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LB 833, 835

mandatory price reporting legislation has been discussed in two Attorney General Opinions. It is the opinion of the Attorney General that the federal price reporting legislation directly preempts the price reporting provisions of state law. The Attorney General has concluded as well that the federal law has also resulted in an indirect and unintended presumption...preemption of the swine antiprice discrimination and cattle contracting elements. The ban on packer ownership of livestock, however, has not been effective. While it is clear that the federal law preempts the price reporting provisions of LB 835, it is the opinion of the Attorney General, in a November 30th opinion to the Department of Agriculture, and the opinion of various congressional staff that we have consulted that this preemption language was not written with the intent or necessarily the effect of interfering with antiprice discrimination or other contract provisions the states may wish to enact or enforce. The preemption is limited strictly to price reporting. However, LB 835 was written a way which somewhat intertwined the "discriminatory" price reporting and cattle contract provision with the state price reporting mechanism. Section 54-2607 prohibits packers from paying different prices for swine. The only allowable exceptions are contained in 54-2608 and 2609, which provide that different prices are allowed only if based on carcass quality and transportation costs, and if the packer reports the price information as would be required by 54-2613. In effect, the legislation creates two requirements to avoid a price discrimination charge. One element is that the packer report the transaction. Since state price reporting is preempted, the Attorney General has concluded that the price discrimination provisions are also preempted. Also provisions preempting or prohibiting certain contract practices for cattle procurement are also inadvertently preempted by this same intermingling of the restrictions with the duty to report the transaction. It is written into these provisions of LB 835 only in order to provide additional incentive to packers to comply with state price reporting. I also want to point out that the effect of destroying the operability of these sections is to preserve a private cause of action for violations of these provisions. Those provisions which would remain dormant, due to federal preemption, are those which create the price reporting system, the price reporting fee and the duties of the department to