

LEGISLATIVE BILL 1193

Approved by the Governor April 14, 1998

Introduced by Dierks, 40; Schellpeper, 18

AN ACT relating to agriculture; to amend sections 2-4402 and 2-4403, Reissue Revised Statutes of Nebraska; to require reports of ownership of real estate involved in farming or ranching and farming or ranching activities; to provide powers and duties for the Secretary of State and Attorney General; to provide for fines or dissolution or cancellation of registration for failure to comply; to define a term; to include grain warehouses in the Nebraska Right to Farm Act; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. (1) A person serving as the president, a general partner, any other officer, or an authorized representative of a corporation, limited partnership, limited liability partnership, or limited liability company or a corporate trustee of a trust shall report to the Secretary of State:

(a) Any interest in real estate held by the corporation, limited partnership, limited liability partnership, limited liability company, or trust used for farming or ranching in this state as defined under Article XII, section 8, of the Constitution of Nebraska;

(b) Any activity or enterprise performed, conducted, or engaged in by the corporation, limited partnership, limited liability partnership, limited liability company, or trust defined as farming or ranching in this state under Article XII, section 8, of the Constitution of Nebraska; and

(c) Whether the corporation, limited partnership, limited liability partnership, limited liability company, or trust contracts with others engaged in farming or ranching for the care or production of agricultural commodities, including livestock.

(2) The reports required by this section shall be open to the public.

(3) For purposes of sections 1 to 5 of this act, interest in real estate used for farming or ranching includes legal, beneficial, and other interests, including interests held by a corporation, limited partnership, limited liability partnership, limited liability company, or trust in a general partnership holding real estate used for farming or ranching, but does not include an interest in real estate used for farming or ranching acquired by a corporation, limited partnership, limited liability partnership, limited liability company, or trust by process of law in the collection of debts or by any procedures for the creation or enforcement of a lien, encumbrance, or claim on the real estate, whether created by mortgage or otherwise.

Sec. 2. (1) The report required by section 1 of this act shall be on a form provided by the Secretary of State. The Secretary of State may incorporate the form with other forms required to be filed by entities identified in subsection (1) of section 1 of this act. If there has been no change in the information contained in the previous report filed by the reporting entity, the reporting entity may so indicate in a space provided on the reporting form for that purpose.

(2) The Secretary of State shall include a list of exemptions to the prohibitions contained in Article XII, section 8, of the Constitution of Nebraska and a means by which persons filing the form may indicate, if applicable, which exemptions apply to the reporting entity. The reporting entity may include or attach a statement indicating the basis upon which the reporting entity claims exemption from the prohibitions contained in Article XII, section 8, of the Constitution of Nebraska.

(3) The Secretary of State shall annually prepare a report indicating the total number of entities reporting under sections 1 to 5 of this act, the number of entities reporting as a corporation, as a limited partnership, as a limited liability partnership, as a limited liability company, and as a trust and the basis upon which the reporting entities claim exemption from the prohibitions contained in Article XII, section 8, of the Constitution of Nebraska. The Secretary of State shall deliver the report to the Clerk of the Legislature on or before January 1 each year.

Sec. 3. (1) Failure to report the information required by section 1 of this act or the filing of false information shall be cause for dissolution or cancellation of registration of the corporation, limited partnership, limited liability partnership, or limited liability company or revocation of

authority to transact business in this state in the manner provided in this section.

(2) If the Secretary of State has reason to believe a corporation, limited partnership, limited liability partnership, or limited liability company required to report pursuant to section 1 of this act has failed to report, or has filed a false or incomplete report, the Secretary of State shall send to the registered agent of such entity by certified mail a notice stating that if the defect is not corrected within sixty days after receipt of notice the entity shall be dissolved or its registration shall be canceled.

(3) If the Secretary of State determines that the entity has not corrected the defect upon the expiration of sixty days after notice of failure to report, false reporting, or incomplete reporting, the entity shall be dissolved or its registration canceled. Notice of such cancellation shall be sent by certified mail to the registered agent of the entity.

(4) A business entity dissolved or canceled pursuant to this section may have its existence reinstated at any time by submitting a report as required by sections 1 to 5 of this act correcting the defect for which it was dissolved and paying a reinstatement fee of one hundred dollars to the Secretary of State. Any fees received pursuant to this section shall be remitted to the State Treasurer for credit to the Corporation Cash Fund.

Sec. 4. (1) The Secretary of State shall use reports generated under section 76-1517 to assist in the identification of trusts engaged in farming or ranching activity as defined in Article XII, section 8, of the Constitution of Nebraska.

(2) Any corporate trustee failing to report the information required by section 1 of this act or filing false information shall be punished by a fine of not more than five hundred dollars.

(3) Any fines received pursuant to this section shall be remitted to the State Treasurer for credit to the temporary school fund.

Sec. 5. The Secretary of State and the Attorney General, for the enforcement of both sections 1 to 5 of this act and Article XII, section 8, of the Constitution of Nebraska, 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 their duties. Service of any subpoena shall be made in the manner prescribed by the rules of civil procedure.

Sec. 6. Section 2-4402, Reissue Revised Statutes of Nebraska, is amended to read:

2-4402. As used in sections 2-4401 to 2-4404 the Nebraska Right to Farm Act, unless the context otherwise requires:

(1) Farm or farm operation shall mean means any tract of land over ten acres in area used for or devoted to the commercial production of farm products; and

(2) Farm product shall mean means those plants and animals useful to man and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, including breeding and grazing, fruits, vegetables, flowers, seeds, grasses, trees, fish, apiaries, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur; and

(3) Public grain warehouse or public grain warehouse operation means any grain elevator building or receptacle in which grain is held for longer than ten days and includes, but is not limited to, all buildings, elevators, and warehouses consisting of one or more warehouse sections within the confines of a city, township, county, or state that are considered a single delivery point with the capability to receive, load out, weigh, and store grain.

Sec. 7. Section 2-4403, Reissue Revised Statutes of Nebraska, is amended to read:

2-4403. A farm or farm operation or a public grain warehouse or public grain warehouse operation shall not be found to be a public or private nuisance if the farm or farm operation or public grain warehouse or public grain warehouse operation existed before a change in the land use or occupancy of land in and about the locality of such farm or farm operation or public grain warehouse or public grain warehouse operation and before such change in land use or occupancy of land the farm or farm operation or public grain warehouse or public grain warehouse operation would not have been a nuisance.

Sec. 8. Original sections 2-4402 and 2-4403, Reissue Revised Statutes of Nebraska, are repealed.