

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2989

By: Leist

AS INTRODUCED

An Act relating to agriculture; providing for the Livestock Dealers Act; modifying terms; adding to powers and duties of the State Department of Agriculture; providing for deemed consent with license issuance; providing procedure for alleged violations; providing for notice and opportunity for hearing; providing procedure; providing for emergencies; providing for appeals; requiring finding of facts and conclusions of laws; providing for hearings and services; authorizing the Attorney General to seek certain relief; providing for jurisdiction; specifying unlawful acts; setting certain penalties; providing for codification; and providing an effective date.

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

SECTION 1. 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:

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

SECTION 2. 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 himself out as an order-buyer, livestock trader or livestock dealer, livestock agent, or
 - (2) offers or undertakes, by name, any means or methods to purchase cattle 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 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 3. AMENDATORY 2 O.S. 1991, Section 1753, is amended to read as follows:

Section 1753. A. The Board 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. Employ personnel to conduct investigations and inspections;

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

6. Investigate complaints and hold hearings;

7. 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;

8. Establish and levy administrative fines against any person who violates any of the provisions of the Livestock Dealers Act or any rule promulgated pursuant to the Livestock Dealers Act;

9. Serve as the custodian of the bond or other surety;
10. Establish the term and fee for licenses; and
11. 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 4. 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 dealers possession within the previous twenty-four (24) months.

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

C. Any holder of a license or permit 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, 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 Department. The Department shall require each applicant for licensure to provide proof of a bond or other surety as required by the Federal Packers and Stockyards Act, as amended. No bond shall be less than Ten Thousand Dollars (\$10,000.00). It shall be a violation of this act for anyone to act as a livestock dealer without a valid livestock dealer license.

2. Each livestock dealer purchasing livestock, before the close of the next business day following the purchase of livestock and transfer of possession thereof, shall deliver to the seller or his duly authorized representative the full amount of the purchase price.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1752.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. Whenever the Department determines there are reasonable grounds to believe that there has been a violation of any of the provisions of the Livestock Dealers Act 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 the 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 Board 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; provided, that any person aggrieved by such order may appeal to the district court of the area affected within thirty (30) days. Such 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 may be served on any person affected thereby personally or by publication.

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 Board; 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 his 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 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1752.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Department 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, interim equitable relief, and punitive damages.

SECTION 7. 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 Board of Agriculture for the time and place of the sale;

3. Fail to provide the Board with adequate records and means to trace the origin of livestock in each consignment delivered to the livestock auction market; and

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

B. After a hearing in accordance with the Administrative Procedures Act, the 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.~~

C. Any person engaging in business as a livestock dealer after the license of such person has been revoked, or while such person is under suspension, 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 8. This act shall become effective November 1, 1996.

45-2-8319

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