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## NF99-401 Nebraska Competitive Livestock Markets Act

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Aiken, J. David, "NF99-401 Nebraska Competitive Livestock Markets Act" (1999). *Historical Materials from University of Nebraska-Lincoln Extension*. 405.

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Published by Cooperative Extension, Institute of Agriculture and Natural Resources,  
University of Nebraska-Lincoln

## Nebraska Competitive Livestock Markets Act

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LB835, which took effect May 27, 1999,

1. restricts livestock ownership by meat packers;
2. regulates hog and cattle sales to packers; and
3. requires daily reporting of hog and cattle contract and sale prices beginning Feb. 15, 2000.

The Nebraska Attorney General has determined that the livestock contracting requirements do not take effect until Feb. 15, 2000. Printed below is the complete text of the Nebraska Competitive Livestock Markets Act. If you have questions regarding the administration or enforcement of the act, contact the Nebraska Attorney General at (402) 471-3839 or the Nebraska Department of Agriculture at (402) 471-2341.

NRS §54-2601. **Act, how cited.** Sections §§54-2601 to -2631 of this act shall be known and may be cited as the Competitive Livestock Markets Act.

NRS §54-2602. **Terms, defined.** For purposes of the Competitive Livestock Markets Act: (1) Animal unit means one head of cattle, three calves under 450 pounds, or five swine; (2) Department means the [Nebraska] 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 150,000 animal units per year; and (6) Person includes individuals, firms, associations, limited liability companies, and corporations and officers or limited liability company members thereof.

NRS §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.

NRS §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.

NRS §54-2605. **Violations by packer; enforcement; penalty.** Whenever the Attorney General has reason to believe that a packer is violating §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 §54-2604, shall order such livestock to be removed and sold and shall assess the packer a fine of not less than \$1,000 for each day of violation.

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

NRS §54-2607. **Sales of swine; packers; prohibited acts.** Except as provided in §§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.

NRS §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 §54-2613, including the payment method specifying prices paid for criteria relating to carcass merit and transportation and acquisition costs.

NRS §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 §54-2613 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 §54-2613 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.

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

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

NRS §54-2612. ***Sales of swine; violation; penalty.*** Any packer acting in violation of §54-2607 is guilty of a Class IV misdemeanor and shall be fined \$500 per violation.

NRS §54-2613. ***Sales of swine; packer; reporting requirements.*** Beginning Feb. 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 14 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.

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

NRS §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 §54-2613 of this act is punishable by a civil penalty not to exceed \$1,000 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 §54-2613 is a Class IV misdemeanor.

NRS §54-2616. ***Sales of swine; enforcement of provisions; restraining order.*** The Attorney General shall enforce the provisions of §§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.

NRS §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.

NRS §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 §54-2623, including specified delivery dates or times.

NRS §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.

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

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

NRS §54-2622. ***Sales of cattle; violation; penalty.*** Any packer acting in violation of §§54-2617 or 54-2619 shall be guilty of a Class IV misdemeanor and shall be fined \$500 per violation.

NRS §54-2623. ***Sales of cattle; packer; reporting requirements.*** Beginning Feb. 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.

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

NRS §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 §54-2623 is punishable by a civil penalty not to exceed \$1,000 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 §54-2623 of this act is a Class IV misdemeanor.

NRS §54-2626. ***Sales of cattle; enforcement of provisions; restraining order.*** The Attorney General shall enforce the provisions of §§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.

NRS §54-2627. ***Fee per animal unit; department assess.*** The department shall assess a fee not to exceed two cents per animal unit reported under §§54-2613 and 54-2623 of this act as direct-purchased or contract-purchased.

NRS §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 §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.

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

NRS §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.

NRS §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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***File NF401 under FARM MANAGEMENT***

***G-3, Farm Law***

***Issued June 1999***

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*Issued in furtherance of Cooperative Extension work, Acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Elbert C. Dickey, Director of Cooperative Extension, University of Nebraska, Institute of Agriculture and Natural Resources.*

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