-2617 or 54-2619 shall be guilty of a Class IV misdemeanor and shall be fined five hundred dollars per violation.

54-2623. Sales of cattle; packer; reporting requirements.

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.

54-2624. Sales of cattle; reports available to public; department; duty. The department shall make report information received under section 54-2623 available to the public in a timely manner to permit the use of the information while it is still relevant.

54-2625. Sales of cattle; packer; failure to make reports; false information; penalties. The failure of a packer to report information to the department as required in section 54-2623 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 54-2623 is a Class IV misdemeanor.

54-2626. Sales of cattle; enforcement of provisions; restraining order. The Attorney General shall enforce the provisions of sections 54-2617 to 54-2625, 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.

54-2627. Fee per animal unit; department assess. The department shall assess a fee not to exceed two cents per animal

unit reported under sections 54-2613 and 54-2623 as direct-purchased or contract-purchased.

54-2627.01. Preemption by federal Livestock Mandatory Reporting Act of 1999; director; duties. (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)(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.

54-2628. Competitive Livestock Markets Cash Fund; created; use; investment. 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 54-2627. 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.

54-2629. Rules and regulations. The department shall adopt and promulgate rules and regulations to carry out sections 54-2607 to 54-2628.

54-2630. Attorney General; enforcement powers. 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.

54-2631. Attorney General; reciprocal agreements; authorized. 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.

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