

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 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 2016 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 due to the federal preemption of this area of the law.

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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.

Source: Laws 1999, LB 835, § 1; Laws 2006, LB 856, § 25; Laws 2016, LB176, § 1.

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) 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.

Source: Laws 1999, LB 835, § 2; Laws 2016, LB176, § 2.

54-2603. Repealed. Laws 2016, LB176, § 7.

54-2604. Packers; acts prohibited.

(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 54-2604.01.

(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.

Source: Laws 1999, LB 835, § 4; Laws 2016, LB176, § 3.

54-2604.01. Swine production contract; contents; cancellation; procedure; violations; Attorney General; duties; fine; Department of Agriculture; rules and regulations.

(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 July 21, 2016.

(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 July 21, 2016.

(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.

Source: Laws 2016, LB176, § 4.

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.

Source: Laws 1999, LB 835, § 5.

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.

Source: Laws 1999, LB 835, § 6.

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.

Source: Laws 1999, LB 835, § 7.

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.

Source: Laws 1999, LB 835, § 8.

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.

Source: Laws 1999, LB 835, § 9.

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.

Source: Laws 1999, LB 835, § 10.

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.

Source: Laws 1999, LB 835, § 11.

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.

Source: Laws 1999, LB 835, § 12.

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.

Source: Laws 1999, LB 835, § 13.

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.

Source: Laws 1999, LB 835, § 14.

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.

Source: Laws 1999, LB 835, § 15.

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.

Source: Laws 1999, LB 835, § 16.

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.

Source: Laws 1999, LB 835, § 17.

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.

Source: Laws 1999, LB 835, § 18.

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.

Source: Laws 1999, LB 835, § 19.

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.

Source: Laws 1999, LB 835, § 20.

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.

Source: Laws 1999, LB 835, § 21.

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.

Source: Laws 1999, LB 835, § 22.

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.

Source: Laws 1999, LB 835, § 23.

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.

Source: Laws 1999, LB 835, § 24.

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.

Source: Laws 1999, LB 835, § 25.

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.

Source: Laws 1999, LB 835, § 26.

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.

Source: Laws 1999, LB 835, § 27.

54-2627.01. Preemption by federal Livestock Mandatory Reporting Act of 1999; legislative findings; purpose of act; 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) 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)(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.

Source: Laws 2006, LB 856, § 27; Laws 2016, LB176, § 5.

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.

Source: Laws 1999, LB 835, § 28.

Cross References

- **Nebraska Capital Expansion Act**, see section 72-1269.
- **Nebraska State Funds Investment Act**, see section 72-1260.

54-2629. Rules and regulations.

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

Source: Laws 1999, LB 835, § 29.

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.

Source: Laws 1999, LB 835, § 30.

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.

Source: Laws 1999, LB 835, § 31.