

ENROLLED HOUSE
BILL NO. 2988

By: Leist of the House

and

Muegge of the Senate

An Act relating to agriculture; amending 2 O.S. 1991, Sections 9-132, 9-133, 9-138, 9-134, 1751, 1752, 1753, and 1754, which relate to the Livestock Auction Market Act and the Livestock Dealers Act; providing for other financial instruments; authorizing State Board of Agriculture to approve or deny certain license; requiring State Board of Agriculture to promulgate certain rules to require certain information and documents for certain license; requiring publication of certain notice; modifying definition of livestock; providing definition for certain animals; modifying authority of law enforcement officers to inspect certain records; increasing authority of State Board of Agriculture; providing for authority to take possession of certain assets; providing for limitation; providing for receiving and depositing of certain assets; providing for certain additional costs; providing for distribution of certain assets; providing for procedures; providing for proportioning of monies; modifying terms; providing for deemed consent with license issuance; requiring certain license; adding to powers and duties of State Board of Agriculture; providing procedure for alleged violations; providing for notice and opportunity for hearing; providing procedure; providing for emergencies; providing for appeals; providing for hearings and services; authorizing State Department of Agriculture to request certain action by Attorney General to seek certain relief; providing for jurisdiction; specifying unlawful acts; setting certain penalties; modifying gender references; providing legislative intent not to expand certain reporting requirements; providing for codification; providing for noncodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 2 O.S. 1991, Section 9-132, is amended to read as follows:

Section 9-132. A. Except as otherwise provided by subsection C of this section, no person shall operate, conduct or maintain a livestock auction market unless such person holds a livestock auction market license issued by the State Board of Agriculture and has:

1. Executed a corporate surety bond pursuant to the provisions of this section. The bond shall be conditioned upon the prompt and faithful accounting for all livestock received, handled or sold, and the remittance of the proceeds from any sale, purchase or exchange of any livestock to the consignor thereof; ~~or~~

2. Opened a certificate of deposit account or a money market savings account. For a certificate of deposit account or a money market savings account to be eligible pursuant to the provisions of this section:

- a. the account must be opened at a federally insured financial depository,
- b. an officer of the financial depository must specifically acknowledge and guarantee the deposit of the funds required by subsection B of this section until otherwise released pursuant to this subsection,
- c. the person operating, conducting or maintaining a livestock auction market may only withdraw any funds deposited in a certificate of deposit account or a money market savings account one hundred twenty (120) days after such person has permanently ceased operations of such livestock auction market unless such person presents to the financial institution a written authorization for release of funds by the Oklahoma Department of Agriculture; or

3. Provided other financial instruments allowable for livestock markets by the Federal Packers and Stockyards Act of 1921, as amended.

B. The corporate surety bond or account required by subsection A of this section for any person operating, conducting or maintaining a livestock auction market shall be in ~~the amount of~~ accordance with the provisions of the Federal Packers and Stockyards Act of 1921, as amended, but not less than Twenty-five Thousand Dollars (\$25,000.00).

C. The corporate surety bond or account required by subsection A of this section shall not be required of any person who, as to such livestock auction markets, has executed and maintained a corporate surety bond or account of Twenty-five Thousand Dollars (\$25,000.00) to secure the performance of ~~his~~ such obligations under the provisions of the ~~federal~~ Federal Packers and Stockyards Act of 1921, as amended. ~~A letter of credit shall not be acceptable.~~

D. 1. Any corporate surety company issuing a bond to any person as specified by subsection A or C of this section for operating, conducting or maintaining a livestock auction market shall notify the Board within seven (7) days in writing of such notice of cancellation or nonrenewal of the bond.

2. The Board shall provide for the publication of notice to the public of the nonrenewal or cancellation of the bond for a livestock auction market upon any notification that the bond of the livestock auction market has been nonrenewed or canceled and no new bond has been obtained.

3. No person shall knowingly operate, conduct or maintain a livestock auction market without a bond in place. Any person violating the provisions of this paragraph, upon conviction, shall be guilty of a felony.

E. All records relating to the prompt and faithful accounting for all livestock received, handled or sold, and the remittance of the proceeds from any sale, purchase or exchange of any livestock to the consignor thereof shall be in accordance with the provisions of the ~~federal~~ Federal Packers and Stockyards Act of 1921, as amended. The State Board of Agriculture or its authorized agent shall audit

such records at least once a year. Any violation of the standards of said Act ~~shall~~ may result in the ~~immediate~~ suspension of the livestock auction market license.

F. Except as otherwise provided by this section, any person violating the provisions of this section, upon conviction, shall be guilty of a misdemeanor.

SECTION 2. AMENDATORY 2 O.S. 1991, Section 9-133, is amended to read as follows:

Section 9-133. A. Every application for a livestock auction market license shall be on a form prescribed by the State Board of Agriculture. Each such license shall expire one (1) year after its issuance or renewal, and a fee of Twenty-five Dollars (\$25.00) shall be charged and collected for the issuance or renewal of any such license. Any such license may be approved, denied, revoked or suspended by the Board, after due notice in writing and an opportunity to be heard has been given to the holder thereof, upon the failure of such holder to comply with the corporate surety bond or account requirements or upon failure of the licensee to comply with any of the provisions of Section 6-102 of this title or the Livestock Auction Market Act or any rule ~~or regulation~~ adopted thereto.

B. The State Board of Agriculture shall promulgate rules to effectuate the provisions of this section. Such rules may include, but not be limited to, requiring:

1. The submission of financial documents;
2. The disclosure of all persons having a financial interest in the applicant and the amount and nature of such interest;
3. Proof that the applicant meets registration requirements of the Federal Packers and Stockyards Act of 1921, as amended; and
4. The submission of any other information reasonably calculated to enable the Board to make the determination required by this section.

C. The Board shall provide for the publication of notice to the public of the suspension or revocation of the livestock auction market license.

SECTION 3. AMENDATORY 2 O.S. 1991, Section 9-138, is amended to read as follows:

Section 9-138. As used in ~~this act, unless the context clearly requires otherwise, the following words and phrases shall have the meaning ascribed to them in this section.~~ the Livestock Auction Market Act:

A. 1. "Livestock" means cattle, ~~hogs or~~ swine, sheep, horses, mules or goats and includes exotic animals;

B. 2. "Slaughter" means killing livestock with the intent to process and distribute the meat and byproducts of such livestock, regardless of the period of time elapsing between the purchase and the killing of such livestock-;

C. 3. "Person" means any individual, firm, partnership, corporation or other organization or business entity-;

D. 4. "Payment by check" means the actual delivery of the check to the seller or ~~his~~ representative at the location where the transfer of ownership is accomplished. In the case of grade and yield selling, payment by check means making the check available at the packing plant, subject to the instructions of the seller or ~~his~~ representative-;

E. 5. "Wire transfer" means any telephonic, telegraphic, electronic or similar communication between the bank of the purchaser and the bank of the seller which results in the transfer of funds or credit of the purchaser to an account of the seller; and

6. "Exotic animals" means commercially raised animals of the families bovidae, cervidae, antilocapridae, suidae and ratites.

SECTION 4. AMENDATORY 2 O.S. 1991, Section 9-134, is amended to read as follows:

Section 9-134. A. Every person operating or conducting a livestock auction market shall make, and keep for two (2) years, a record showing an identifying description, vehicle license tag number, and the names and addresses of the buyer and seller of livestock consigned for sale at such livestock auction markets. Such records shall be open to inspection during reasonable business hours by any authorized agent employed by the State Board of Agriculture ~~or by any other law enforcement officer of this state.~~

B. Any records required to be kept pursuant to subsection A of this section may not be removed from the premises by said authorized agent ~~or officer~~ without the express authority of the person who has jurisdiction over such records or except as otherwise authorized by a court of law. These records may be photocopied at the request of the agent ~~or officer~~.

C. Any person convicted of violating the provisions of subsection A of this section shall be guilty of a misdemeanor and shall be punishable by a fine not to exceed One Hundred Dollars (\$100.00) or by imprisonment in the county jail not to exceed ten (10) days or by both such fine and imprisonment.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-134.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Upon the suspension or revocation of any livestock auction market license as a result of a custodial account default, the Board shall have the authority to take possession of any and all assets which belong to the custodial account for shippers' proceeds, including, but not limited to, custodial account checking or savings accounts, custodial account certificates of deposit, receivables and livestock for which the custodial account has not been reimbursed or any other assets which belong to the custodial account as determined by the Board.

B. Assets taken into possession shall be limited to custodial account assets as determined by the State Board of Agriculture. All funds collected from custodial account assets shall be placed in an account of the Department of Agriculture specifically designated as a shippers' proceeds trust fund.

C. The Board shall have the authority to receive, deposit and administer all proceeds belonging to the custodial account for shippers' proceeds of any livestock auction market whose license has been suspended or revoked.

D. Upon taking possession of any such assets specified by this section, the Board shall distribute the assets as follows:

1. The Board shall receive an amount equal to the cost incurred by the Board in handling and maintenance of the trust fund of shippers' proceeds, including cost of hauling, yardage, watering, feeding, commissions and other costs in the marketing or handling of any livestock taken into possession; and

2. All remaining funds shall be proportioned among all persons submitting valid claims as determined by the Board.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1750 of Title 2, unless there is created a duplication in numbering, reads as follows:

This section and Sections 1751 through 1754 of Title 2 of the Oklahoma Statutes shall be known and may be cited as the "Livestock Dealers Act".

SECTION 7. AMENDATORY 2 O.S. 1991, Section 1751, is amended to read as follows:

Section 1751. As used in ~~this act~~ the Livestock Dealers Act:

1. "Board" means the Oklahoma Board of Agriculture;
2. "Person" means any individual, partnership, corporation, association or other form of business enterprise;
3. "Livestock" means cattle, sheep, swine, horses, mules and goats;
4. a. "Livestock dealer" means any person engaged in the business of buying or selling livestock in commerce; or any person registered and bonded under the provisions of the Federal Packers and Stockyards Act of 1921, as amended, who buys livestock. Any person shall be regarded as operating as a livestock dealer within the meaning of the Livestock Dealers Act, who:
 - (1) holds oneself out as an order-buyer, livestock dealer or livestock agent, or
 - (2) offers or undertakes, by name, any means or methods to purchase livestock for another for a fee or commission,
- b. The term livestock dealer shall not include:
 - (1) a person who buys or sells livestock as part of his such person's own bona fide breeding, feeding or dairy or beef operations, ~~nor~~
 - (2) a person who receives livestock exclusively for immediate slaughter on his such person's own premises; ~~nor, or~~
 - (3) a farmer or rancher who buys livestock in the ordinary course of his such farmer's or rancher's farming or ranching operation unless he such farmer or rancher is registered and bonded under the Federal Packers and Stockyards Act of 1921, as amended. ~~It shall be unlawful and a misdemeanor for any person to operate as a livestock dealer without a valid livestock dealer's license;~~
5. "Livestock special sale" means any public or private sale of livestock by public auction except livestock sales conducted under the provisions of Sections 9-131 through 9-137 of this title and farm auctions; and

6. "Department" means the State Department of Agriculture.

SECTION 8. AMENDATORY 2 O.S. 1991, Section 1752, is amended to read as follows:

Section 1752. A. Every livestock dealer shall maintain written records as required by the Federal Packers and Stockyards Act of 1921, as amended, and any other written records which are necessary and adequate to determine the sources and disposition of livestock that are, or have been, in his said dealer's possession within the previous twenty-four (24) months.

B. The State Board of Agriculture and ~~all authorized law enforcement officers~~ its authorized agents shall have access to examine the records of all livestock dealers within reasonable working hours.

C. Any holder of a license or permit issued pursuant to the Livestock Dealers Act shall be deemed to have given consent to any authorized officer, employee, or agent of the Department to enter and inspect a livestock facility or examine the records of a livestock dealer in accordance with the provisions of the Livestock Dealers Act. Refusal to permit entry or inspection, except for good cause, shall constitute grounds for denial, suspension, nonrenewal,

or revocation of a license as provided in the provisions of the Livestock Dealers Act.

D. 1. Each livestock dealer shall be licensed by the State Department of Agriculture. The Department shall require each applicant for licensure to provide proof of a bond or other financial instrument as required by the Federal Packers and Stockyards Act of 1921, as amended. No bond shall be less than Ten Thousand Dollars (\$10,000.00). It shall be a violation of the Livestock Dealers Act for anyone to act as a livestock dealer without a valid livestock dealer license.

2. Livestock purchased by any packer, market agency or dealer shall be paid for in accordance with Section 409.24 of the Federal Packers and Stockyards Act of 1921, as amended.

SECTION 9. AMENDATORY 2 O.S. 1991, Section 1753, is amended to read as follows:

Section 1753. A. The State Board of Agriculture shall have authority to promulgate all necessary rules and regulations for the implementation of this act the Livestock Dealers Act.

~~Any violation of this act shall be a misdemeanor~~ B. The Department shall have the power and duty to:

1. Issue, renew, suspend, revoke, modify or deny licenses to livestock dealers pursuant to the Livestock Dealers Act;

2. Issue, renew, suspend, revoke, modify or deny a permit to conduct a livestock special sale;

3. Enter upon public and private property for the purpose of making inspections required by the Livestock Dealers Act;

4. Enforce the standards and rules promulgated by the Board pursuant to the Livestock Dealers Act;

5. Investigate complaints and hold hearings;

6. Initiate proceedings, request prosecution of and initiate injunctive proceedings against any person who violates any of the provisions of the Livestock Dealers Act or any rule promulgated pursuant to the Livestock Dealers Act;

7. Establish and assess administrative penalties against any person who violates any of the provisions of the Livestock Dealers Act or any rule promulgated pursuant to the Livestock Dealers Act;

8. Establish the term and fee for licenses; and

9. Exercise all incidental powers as necessary and proper to implement and enforce the provisions of the Livestock Dealers Act and the rules of the Board promulgated pursuant thereto.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1753.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. Whenever the State Department of Agriculture determines there are reasonable grounds to believe that there has been a violation of any of the provisions of the Livestock Dealers Act or of any rules promulgated thereto or any order of the Department, it shall give written notice to the alleged violator specifying the cause of complaint.

2. Such notice shall require that the matters complained of be corrected or that the alleged violator appear before the Department at a time and place determined by the Department and answer the charges.

3. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection D of this section not less than twenty (20) days before the time set for the hearing.

B. 1. The Department shall afford the alleged violator an opportunity for a fair hearing in accordance with the provisions of Article II of the Administrative Procedures Act. On the basis of the evidence produced at the hearing, the Department shall make

findings of fact and conclusions of law and enter an order thereon. The Department shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing and made written request for notice of the order.

2. Recommendations for findings of fact and conclusions of law shall be transmitted by the hearing officer to the State Board of Agriculture which shall thereupon enter its order. The Board may, in its discretion, enter its order on the basis of such record or, before issuing its order, require additional hearings or further evidence to be presented.

3. The order of the Board shall become final and binding on all parties unless appealed to the district court as provided in Article II of the Administrative Procedures Act.

C. 1. Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or welfare, it may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order shall be effective immediately.

2. Any person to whom such an order is directed shall comply therewith immediately but on application to the Board shall be afforded a hearing within ten (10) days.

3. On the basis of such hearing, the Board shall continue such order in effect, revoke it or modify it. Any person aggrieved by such order may appeal to the district court of the area affected within thirty (30) days. The appeal when docketed shall have priority over all cases pending on said docket, except criminal.

D. 1. Except as otherwise expressly provided by law, any notice, order or other instrument issued by or under authority of the Board shall be served on any person pursuant to the provisions of Section 2005 of Title 12 of the Oklahoma Statutes.

2. Proof of such service shall be made as in case of service of a summons or by publication in a civil action, such proof to be filed in the office of the Department; or such service may be made by mailing a copy of the notice, order or other instrument by registered mail directed to the person affected at such person's last-known post office address as shown by the files or records of the Department, and proof thereof may be made by the affidavit of the person who did the mailing, and filed in the office of the Department.

E. Every certificate or affidavit of service made and filed as provided for in this section shall be prima facie evidence of the facts therein stated, and a certified copy thereof shall have like force and effect.

F. The hearings as provided for in this section may be conducted by the Board itself at a regular or special meeting of the Board, or the Board may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the Board at any time and place. Such hearings shall be conducted in conformity with and records made thereof as provided in the Administrative Procedures Act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1753.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

The State Department of Agriculture may request the Attorney General to bring an action in a court of competent jurisdiction for equitable relief to redress or restrain a violation by any person of a provision of the Livestock Dealers Act, or a rule or order issued pursuant to the provisions of the Livestock Dealers Act. Said court has jurisdiction to determine said action, and to grant the

necessary or appropriate relief including, but not limited to, mandatory or prohibitive injunctive relief or other interim equitable relief.

SECTION 12. AMENDATORY 2 O.S. 1991, Section 1754, is amended to read as follows:

Section 1754. A. It shall be a misdemeanor for any person to ~~conduct:~~

1. Operate as a livestock dealer without a valid livestock dealer license;

2. Conduct a livestock special sale without a valid permit issued by the State Board of Agriculture for the time and place of the sale; and

3. Otherwise violate the Livestock Dealers Act or any rule or order issued pursuant to the Livestock Dealers Act.

B. It shall be a misdemeanor for any livestock dealer to fail to provide the Board with adequate records and other information to trace the origin of livestock in each consignment delivered to the livestock auction market.

C. After a hearing in accordance with the Administrative Procedures Act, the State Board of Agriculture has the authority to impose a fine not to exceed One Hundred Dollars (\$100.00) for the first offense, Two Hundred Fifty Dollars (\$250.00) for the second offense and Five Hundred Dollars (\$500.00) for each succeeding offense on every person operating or conducting a livestock auction market ~~for failure to provide the Board with adequate records and means to trace the origin of livestock in each consignment delivered to the livestock auction market.~~

D. Any person engaging in business as a livestock dealer after the license of such person has been revoked, suspended or nonrenewed, or at any time such person has violated the provisions of the Livestock Dealers Act or any rule or order issued pursuant thereto, upon conviction thereof, shall be guilty of a misdemeanor and shall be punished by a fine of not less than One Hundred Dollars (\$100.00) and not exceeding Five Thousand Dollars (\$5,000.00), or by imprisonment in the county jail not less than thirty (30) days nor exceeding one (1) year or by both such fine and imprisonment. Each day of such violation shall be a separate offense.

SECTION 13. It is the intention of the Legislature that the provisions of this act shall not be construed to expand or otherwise increase any reporting requirements beyond those which are in effect on the effective date of this act.

SECTION 14. Section 13 of this act shall not be codified in the Oklahoma Statutes.

SECTION 15. This act shall become effective November 1, 1996.

Passed the House of Representatives the 7th day of May, 1996.

Speaker of the House of
Representatives

Passed the Senate the 14th day of May, 1996.

President of the Senate