

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2988

By: Leist

AS INTRODUCED

An Act relating to agriculture; amending 2 O.S. 1991, Sections 9-132, 9-133 and 9-138, which relate to the Livestock Auction Market Act; providing for other surety; authorizing the State Board of Agriculture to establish fees; modifying certain terms increasing authority of the State Board of Agriculture; providing for seizure of assets; providing for limitation; providing for receiving and depositing of certain assets; providing for certain additional costs; providing for establishment of a date of loss; requiring proof of ownership; providing for procedures; requiring administrative fees; providing for proportioning of monies; providing for determination of loss; providing for notification; requiring surrender of certain funds; providing for certain interest; authorizing use of other remedies; authorizing liens; providing for procedure and type of property; providing for codification; 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 surety allowable for livestock markets by the U.S. Packers and Stockyards Act, 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 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 obligations under the provisions of the federal Packers and Stockyards Act, 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 Packers and Stockyards Act, 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 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)~~ established by the Board shall be charged and collected for the issuance or renewal of any such license. Any such license may be 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 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.

A. Livestock means cattle, ~~hogs or~~ swine, sheep, horses, mules or goats.

B. 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. Person means any individual, firm, partnership, corporation or other organization or business entity.

D. 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. 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.

SECTION 4. 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, revocation or expiration of any livestock auction market license, the Board shall have the authority to seize any and all assets which belong to the custodial account for shippers' proceeds, including 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. Any seizure of assets shall be limited to custodial account assets as determined by the Board. 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. 1. 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 expired or has been suspended or revoked.

2. Should seizure of livestock be necessary, any cost to the Board in marketing the livestock such as hauling, feed, yardage or commissions, shall be deducted from the proceeds from the sale of said livestock.

D. 1. The Board may establish a date of loss which shall be the basis for all claims of loss against a person operating, conducting or maintaining a livestock auction market.

2. To be eligible to file a claim of loss and receive payment as provided in the Livestock Auction Market Act, a person must establish ownership or title to assets or title to livestock. Evidence of such ownership or title shall include but shall not be limited to bills of sale, receipts, tickets or other evidence of ownership. The Board shall determine the sufficiency of evidence of ownership or title.

3. Shippers shall, within sixty (60) days from the last sale prior to the order of the Board establishing the date of loss, file a written claim of loss with the Board. If such claim of loss is not filed within the time specified, the shipper shall forfeit all rights to remuneration or payment as provided in the Livestock Auction Market Act.

E. Upon seizure 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 or other costs in the marketing or handling of any livestock seized.

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

F. 1. After distribution of assets, the Department shall proceed to ascertain if there is any loss to the shipper and obtain proof thereof. Upon ascertainment of any such loss, the Board shall immediately notify any bonding company that provided bond for such loss. As soon as practicable, the Board shall communicate the amount of such loss along with proof thereof and the date of loss as determined by the Board to the bonding company.

2. Failure by the bonding company to surrender such funds shall result in a nonrefundable penalty assessment payable to the Board of one percent (1%) per month plus interest of one percent (1%) per month of the face amount of the bond or surety, commencing with the date of loss and continuing until such surety funds are surrendered.

3. Nothing herein contained shall prohibit the Board from pursuing any other remedy provided by the Livestock Auction Market Act or as otherwise provided by law.

G. To afford added protection to the custodial account for shippers' proceeds, upon suspension or revocation of the state or federal license, the State Board of Agriculture may file a lien in the office of the court clerk of any county in which such person operating, conducting or maintaining a livestock auction market has property against all assets of the person operating, conducting or maintaining a livestock auction market in such county, in an amount to be fixed by the Board. Such lien may be enforced in a court of competent jurisdiction.

SECTION 5. This act shall become effective November 1, 1996.

45-2-8318

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