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LB176 Packer Feeding Bill Enacted

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Why did LB176 pass in 2016 when it was narrowly defeated in 2015? It is impossible to say without interviewing the senators who switched their votes between 2015 and 2016. However, LB176 was significantly amended in 2016 to include contract protections for producers signing swine production contracts.

What contract protections were adopted? The contract protection amendments deal with (1) contract cancellation, (2) capital investment disclosure statement, (3) arbitration, (4) confidentiality, (5) state enforcement and (6) state contract regulation.

- **Contract cancellation**: producers have the option to cancel a swine production contract that they have signed within three business days after contract signing, or any longer period specified in the contract itself. This gives the producer a limited opportunity to withdraw from the contract if they change their mind (the “three-day cooling off” period).

- **Capital investment disclosure**: the first page of the swine production contract must include a statement identified as the “Additional Capital Investments Disclosure Statement,” conspicuously stating that additional large capital investments may be required of the contract grower during the term of the production contract. This is to alert the contract producer that the production contract may require the producer to make expensive investments to upgrade his/her facilities to meet contract requirements.

- **Arbitration**: production contracts may include arbitration clauses requiring any contract dispute to be resolved through arbitration rather than court litigation. Such production contracts must contain provisions allowing producers to opt out of arbitration before the contract is signed. If the producer has opted out, the producer and packer may later agree to arbitrate contract disputes. Arbitration typically takes much less time than litigation, but an arbitration decision is typically binding—and cannot be appealed in court.

- **Confidentiality**: the swine contract may be shared by the producer with anyone, including business associates, employees, financial and legal advisors, and family members. This allows the producer to obtain professional advice on whether or not to sign the production contract, which any interested producer would be foolish not to do.

- **State enforcement**: the Nebraska Attorney General can sue to enforce any provisions of LB176. So wronged producers don’t necessarily have to go to court themselves.

- **State regulation of production contracts**: The Department of Agriculture is authorized by LB176 to adopt regulations for swine production contracts to protect contract growers from unfair business practices and coercion. This means that the Department of Agriculture could go beyond the contract protections established in LB176 if the Department felt such additional contract regulations were needed to protect contract swine producers.

LB176 is a significant change in Nebraska livestock development policy. Only time will tell how it works out. As a minimum it gives swine processors and potential contract producers options they did not have before. In addition, it should mean that when Nebraska swine processing facilities need to be replaced, we will be on a more equal footing with Iowa regarding packer feeding options, and that replacement swine processing facilities are to that extent as likely to be developed in Nebraska rather than in Iowa.

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