

LIVESTOCK MARKET AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Dennis H. Iverson

AN ACT RELATING TO AGRICULTURE; REQUIRING AGENTS FOR LIVESTOCK MARKETS TO BE LICENSED; CHANGING THE MEMBERSHIP OF THE LIVESTOCK AUCTION COMMITTEE; ALLOWING THE COMMISSIONER OF AGRICULTURE AND FOOD TO APPOINT THE MEMBERS OF THE LIVESTOCK AUCTION COMMITTEE; SPECIFYING REQUIREMENTS PERTAINING TO THE APPLICATION FOR AND TRANSFER OF A LIVESTOCK MARKET LICENSE; REQUIRING A LIVESTOCK MARKET TO MAINTAIN A FINANCIAL CONDITION OF TOTAL ASSETS IN EXCESS OF TOTAL LIABILITIES AND TO MAINTAIN A CUSTODIAL ACCOUNT; AND PROVIDING FOR THE SUSPENSION OR REVOCATION OF A LIVESTOCK MARKET LICENSE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 4-7-3, as last amended by Chapter 302, Laws of Utah 1997
- 4-30-1, as enacted by Chapter 2, Laws of Utah 1979
- 4-30-2, as last amended by Chapter 243, Laws of Utah 1996
- 4-30-4, as last amended by Chapter 130, Laws of Utah 1985
- 4-30-7, as enacted by Chapter 2, Laws of Utah 1979
- 4-30-9, as enacted by Chapter 2, Laws of Utah 1979

ENACTS:

- 4-30-7.5, Utah Code Annotated 1953
- 4-30-7.6, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 4-7-3 is amended to read:

4-7-3. Definitions.

As used in this chapter:

- (1) "Agent" or "broker" means any person who, on behalf of a dealer [or], purchaser, or

livestock market, as defined in Section 4-30-1, solicits or negotiates the consignment or purchase of any product of agriculture.

(2) "Consignor" means any person who ships or delivers any product of agriculture to a dealer for storage, handling, or sale.

(3) (a) "Dealer" means any person who:

(i) receives any product of agriculture from any person for sale or storage on commission; and

(ii) is entrusted with the possession, management, control, or disposal of any product of agriculture for the account of that person.

(b) "Dealer" includes ["] a livestock dealer.["]

(4) (a) "Immediate resale" means the resale of livestock within 60 days of purchase.

(b) "Immediate resale" does not include the resale of livestock culled within 60 days that were purchased for feeding or replacement.

(5) "Livestock" means cattle, swine, equines, sheep, camelidae, ratites, bison, and domesticated elk as defined in Section 4-39-102.

(6) "Livestock dealer" means a person engaged in the business of purchasing livestock for immediate resale or interstate shipment for immediate resale.

(7) "Producer" means any person who is primarily engaged in the business of raising any product of agriculture for profit.

(8) "Product of agriculture" means any product useful to the human species which results from the application of the science and art of the production of plants and animals.

Section 2. Section **4-30-1** is amended to read:

4-30-1. Definition.

For the purpose of this chapter ["]livestock[":

(1) "Consignor" or "shipper" means any person who consigns, ships, or delivers livestock to a livestock market for storage, handling, or sale.

(2) (a) "Livestock market" means a public market place consisting of pens or other enclosures where all classes of livestock or poultry are received on consignment and kept for subsequent sale,

either through public auction or private sale[;but it].

(b) "Livestock market" does not [mean] include:

[(a)] (i) a place used solely for liquidation of livestock by a farmer, dairyman, livestock breeder, or feeder who is going out of such business; or

[(b)] (ii) a place where an association of livestock breeders or an individual livestock breeder offers registered livestock or breeding sires for sale and assumes all responsibility for the sale, guarantees title to the livestock or sires sold, and arranges with the department for brand inspection of all animals sold.

(3) "Person" means an individual, partnership, corporation, or association.

Section 3. Section **4-30-2** is amended to read:

4-30-2. Livestock Market Committee created -- Composition -- Terms -- Removal -- Compensation -- Duties.

(1) There is created a Livestock Market Committee which consists of the following seven members appointed to a four-year term of office by the [governor] commissioner:

[(a)] ~~the commissioner who serves as chair;~~

[(b)] (a) one member recommended by the livestock market operators in the state;

[(c)] (b) one member recommended by the Utah Cattlemen's Association;

[(d)] (c) one member recommended by the Utah Dairymen's Association;

[(e)] (d) one member recommended by the Utah Woolgrowers' Association;

[(f)] (e) one member recommended by the horse industry; [and]

[(g)] (f) one member recommended by the Utah Farm Bureau Federation; and

(e) one member recommended by the Utah Farmers Union.

(2) Notwithstanding the requirements of Subsection (1), the [governor] commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(3) No more than four members[~~, exclusive of the commissioner,~~] shall be members of the same political party.

(4) (a) The [governor] commissioner may remove a member of the committee at the request of the association or group which recommended the member's appointment.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) The Livestock Market Committee shall elect a chair from its membership, who shall serve for a term of office of two years, but may be reelected for subsequent terms.

[(5)] (6) (a) The chair is responsible for the call and conduct of meetings.

(b) Four members constitute a quorum for the transaction of official business.

[(6)] (7) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

[(7)] (8) The Livestock Market Committee acts as advisor to the department with respect to the administration and enforcement of this chapter and makes recommendations necessary to carry out the intent of this chapter to the commissioner.

Section 4. Section **4-30-4** is amended to read:

4-30-4. License required -- Application -- Fee -- Expiration -- Renewal.

(1) (a) No person may operate a livestock market in this state without a license issued by the department.

(b) Application for a license shall be made to the department upon forms prescribed and furnished by it. The application shall specify:

[(a)] (i) if the applicant is an individual, the name [and], address, and date of birth of the applicant [and a statement of]; or

(ii) if the applicant is a partnership, corporation, or association, the name [and], address, and date of birth of each person who has a financial interest in the applicant and the amount of [such] each person's interest;

[(b)] (iii) a certified statement of the financial assets and liabilities of the applicant[;]
detailing:

(A) current assets;

(B) current liabilities;

(C) long-term assets; and

(D) long-term liabilities;

[(c)] (iv) a legal description of the property where the market is proposed to be located, its street address, and a description of the facilities proposed to be used in connection with it;

[(d)] (v) a schedule of the charges or fees the applicant proposes to charge for each service rendered; and

[(e)] (vi) a detailed statement of the trade area proposed to be served by the applicant, the potential benefits which will be derived by the livestock industry, and the specific services the applicant intends to render at [such] the livestock market.

(2) (a) Upon receipt of a proper application, payment of a license fee in an amount determined by the department pursuant to Subsection 4-2-2(2), and a favorable recommendation by the Livestock Market Committee, the commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue a license allowing the applicant to operate the livestock market proposed in the application valid through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.

(b) A livestock market license is annually renewable on or before December 31 of each year upon the payment of an annual license renewal fee in an amount determined by the department pursuant to Subsection 4-2-2(2).

(3) No livestock market original or renewal license may be issued until the applicant has

provided the department with a certified copy of a surety bond filed with the United States Department of Agriculture as required by the Packers and [Livestock] Stockyards Act [(1921, 7 U.S.C. Section 181 et seq.)];

Section 5. Section **4-30-7** is amended to read:

4-30-7. Transfer of livestock market license permitted -- Conditions.

(1) No livestock market license is transferable to another person without the prior approval of the commissioner.

(2) A change in the membership of a partnership or association, or the sale or transfer of a 25% or greater interest in the stock ownership of a corporate livestock market shall be considered a transfer of the livestock market license and is subject to the requirements of this section.

(3) Application to allow transfer of a livestock market license shall be made to the department on a form prescribed and furnished by it.

(4) The commissioner may grant a transfer of the license;

(a) if the proposed transferee meets all the requirements [and considerations] specified for an original license in [Subsection] Section 4-30-4(3); and

(b) based on the criteria specified in Section [4-30-5] 4-30-6.

Section 6. Section **4-30-7.5** is enacted to read:

4-30-7.5. Financial responsibility.

Each livestock market shall maintain a financial condition of total assets in excess of total liabilities, including total current assets in excess of total current liabilities.

Section 7. Section **4-30-7.6** is enacted to read:

4-30-7.6. Custodial accounts for trust funds.

(1) (a) Each payment that a livestock buyer makes to a livestock market selling on commission is a trust fund.

(b) Funds deposited in custodial accounts are trust funds.

(2) Each livestock market engaged in selling livestock on a commission or agency basis shall establish and maintain a separate bank account designated as "custodial account for shippers' proceeds" or some similar identifying designation, to disclose that the depositor is acting as a

fiduciary and that the funds in the account are trust funds.

(3) (a) The livestock market shall deposit in its custodial account before the close of the next business day after the livestock is sold:

(i) the proceeds from the sale of the livestock that have been collected; and

(ii) an amount equal to the proceeds receivable from the sale of livestock that are due from:

(A) the livestock market;

(B) any owner, officer, or employee of the livestock market; and

(C) any buyer to whom the livestock market has extended credit.

(b) The livestock market shall thereafter deposit in the custodial account all proceeds collected until the account has been reimbursed in full, and shall, before the close of the seventh day following the sale of livestock, deposit an amount equal to all the remaining proceeds receivable whether or not the proceeds have been collected by the livestock market.

(4) The custodial account shall be drawn on only for payment of:

(a) the net proceeds to the consignor or shipper, or to any person that the livestock market knows is entitled to payment;

(b) to pay lawful charges against the consignment of livestock which the market agency shall, in its capacity as agent, be required to pay; and

(c) to obtain any sums due the livestock market as compensation for its services.

(5) (a) Each livestock market shall keep accounts and records that will disclose at all times the handling of funds in the custodial account.

(b) Accounts and records must at all times disclose the name of the consignors and the amount due and payable to each from funds in the custodial account.

(6) The custodial account must be established and maintained in a bank whose deposits are insured by the Federal Deposit Insurance Corporation.

Section 8. Section **4-30-9** is amended to read:

4-30-9. Suspension or revocation of license -- Grounds.

The department is authorized to suspend or revoke the license of any livestock market or livestock market weighman who:

- (1) violates any provision of this chapter or any rule promulgated under this chapter; or
- (2) engages in any fraudulent or deceitful activity.