



**A REVIEW OF LIVESTOCK PACKER LEGISLATION -- 1999**

**INTRODUCTION**

In 1999, the South Dakota Legislature enacted Senate Bill 95, requiring meat packers to make daily reports on prices paid for livestock and prohibiting certain forms of price discrimination by large-scale packing operations. Several area states also passed legislation on these or related topics during 1999 in response to nearly unprecedented low prices and serious financial distress for livestock producers. In December 1998, hog prices dropped below \$10 per hundredweight for the first time since 1955. Adjusted for inflation, this was lower than hog prices during the Great Depression and less than one-fifth of hog prices during the past five years. This level of economic stress has led to legislative efforts to provide relief and has stimulated speculation and discussion about the causes of the crisis. Senate Bill 95 was one effort to address the problem.

**BACKGROUND -- CORPORATE FARMING AND LARGE-SCALE LIVESTOCK FEEDING OPERATIONS**

Problems in livestock markets have arisen from a combination of causes, including diminished Asian and European markets stemming from economic and financial difficulties there, foreign competition, oversupply, reduced slaughter capacity, and the continuing consolidation of livestock producers into

large-scale corporate operations, resulting in an increasingly difficult situation for traditional, small-scale family farm livestock production. While the root causes of the current crisis are open for debate, it is likely that the concentration of livestock packing operations in the hands of a few large packing corporations and the involvement of those firms in other components of the livestock production and processing industry have also contributed. This increasing concentration has led to calls for restrictions on the powers and scope of activity of large-scale packing operations. In 1991, the South Dakota Legislature conducted an interim study of concentration and vertical integration in the livestock packing industry. The study resulted in the passage of SDCL 40-15A-13 to 40-15A-19, requiring certain large-scale packers to make annual reports on contracts with livestock producers. More recently, livestock producers have raised objections to certain contracting practices by livestock packers, leading to much of the legislation introduced in various state legislatures in 1999.

The general concern over the years with the expansion of corporate farming at the expense of family farmers has led to numerous attempts to address the situation legislatively. South Dakota's corporate farming law, known as the "Family Farm Act of 1974" (SDCL Chapter 47-9A), was enacted to protect

family farm operations from the expansion of corporate farming and has been amended on several occasions, usually in response to proposals for large-scale livestock production operations that would not have been subject to regulation under that law. In 1998, South Dakota voters approved "Amendment E," an initiated amendment to the state constitution that essentially replaces the older corporate farming law with constitutional provisions based on Nebraska's corporate farming laws, which are included in their state constitution. Amendment E (Article XVII, Sections 21 to 24 of the South Dakota State Constitution) was a controversial measure that passed with 59% of the vote. Amendment E was the subject of intense debate, with various agricultural groups and organizations lining up on opposite sides of the issue. Proponents of the measure believed that the existing corporate farming statutes were not stringent enough to address the problems facing family farmers and to prevent the domination of agriculture by large corporations. They also believed that placing the measure in the state constitution would strengthen it and protect it from short-term political pressures and economic promotional plans. Opponents feared that placing these provisions in the constitution would make them overly difficult to amend if they proved to be ineffective or detrimental. They also believed that the language of Amendment E was unclear and that the measure would produce much litigation without solving the underlying problems confronting the agricultural economy.

## **RECENT LEGISLATIVE ACTIVITY**

During the middle and late 1990s, the South Dakota Legislature debated a large number of bills directed at regulating the

potential social, economic, and environmental impacts of large-scale farming operations. This legislation typically took the form of environmental protection measures, adjustments to zoning laws, or efforts to restrict or monitor the operations of large-scale agricultural entities. Most of these bills were defeated, although some legislation of this type was enacted. In 1997, HB 1261 (SDCL 1-40-38) directed the Department of Environment and Natural Resources to promulgate rules to establish an inspection and enforcement program for large-scale concentrated animal feeding operations. HB 1229 (SDCL 34A-2-125) established a graduated set of environmental fees for large-scale feeding operations, and HB 1199 (SDCL 34A-3A-24) prohibited the establishment of certain livestock feeding operations over shallow aquifers. The 1998 Legislature enacted SB 239 (SDCL 20-9-29 to 31) which imposed legal responsibility and liability on the owners of livestock for environmental damages caused by the negligent actions of persons hired by the owners to care for livestock. SB 240 (SDCL Chapter 34A-2B) established an environmental livestock cleanup fund for certain environmental damages associated with livestock operations. During 1997 and 1998, the Legislature considered more than thirty bills dealing with large-scale livestock feeding operations and closely related topics.

## **LIVESTOCK PACKER OPERATIONS AND PRACTICES**

The 1999 Legislature turned its attentions to the packing industry and to specific practices by the industry that some producers viewed as unfair to small operators and a threat to family farm operations. The issues of captive supply, price discrimination, and failure to fairly

report livestock prices have generated serious controversy in the livestock industry and are alleged by some livestock producers to be primary reasons for the inability of smaller producers to compete successfully and prime examples of the abuse of economic power by large-scale packing operations. Others argue that concentration in the packing industry is not the primary cause of the current crisis, which is caused instead by oversupply, foreign competition, and problems in foreign markets.

Captive supply refers to the practice by packers of either owning their own livestock directly or controlling livestock through forward contracting with livestock producers. Critics maintain that captive supply practices allow packers to manipulate markets by slaughtering their own livestock when prices are relatively high on the cash market and purchasing livestock for slaughter when prices are lower. Controversy related to the reporting of livestock prices involves allegations that packers fail to report certain transactions when not reporting is in their interest. An example would be a situation in which packers pay above-market prices to a particular producer on the condition that the price not be disclosed, which could have the effect of keeping the market price on purchases from other producers artificially low. Producers called for legislation to establish mandatory price reporting by livestock packers and a method of public price discovery to enable producers to compete in livestock markets on an equitable basis. Producers were also calling for legislation to require the labeling of foreign meat, to prohibit the ownership of livestock by packers under certain conditions, and to combat concentration and vertical integration in the packing industry.

Generally, critics of the packing industry felt that packers were using a system of price discrimination to manipulate markets to their advantage and that packers were able to do so because of their size and the concentration of the packing industry in the hands of a few firms. While the merits of these criticisms are open for debate, and the livestock and packing industries involve complex financial and production arrangements, it is clear that the current system with its increased levels of packer concentration has generated widespread concern and controversy.

### **SB 95 AND OTHER 1999 LEGISLATION**

The 1999 South Dakota Legislature considered a large number of bills and resolutions dealing with the agricultural crisis, livestock packer practices, and corporate farming operations. The Legislature subsequently enacted SB 95 and SB 164 (codified at SDCL Chapter 40-15B), both of which addressed operational practices by livestock packers. SB 164 simply placed selected provisions of the federal Packers and Stockyards Act in state statute (SDCL 40-15B-8), essentially restating federal law prohibiting unfair or discriminatory marketing practices or practices that tend to restrain trade in the livestock packing industry. SB 164 was passed without significant opposition.

Senate Bill 95's path through the Legislature was much more tumultuous. SB 95 received significant media attention and drew large numbers of private citizens to overflowing galleries and committee rooms to testify on the bill and to express their support. One legislator reported that he was physically assaulted because of his position on the bill. Early in the legislative session, proponents of SB 95 determined that they

would not support or accept amendments to the bill other than minor amendments approved by the bill's sponsor, a decision that probably reduced the Legislature's flexibility and the potential for compromise and fine tuning, normally an important part of the legislative process.

SB 95 was based on legislation that had been previously pending in the Iowa Legislature and consisted of two primary components: provisions prohibiting price discrimination by livestock packers, and price reporting requirements for packers. The price reporting provisions require packers, at the end of each day, to provide to the United States Department of Agriculture and the South Dakota Department of Agriculture all prices paid that day for livestock, both contract and direct purchase. The price reporting provisions also direct the Attorney General to enforce the statute and the South Dakota Department of Agriculture to promulgate rules to specify reporting forms and procedures. The bill also establishes a civil penalty of \$1000 per day for each day that a report is not published.

The price discrimination provisions of SB 95 were more problematic and were later found unconstitutional and invalidated by court decision. The price discrimination portion of the bill would have prohibited discrimination in prices paid for the purchase of livestock for slaughter unless the price differential were based on quality of the livestock, actual costs related to transporting and acquiring the livestock, or an agreement for delivery of livestock at a specified date or time and all pertinent information related to the differential pricing were published. The bill provided a civil penalty of treble damages against a packer who violated the price discrimination provisions of the bill.

## **SB 95 LITIGATION**

The passage of SB 95 led immediately to speculation about the possible reaction of livestock packers to the bill and about the bill's impacts on South Dakota producers. In addition, the bill's price discrimination language was unclear as to whether the bill applied to purchases of livestock anywhere to be slaughtered in South Dakota or to purchases in South Dakota of livestock for slaughter. This distinction is important in addressing basic interstate commerce issues related to the bill, although the bill also involves additional interstate commerce concerns beyond the basic language question.

The immediate impact of the bill in South Dakota was a reduction of prices paid by John Morrell and Company, South Dakota's largest livestock packer. Morrell, fearful that the slaughter of any livestock purchased in or out of South Dakota could put the company in violation of the price discrimination portion of SB 95, ceased buying hogs anywhere on any basis other than grade and yield. This move resulted in reduced slaughter numbers at Morrell's Sioux Falls plant and lower overall prices being offered to producers. Also, Morrell has a large number of buyers and buying stations across the state, making it difficult for the company to purchase livestock at different locations for different prices without being in violation of the statute. In addition, packers in other states hesitated or ceased purchasing South Dakota livestock for slaughter given the uncertainty over the effect of the price discrimination statute. While proponents and opponents of the bill debated whether the price and slaughter reductions were justified or simply calculated to obstruct enforcement of the bill and cause its eventual repeal, the

short-term effects of the bill were cause for concern.

Meanwhile, the American Meat Institute and John Morrell and Company filed suit in U.S. District Court challenging the constitutionality of SB 95. In July, the court overturned the provisions of SB 95 related to price discrimination but upheld the bill's price reporting requirements. The court interpreted the language relating to purchase of livestock for slaughter in South Dakota to mean purchase of livestock anywhere to be slaughtered in South Dakota and held this provision to be directly and unduly regulating commerce in other states and therefore unconstitutional. The court also discussed other higher level tests of constitutionality with respect to interstate commerce but did not rule on SB 95 on that basis. It is not clear whether SB 95's price discrimination provisions, without the offending language related to the location of livestock purchases, would have been in violation of interstate commerce provisions.

#### **LEGISLATION AND ACTIVITIES IN OTHER STATES -- 1999**

South Dakota was not the only state to address livestock price discrimination and mandatory price reporting in 1999. A number of meetings and rallies were held in the upper Midwest in support of state and federal legislation to address the agricultural crisis in general and livestock packer operations in particular, and legislation was introduced in several states. The 1999 Minnesota Legislature enacted a mandatory price reporting bill (Minnesota Statutes, Section 31b.07) for livestock packers. In Iowa in 1999, SF 436 was approved. SF 436 establishes livestock price reporting and notice requirements and prohibits certain confidential provisions of livestock sales

contracts. Nebraska's bill is potentially more far-reaching. Legislative Bill 835, known as the Livestock Markets Act, which was approved by the Governor in May 1999, prohibits packer ownership of livestock in certain cases, prohibits certain forms of price discrimination, and requires price reporting for swine and cattle purchases. Missouri's legislation, SB 310, which was signed by the Governor on July 2, 1999, has price discrimination and price reporting provisions similar to SB 95 as it passed the South Dakota Legislature; but Missouri's bill also requires country of origin labeling for foreign meat sold in Missouri. Legislation dealing with price reporting, price discrimination, or related livestock packer issues was also introduced in Kansas, Wisconsin, and other states during 1999.

#### **FEDERAL LEGISLATION**

One criticism of SB 95 and similar legislation in other states is that a piecemeal, state-by-state approach does not solve the problem and may make matters worse for all parties if requirements and practices are not uniform. The current federal Packers and Stockyards Act regulates livestock packers on a nationwide basis, but critics maintain that the current law is either not stringent enough or is not being properly enforced or a combination of both. There are currently numerous proposals to address livestock packer issues through federal legislation, but some proponents of reform in the packing industry worry that weak federal legislation would undercut some of the new and more stringent state laws and in the long run damage reform efforts. Others argue that states must take the lead in addressing livestock packer issues as a way of directing national attention to the seriousness of the problems in the hope

of prompting more significant federal action, even though state action may mean confusion and lack of coordination in state efforts and state requirements in the short run. It is likely that the situation will eventually be addressed by the introduction of federal legislation, given the interstate nature and national scope of the livestock packing industry, although the eventual form and direction of federal legislation is not yet clear.

### **SUMMARY/PROSPECTS**

The nation's livestock producers are under severe stress due to a number of short- and long-range factors. At the

same time, the livestock packing industry has grown increasingly concentrated, with the four largest packers holding approximately 80% of the market share for steer and heifer slaughter. Agriculture in general has undergone massive changes and will continue to do so, and some of the changes will cause hardship and dislocation for many people and organizations. It is likely that practices in the packing industry have caused some of the current problems in the agricultural community, but many other factors also contribute to those problems. It is the task of policymakers and regulators to find an equitable balance in trying to solve these complex issues.

---

**This issue memorandum was written by Tom Magedanz, Principal Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.**

---