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Agricultural Production Contract Act

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Cornhusker Economics

Cooperative Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
University of Nebraska – Lincoln

Agricultural Production Contract Act

Market Report	Yr Ago	4 Wks Ago	1/26/01
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$67.24	\$77.00	\$77.98
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	89.82	*	93.58
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	96.97	103.83	95.57
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	101.28	121.23	118.94
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	40.50	37.75	37.00
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	49.45	*	*
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	99.75	119.13	111.20
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	64.75	70.00	75.00
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	148.00	152.00	160.00
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	2.91	3.37	3.32
Corn, No. 2, Yellow Omaha, bu	1.95	2.09	1.82
Soybeans, No. 1, Yellow Omaha, bu	4.87	4.82	4.38
Grain Sorghum, No. 2, Yellow Kansas City, cwt	3.33	3.87	3.48
Oats, No. 2, Heavy Sioux City, IA, bu	1.28	1.24	1.33
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	*	110.00	115.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	32.50	68.50	67.50
Prairie, Sm. Square, Good Northeast Nebraska, ton	*	97.50	100.00
* No market.			

Agricultural production contracts are becoming more widespread in Nebraska. (Contract production should be distinguished from custom farming, which is not at issue here). Under ag production contracts, farmers may contract to produce crops or livestock typically for processors. Contracting is widespread in the broiler industry, and is becoming more common in the swine and beef industry, and for some crops. The Producer Protection Act of 2000 (PPA) is a proposed model state statute prepared by the National Association of Attorneys General to deal with legal issues associated with agricultural contracting. The PPA was developed in order to avoid some problems that have arisen with contracting in the broiler industry. The Unicameral's Agriculture Committee has introduced LB592, based on the PPA and dealing with swine and cattle production contracts. Sen. Dierks has introduced a companion bill, LB587. LBs 592 and 587 will be heard by the Agriculture Committee on February 13, 2001 at 1:30 p.m. in Room 1524, State Capital Building. The bills apply only to swine and cattle production contracts between producers and processors, and do not apply to crop production contracts, do not apply to production contracts for other livestock species, and do not apply to cattle or swine production contracts not involving processors.

Background. In the broiler industry, broiler production contracts tended to favor the processor. Contracts typically are written by the processor's attorney and are presented to growers on a "take it or leave it" basis. Broiler production contracts were written to discourage or prevent information sharing among growers, and to prevent collective bargaining



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or other collective action by growers. LBs 592 and 587 would apply to swine and cattle production contracts between producers and processors. LB592 would:

- require a disclosure statement for swine and cattle production contracts identifying major risks the producer would assume if the producer signed the contract;
- require swine and cattle production contracts to avoid complicated legal terminology in order to be more easily understood by producers;
- establish a three-day review period to allow producers to receive legal and other professional advice regarding the contract and to withdraw from the contract without penalty;
- prohibit confidentiality clauses in the swine and cattle production contracts, so that contract terms may be disclosed to professional advisors as well as to other producers;
- require swine and cattle production contract disputes to be resolved through mediation instead of litigation or arbitration;
- establish a voluntary process for the Nebraska Attorney General to certify that swine and cattle production contracts comply with the LB592's requirements; and
- allows for public and private enforcement, including legal fees to producers who win in court.

In addition, LB587 prohibits unfair (i.e. retaliatory) practices to discourage swine or cattle producers from exercising their legal rights.

Producer Investment Protection. Some ag production contracts may require the grower to make a substantial investment in new facilities in order to qualify for the contract; e.g. install new broiler houses in order to qualify for a broiler production contract. The danger to the grower is that the contract may be cancelled or otherwise terminated before the loan has been paid off, and the grower will not have an alternative use for the facilities. LB592 would require 90 days notice of swine or cattle production contract termination, cancellation or nonrenewal, and would require the processor to pay damages to the producer for damages to the producer's required investment of

\$100,000 or more. The damages recoverable would be based upon the nondepreciated value of the capital improvements at the date of contract termination or cancellation, or contract nonrenewal. Forty-five days notice would be required if the processor determined that the producer was in material (i.e. important) breach of the swine or cattle production contract, and the producer would have to be given 30 days time within which to remedy the alleged breach. No damages would be owed to the grower in cases of material breach. No notice or damages would be required where the contract was cancelled because the producer either abandoned the contract or was convicted of theft or fraud against the processor.

Production Contract Liens. One difficult livestock production contract issue has been finding ways to protect the producer's right to receive payment, particularly if the processor encounters financial difficulty or if contract disputes arise. If a processor has borrowed its operating funds, the processor's lender will typically have the first lien on processor's property. This would include unpaid crops or livestock that the processor had received from producers under an ag production contract. The processor's lender having the first lien on the processor's property means that if the processor is unable to pay growers, the processor's lender would be paid before the producers are. Congress has changed this rule for producers selling livestock to meatpackers, and PPA would have changed this for contract swine or cattle growers as well. However, these provisions were not included in LB592 or LB587. Such provisions would have been vigorously opposed by agricultural lenders.

LBs 592 and 587 would provide significant legal protection to growers entering into agricultural production contracts for swine and cattle in Nebraska. The bills deserve a hard look by the Nebraska Unicameral and agricultural groups.

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