

AMENDMENTS TO LB176

(Amendments to Standing Committee amendments, AM495)

Introduced by Davis, 43.

1 1. Strike amendment 1 and insert the following new amendments:

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

3 Section 1. Section 54-2601, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5 54-2601 Sections 54-2601 to 54-2631 and section 4 of this act shall  
6 be known and may be cited as the Competitive Livestock Markets Act.

7 Sec. 3. Section 54-2604, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 54-2604 (1) Except as provided in subsection (2) of this section, a  
10 packer shall not:

11 (a) Directly or indirectly own, control, or operate a livestock  
12 operation in this state; or

13 (b) Directly or indirectly be engaged in the ownership, keeping, or  
14 feeding of livestock, other than temporary ownership, keeping, and  
15 feeding not to exceed fourteen days which is necessary and incidental to,  
16 and immediately prior to, the process of slaughter.

17 (2) Subdivision (1)(b) of this section does not apply to the  
18 ownership, keeping, or feeding of swine by a packer at one or more  
19 contract swine operations in this state if the packer does not own, keep,  
20 or feed swine in this state except for the purpose of the slaughtering of  
21 swine or the manufacturing or preparation of carcasses of swine or goods  
22 originating from the carcasses in one or more processing facilities owned  
23 or controlled by the packer. Agreements for such contract swine  
24 operations shall be subject to section 4 of this act.

25 (3) For purposes of this section, indirectly own, control, or  
26 operate a livestock operation and indirectly be engaged in the ownership,

1 keeping, or feeding of livestock includes:

2 (a) Receiving the net revenue or a share of the net revenue derived  
3 from a livestock operation or from a person who contracts for the care  
4 and feeding of livestock in this state, unless the packer is not involved  
5 in the management of the livestock operation;

6 (b) Assuming a morbidity or mortality production risk if the  
7 livestock are fed or otherwise maintained as part of a livestock  
8 operation in this state, unless the packer is not involved in the  
9 management of the livestock operation;

10 (c) Loaning money or guaranteeing, acting as a surety for, or  
11 otherwise financing a livestock operation in this state or a person who  
12 contracts for the care and feeding of livestock in this state. For  
13 purposes of this subdivision, loaning money or guaranteeing, acting as a  
14 surety for, or otherwise financing a livestock operation does not include  
15 executing a contract for the purchase of livestock by a packer,  
16 including, but not limited to, forward contracts, marketing agreements,  
17 long-term arrangements, formula arrangements, other noncash sales  
18 arrangements, contracts that contain a ledger balance unsecured by  
19 collateral of the debtor or other price risk sharing arrangements, or  
20 providing an open account or loan unsecured by collateral of the debtor  
21 or a ledger balance or loan secured by collateral of the debtor so long  
22 as the amount due from the debtor does not exceed one million dollars.

23 ~~After May 27, 1999, it is unlawful for a packer to directly or~~  
24 ~~indirectly be engaged in the ownership, keeping, or feeding of livestock~~  
25 ~~for the production of livestock or livestock products, other than~~  
26 ~~temporary ownership, keeping, and feeding, not to exceed five days,~~  
27 ~~necessary and incidental to the process of slaughter.~~

28 Sec. 4. (1) For purposes of this section:

29 (a) Association means an organization, corporate or otherwise, with  
30 or without capital stock, formed for a common purpose;

31 (b) Contract grower means a person or entity to the extent that

1 person or entity enters into a contract grower agreement;

2 (c) Contract grower agreement means an agreement between a packer  
3 and a contract grower for purposes of establishing a contract swine  
4 operation;

5 (d) Contract input means a commodity, an organic or synthetic  
6 substance, a compound, or a service that is used by a contract grower to  
7 produce swine under a contract grower agreement; and

8 (e) Prospective contract grower means a person or entity in active  
9 contact with a packer with respect to the establishment of a contract  
10 grower agreement.

11 (2) Contract growers and prospective contract growers have the  
12 following rights:

13 (a) The right to join or to refrain from joining or belonging to an  
14 association of contract growers;

15 (b) The right to lawfully provide statements or information,  
16 including to the United States Secretary of Agriculture or to a law  
17 enforcement agency, regarding alleged improper actions or violations of  
18 law by a packer. This right does not include the right to make statements  
19 or provide information if such statements or information are determined  
20 to be libelous or slanderous; and

21 (c) The right to file, continue, terminate, or enforce a lien under  
22 Nebraska law.

23 (3) Packers shall not engage in the following in connection with  
24 contract growers or prospective contract growers:

25 (a) Impose less favorable terms and conditions in contract grower  
26 agreements on the basis of a contract grower's or prospective contract  
27 grower's membership in a contract grower association or activities in  
28 such association;

29 (b) Take action to coerce, retaliate, or discriminate against any  
30 contract grower or prospective contract grower because that contract  
31 grower or prospective contract grower exercises, or attempts to exercise,

1 any right provided in subsection (2) of this section, including:

2 (i) Any such coercive, retaliatory, or discriminatory action in  
3 connection with the execution, termination, extension, or renewal of an  
4 agricultural contract between the packer and a contract grower;

5 (ii) Any such coercive, retaliatory, or discriminatory action in  
6 connection with the execution, termination, extension, or renewal of a  
7 contract grower agreement;

8 (iii) Any such coercive, retaliatory, or discriminatory action in  
9 connection with the imposition of discriminatory or preferential terms in  
10 a contract grower agreement or the interpretation of the terms of a  
11 contract grower agreement in a discriminatory or preferential manner;

12 (iv) Any such coercive, retaliatory, or discriminatory action in  
13 connection with the imposition of a penalty, including the unreasonable  
14 denial of a reward;

15 (v) Any such coercive, retaliatory, or discriminatory action in  
16 connection with the altering of the quality, quantity, or delivery times  
17 of contract inputs provided to the contract grower by the packer as  
18 required in the contract grower agreement, except that delivery times may  
19 be changed by mutual agreement due to weather and market conditions; and

20 (vi) Any such coercive, retaliatory, or discriminatory action in  
21 connection with the use of the performance of any other contract grower  
22 as a basis for the termination, cancellation, or renewal of a contract  
23 grower agreement or to negatively affect the contract grower's  
24 compensation, except that nothing in this subdivision shall prohibit a  
25 packer from using a program which rewards contract growers with monetary  
26 bonuses based on superior performance; and

27 (c) Provide false material factual information to contract growers  
28 or prospective contract growers regarding the following:

29 (i) Other contract growers with whom the contract grower or  
30 prospective contract grower associates;

31 (ii) An association of contract growers;

1           (iii) An agricultural organization with which the contract grower or  
2 prospective contract grower is affiliated; or

3           (iv) The contract grower rights provided in subsection (2) of this  
4 section.

5           (4) To the extent applicable to the contract grower agreement, a  
6 packer shall provide to the contract grower, upon request, the  
7 statistical information and data used to determine payment to the  
8 contract grower under the contract grower agreement.

9           (5) To the extent applicable to the contract grower agreement, a  
10 packer shall allow a contract grower or a contract grower's designated  
11 representative, if within the packer's authority, reasonable access to  
12 observe, by actual observation at the time of weighing, the weights and  
13 measures used to determine the contract grower's compensation under a  
14 contract grower agreement.

15           (6) A packer shall not require a contract grower to make capital  
16 investments associated with an existing contract grower agreement that  
17 are in addition to the investment requirements of the contract grower  
18 agreement unless fair and equitable compensation is paid to the contract  
19 grower by the packer in a manner the contract grower agrees to in  
20 writing, except that the packer can require a contract grower to make  
21 necessary capital improvements at the contract grower's expense to meet  
22 statutory or regulatory standards and requirements as a condition to  
23 continuing the contractual relationship. If the contract grower cannot  
24 reasonably pay for or secure third-party financing for such improvements  
25 and modifications, the packer shall attempt to negotiate mutually  
26 agreeable financing, terms, and conditions for financing by the packer,  
27 enhanced compensation to the contract grower by the packer, or other  
28 contract modifications with the contract grower for such mandated  
29 improvements or modifications. If the contract grower cannot reasonably  
30 pay or secure third-party financing for such improvements or  
31 modifications and no mutual agreement is reached with the packer

1 regarding financing, compensation, or other contract modifications,  
2 either party may declare a force majeure event under the contract grower  
3 agreement. Nothing in this subsection shall affect a contract grower's  
4 obligation to reasonably maintain its existing facilities or the  
5 facilities as they are improved and modified as referenced in this  
6 subsection.

7 (7) Contract growers or prospective contract growers may form and  
8 operate an association of agricultural product producers pursuant to the  
9 Capper-Volstead Act, 7 U.S.C. 291 and 292, and such an association may  
10 negotiate with a packer with respect to the terms of contract grower  
11 agreements, including, but not limited to, negotiations related to the  
12 compensation to be paid pursuant to contract grower agreements. To the  
13 extent that contract growers or prospective contract growers organize  
14 such an association:

15 (a) A packer shall not retaliate or discriminate against such  
16 contract growers or prospective contract growers because they have  
17 organized such an association; and

18 (b) A packer shall negotiate in good faith with any such  
19 association.

20 (8)(a) A contract grower who suffers damages as a result of a  
21 packer's violation of this section or a contract grower agreement may  
22 obtain appropriate legal and equitable relief in a suit against the  
23 packer.

24 (b) A prospective contract grower who suffers damages as a result of  
25 a packer's violation of this section may obtain appropriate legal and  
26 equitable relief in a suit against the packer.

27 (c) The laws of the State of Nebraska shall be applicable to any  
28 contract grower agreement between a packer and a contract grower located  
29 in the State of Nebraska.

30 (d) A packer shall not use binding alternative dispute resolution as  
31 a mechanism to resolve any dispute related to, or arising from, this

1 section or a contract grower agreement.

2 (e) If the contract grower or prospective contract grower prevails  
3 in such an action against a packer, the contract grower or prospective  
4 contract grower shall be entitled to court costs, reasonable attorney's  
5 fees, and reasonable litigation expenses.

6 (f) If injunctive relief is sought in such an action, a contract  
7 grower or prospective contract grower shall not be required to post a  
8 bond.

9 (g) A packer shall not contract to limit the measure of damages  
10 available to a contract grower under Nebraska law.

11 (h) Except as otherwise provided in this section, a contract grower  
12 or prospective contract grower shall be entitled to damages as provided  
13 by Nebraska law and a packer shall be entitled to defenses as provided by  
14 Nebraska law.

15 (9) The Attorney General may enforce this section and any of the  
16 rights of contract growers and prospective contract growers identified in  
17 this section against a packer. The Attorney General shall also be  
18 entitled to injunctive relief, if appropriate, in order to redress  
19 violations of this section.

20 2. Renumber the remaining sections and correct the repealer  
21 accordingly.