

## LEGISLATIVE BILL 197

Approved by the Governor February 13, 2001

Introduced by Dierks, 40

AN ACT relating to agriculture; to amend sections 2-3002 to 2-3005, 54-1162, 54-1175, 54-1180, and 54-1181, Reissue Revised Statutes of Nebraska, and sections 54-1156 to 54-1160, 54-1165, 54-1168, 54-1169, 54-1171 to 54-1174, 54-1176, and 54-1182, Revised Statutes Supplement, 2000; to change intent, prohibited acts, and department powers and duties relating to poultry disease control; to rename the Livestock Auction Act; to define terms; to change provisions relating to the Livestock Auction Market Board, weighing of livestock, and designated veterinarians; to harmonize provisions; to eliminate obsolete provisions and the Nebraska Livestock Market Act; to provide operative dates; to repeal the original sections; and to outright repeal sections 54-1164, 54-2002 to 54-2011, 54-2013, and 54-2015 to 54-2019, Reissue Revised Statutes of Nebraska, and sections 54-2001, 54-2012, and 54-2014, Revised Statutes Supplement, 2000.

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

Section 1. Section 2-3002, Reissue Revised Statutes of Nebraska, is amended to read:

2-3002. As used in the Nebraska Poultry Disease Control Act, unless the context otherwise requires:

(1) Poultry ~~shall mean domestic chickens, turkeys, ducks, and geese of all ages~~ means domesticated fowl, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, except doves and pigeons, which are bred for the primary purpose of producing eggs or meat;

(2) Hatching eggs ~~shall mean~~ means eggs of poultry for hatching purposes including embryonated eggs;

(3) Hatchery ~~shall mean~~ means hatchery equipment on one premises operated or controlled by any person;

(4) Breeding flock ~~shall mean~~ means two or more individuals of the same species and different sexes maintained together to produce fertile eggs for the hatching of offspring;

(5) Person ~~shall mean~~ means an individual, corporation, firm, partnership, or limited liability company or any member or officer thereof; and

(6) Pullorum and typhoid clean ~~shall mean~~ means poultry in which no ~~pullorum or typhoid~~ pullorum-typhoid reactors were found on the first official blood test or which have been retested with two consecutive official negative tests.

Sec. 2. Section 2-3003, Reissue Revised Statutes of Nebraska, is amended to read:

2-3003. The intent of the Nebraska Poultry Disease Control Act shall be to control and eradicate ~~hatchery-disseminated poultry~~ diseases, to provide for cooperation with the United States Department of Agriculture and other states to that end, and to provide authority to test breeding flocks and quarantine infected flocks.

Sec. 3. Section 2-3004, Reissue Revised Statutes of Nebraska, is amended to read:

2-3004. No person shall ~~buy,~~ sell, offer for sale, ship or import into this state, or buy from another state hatching eggs or poultry, except for immediate slaughter, unless the flock or hatchery of origin is following a disease control program officially approved or recognized by the State Veterinarian.

Sec. 4. Section 2-3005, Reissue Revised Statutes of Nebraska, is amended to read:

2-3005. (1) The State Veterinarian, subject to the approval of the Director of Agriculture, shall adopt and promulgate such rules and regulations ~~as are needed~~ to carry out the purposes and intent of the Nebraska Poultry Disease Control Act. As far as practical, the disease provisions of the rules and regulations officially promulgated by the United States Department of Agriculture, commonly known and cited as the National Poultry Improvement Plan and Auxiliary Provisions, shall be adopted (1) (a) to establish and maintain breeding poultry flocks and hatcheries as pullorum and typhoid clean, (b) to establish requirements for poultry being exhibited, (c) (2) ~~to require poultry entering exhibitions to be tested negative to pullorum and typhoid or originate in a flock which is pullorum and typhoid clean,~~ and (3) to assure

that only breeding poultry and hatching eggs which are pullorum and typhoid clean are moved into and within Nebraska, and (d) to establish testing requirements to monitor the presence of pullorum and typhoid in Nebraska.

(2) The State Veterinarian shall have quarantine power and may require reports and records from persons subject to the act as established in the rules and regulations.

Sec. 5. Section 54-1156, Revised Statutes Supplement, 2000, is amended to read:

54-1156. Sections 54-1156 to 54-1185 shall be known and may be cited as the Livestock Auction Market Act.

Sec. 6. Section 54-1157, Revised Statutes Supplement, 2000, is amended to read:

54-1157. It is hereby declared to be the policy of the State of Nebraska, and the purpose of the Livestock Auction Market Act, to encourage, stimulate, and stabilize the agricultural economy of the state in general, and the livestock economy in particular, by encouraging the construction, development, and productive operation of livestock auction markets as key industries of the state and those markets' particular trade areas, with all benefits of fully open, free, competitive factors, in respect to sales and purchases of livestock.

Sec. 7. Section 54-1158, Revised Statutes Supplement, 2000, is amended to read:

54-1158. As used in the Livestock Auction Market Act, unless the context otherwise requires:

(1) ~~Person means any individual, firm, association, partnership, limited liability company, or corporation;~~

~~(2) Department means the Department of Agriculture;~~

~~(3) Director means the Director of Agriculture;~~

(4) Accredited veterinarian means a veterinarian duly licensed by the State of Nebraska and approved by the deputy administrator of the United States Department of Agriculture in accordance with 9 C.F.R. part 161 as the regulations existed on the operative date of this section;

(2) Board means the Livestock Auction Market Board;

(3) Department means the Department of Agriculture;

(4) Designated veterinarian means an accredited veterinarian who has been designated and authorized by the State Veterinarian to make inspections of livestock at livestock auction markets as may be required by law or regulation whether such livestock is moved in interstate or intrastate commerce;

(5) Director means the Director of Agriculture;

(6) ~~(5) Livestock means cattle, calves, horses, mules, swine, sheep, and goats;~~

~~(6) (7) Livestock auction market means any place, establishment, or facility commonly known as a livestock auction market, sales ring, or the like, conducted or operated for compensation as an auction market for livestock, consisting of pens or other enclosures, and their appurtenances, in which livestock are received, held, sold, or kept for sale or shipment;~~

~~(7) Market license means the license for livestock auction market operation authorized to be issued under the act; and~~

(8) Livestock auction market operator means any person engaged in the business of conducting or operating a livestock auction market, whether personally or through agents or employees;

(9) Market license means the license for a livestock auction market authorized to be issued under the act;

(10) Person means any individual, firm, association, partnership, limited liability company, or corporation; and

(11) State Veterinarian means the veterinarian in charge of the Bureau of Animal Industry within the department or his or her designee, subordinate to the director.

Sec. 8. Section 54-1159, Revised Statutes Supplement, 2000, is amended to read:

54-1159. The Livestock Auction Market Act shall not be construed to include:

(1) Any place or operation where Future Farmers of America, ~~or~~ 4-H groups, or private fairs conduct sales of livestock;

(2) Any place or operation conducted for a dispersal sale of the livestock of farmers, dairypersons, or livestock breeders or feeders, where no other livestock is sold or offered for sale; or

(3) Any place or operation where a breeder or an association of breeders of livestock assemble and offer for sale and sell under their own management any livestock, when such breeders ~~shall~~ assume all responsibility of such sale and the title of livestock sold. This shall apply to all

purebred livestock association sales.  ~~+ or~~

~~(4) Any presently existing livestock market known as a terminal livestock market and regulated under the provisions of the federal Packers and Stockyards Act, 1921, 7 U.S.C. 181 et seq., and amendments thereto.~~

Sec. 9. Section 54-1160, Revised Statutes Supplement, 2000, is amended to read:

54-1160. There is hereby created in the Department of Agriculture a Livestock Auction Market Board consisting of three members. The board shall consist of the Director of Agriculture, the State Veterinarian, and a livestock auction market operator to be appointed by the Governor. The Director of Agriculture shall be chairperson of the board. The term of office of the appointed member shall be four years. The appointed member shall receive as compensation for his or her services the sum of ~~ten~~ fifty dollars per day or twenty-five dollars per half day and actual expenses incurred while in the discharge of his or her duties. The board shall meet ~~at least quarterly~~ for the ordinary transaction of official business and ~~otherwise~~ at the call of the director. A majority affirmative vote of the board shall be necessary to constitute an official act.

The board shall have power and duty to:

- (1) Administer the Livestock Auction Market Act in respect to recommending the issuance, suspensions, and revocations of market licenses;
- (2) Prescribe and adopt the forms of application for market licenses, the forms of notice of hearings on market license applications, and such other forms as necessary to perform and carry out its functions;
- (3) Adopt and promulgate rules subject to the approval of the director governing the conduct of hearings before it for applications for market licenses, transfers, suspensions, and revocations consistent with the Livestock Auction Market Act and not contrary to the general laws of Nebraska governing hearings before administrative boards; and
- (4) Administer section 54-1166 relating to terminations of market licenses and hearings regarding such terminations.

Sec. 10. Section 54-1162, Reissue Revised Statutes of Nebraska, is amended to read:

54-1162. Upon the filing of the application as provided in section 54-1161, the director shall fix a reasonable time for the hearing at a place designated by him or her at which time a hearing shall be held on the proposed location of the livestock auction market. The director forthwith shall cause a copy of such application, together with notice of the time and place of hearing, to be served by mail not less than fifteen days prior to such hearing, upon the following:

- (1) All duly organized statewide livestock associations in the state who have filed written requests with the board to receive notice of such hearings and such other livestock associations as in the opinion of the director would be interested in such application; and
- (2) ~~The operators of all~~ All livestock auction ~~markets~~ market operators in the state.

The director shall give further notice of such hearing by publication of the notice thereof once in a daily or weekly newspaper circulated in the city or village where such hearing is to be held, as in the opinion of the director will give reasonable public notice of such time and place of hearing to persons interested therein.

Sec. 11. Section 54-1165, Revised Statutes Supplement, 2000, is amended to read:

54-1165. Every livestock auction market operator shall pay annually, on or before August 1, a market license fee of one hundred fifty dollars to the board for each livestock auction market operated by him or her, which payment shall constitute a renewal for one year. Fees so paid shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund for the use of the board in paying the expenses of administration of the Livestock Auction Market Act.

Sec. 12. Section 54-1168, Revised Statutes Supplement, 2000, is amended to read:

54-1168. Every market license holder under the Livestock Auction Market Act shall keep an accurate record of all transactions conducted in the ordinary course of his or her business. Such records shall be available for examination of the board, or its duly authorized representative, in respect to a market license issued under such act.

Sec. 13. Section 54-1169, Revised Statutes Supplement, 2000, is amended to read:

54-1169. The board may, upon its own motion, whenever it has reason to believe the provisions of the Livestock Auction Market Act have been violated, or upon verified complaint of any person in writing, investigate the

actions of any market license holder, and if it finds probable cause to do so, shall file a complaint against the market license holder which shall be set down for hearing before the board upon fifteen days' notice served upon such market license holder either by personal service upon him or her or by registered or certified mail or telegram prior to such hearing.

The director shall have the power to administer oaths, certify to all official acts, and subpoena and bring before the board any person in this state as a witness, to compel the producing of books and papers, and to take the testimony of any person on deposition in the same manner as is prescribed by law in the procedure before the courts of this state in civil cases. Processes issued by the director shall extend to all parts of the state and may be served by any person authorized to serve processes. Each witness who shall appear by the order of the director at any hearing before the board shall receive for such attendance the same fees allowed by law to witnesses in civil cases appearing in the district court and mileage at the same rate provided in section 81-1176, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness has not been required to attend at the request of any party, but has been subpoenaed by the director, his or her fees and mileage shall be paid by the director in the same manner as other expenses of the board are paid.

All powers of the director as provided in this section shall likewise be applicable to hearings held on applications for the issuance of a market license.

Formal finding by the board after due hearing that any market license holder: (1) Has ceased to conduct a livestock auction market business; (2) has been guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock; (3) has violated any of the provisions of the Livestock Auction Market Act; or (4) has violated any of the rules or regulations adopted and published by the board, shall be sufficient cause for the suspension or revocation of the market license of the offending livestock auction market operator.

Sec. 14. Section 54-1171, Revised Statutes Supplement, 2000, is amended to read:

54-1171. Any person who violates any provision or requirements of the Livestock Auction Market Act is guilty of a Class II misdemeanor. Each day any person operates or conducts a livestock auction market in this state without a license as prescribed in such act is considered a separate offense. The director may institute proceedings to enjoin the operation of a livestock auction market if the person sought to be enjoined is operating a livestock auction market without a market license in good standing as provided in such act.

Sec. 15. Section 54-1172, Revised Statutes Supplement, 2000, is amended to read:

54-1172. Salaries and expenses of employees, costs of hearings, and all other costs of the board in the administration of the Livestock Auction Market Act shall be paid from the Livestock Auction Market Fund which is hereby created. Any money in the Livestock Auction Market Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 16. Section 54-1173, Revised Statutes Supplement, 2000, is amended to read:

54-1173. The license and permit fees collected as provided by the Livestock Auction Market Act are an occupation tax and shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund. All money so collected shall be appropriated to the uses of the Department of Agriculture for the purpose of administering such act and shall be paid out only on vouchers approved by the director and upon the warrant or warrants issued by the Director of Administrative Services. Any unexpended balance in such fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium; otherwise it shall lapse into the General Fund.

Sec. 17. Section 54-1174, Revised Statutes Supplement, 2000, is amended to read:

54-1174. A copy of any license and bond provided for in the Livestock Auction Market Act and certified by the director may be procured upon payment of a fee of one dollar for each copy and shall be received as competent evidence in any court in the State of Nebraska without further proof.

Sec. 18. Section 54-1175, Reissue Revised Statutes of Nebraska, is amended to read:

54-1175. No license or renewal license to establish or operate a livestock auction market within the State of Nebraska shall be issued, nor

shall any duly licensed livestock auction market within the state continue to operate, unless the livestock ~~handled~~ weighed by such livestock auction market ~~shall be~~ are weighed by a weighmaster duly licensed by the director to weigh livestock in livestock auction markets in the State of Nebraska.

Sec. 19. Section 54-1176, Revised Statutes Supplement, 2000, is amended to read:

54-1176. Upon application in writing to the director, accompanied by a permit fee of one dollar, the director shall issue annual licenses to weighmasters required by section 54-1175. If the applicant is an individual, the application shall include the applicant's social security number. Subject to the conditions of the Livestock Auction Market Act, the director may summarily dismiss any weighmaster employee at any livestock auction market at any time. The money arising from permit fees of weighmasters shall be occupation tax and not license money.

Sec. 20. Section 54-1180, Reissue Revised Statutes of Nebraska, is amended to read:

54-1180. All cattle, calves, ~~horses, mules,~~ swine, sheep, and goats, upon entering a livestock auction ~~markets~~ market, shall be inspected for health before being offered for sale. Such inspection shall be made by a designated veterinarian. ~~who has been designated and authorized by the State Veterinarian to make inspections of livestock at livestock auction markets as may be required by law or regulation, whether such livestock is moved in interstate or intrastate commerce.~~ The fees for such inspection shall be established by rules and regulations of the State Veterinarian and shall be collected by the operator of the livestock auction market. Such fees shall be used to pay the fees of necessary inspections and for no other purpose, and shall be remitted as may be provided by regulation. ~~When remitted to the state, the~~ The fees shall be ~~placed in~~ remitted to the State Treasurer for credit to the Livestock Auction Market Fund and shall be expended exclusively to pay the fees of providing necessary inspections at the livestock auction market which has remitted such fees. Each designated veterinarian making market inspections shall be paid twenty-five dollars for each regularly scheduled sale day in each calendar month as a guaranteed minimum salary for providing adequate inspection services. If the fees collected each calendar month by the market operator do not equal such amount, the market operator shall make up the difference in his or her remittance to the state. The rules and regulations establishing fees for such inspection shall not be adopted, amended, or repealed until after notice by mail to each market licensee and ~~authorized inspector~~ designated veterinarian of the time and place of hearing on the question of adoption, amendment, or repeal of such rules and regulations; such notice shall be mailed at least ten days prior to the date of hearing and shall be sufficient if addressed to the last-known address of ~~such licensee or inspector~~ each market licensee and designated veterinarian shown on the records of the department.

Sec. 21. Section 54-1181, Reissue Revised Statutes of Nebraska, is amended to read:

54-1181. The State Veterinarian shall make the designation of the ~~veterinarian~~ veterinarians required by sections 54-1180 and 54-1182 by entering into an agreement with any duly licensed accredited veterinarian for his or her professional services in performing necessary inspections. Such agreement shall provide that the State Veterinarian may terminate it at any time for what he or she deems to be just cause, and shall further provide that the state ~~shall~~ pay such veterinarian a fee as established by ~~the provisions of~~ section 54-1180, which amount shall be paid monthly from the Livestock Auction Market Fund. Such ~~contract agreement~~ shall make the designated veterinarian an agent for the Department of Agriculture to perform the duties assigned by sections 54-1180 and 54-1182, and the rules and regulations prescribed by the State Veterinarian, but shall not be deemed to make the designated veterinarian an officer or employee of the state. The orders of such designated veterinarian, issued in the performance of the duties assigned ~~him by~~ under sections 54-1180 and 54-1182, and the rules and regulations prescribed by the State Veterinarian, shall have the same force and effect as though such order had been made by the State Veterinarian. ~~Veterinarians, designated in accordance with the requirements of this section,~~ Designated veterinarians shall not be liable for reasonable acts performed to carry out the duties as set forth in sections 54-1180 and 54-1182 and the rules and regulations prescribed by the State Veterinarian pursuant to such sections.

Sec. 22. Section 54-1182, Revised Statutes Supplement, 2000, is amended to read:

54-1182. Any livestock sold or disposed of at a livestock auction market, before removal therefrom, shall be released by the authorized designated veterinarian, ~~designated by the State Veterinarian as provided in~~

~~the Livestock Auction Act,~~ and treated to conform with the health requirements of the rules and regulations prescribed by the State Veterinarian for the movement of livestock. When required, the ~~authorized~~ designated veterinarian shall furnish each owner with a certificate showing such inspection, treatment, or quarantine. No such livestock for interstate or intrastate shipment shall be released until all the requirements of the state of its destination ~~shall~~ have been complied with. Any diseased or exposed livestock shall be handled in accordance with the rules and regulations as prescribed by the State Veterinarian.

Sec. 23. Sections 1 to 4 and 24 of this act become operative on January 1, 2002. The other sections of this act become operative on their effective date.

Sec. 24. Original sections 2-3002 to 2-3005, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 25. Original sections 54-1162, 54-1175, 54-1180, and 54-1181, Reissue Revised Statutes of Nebraska, and sections 54-1156 to 54-1160, 54-1165, 54-1168, 54-1169, 54-1171 to 54-1174, 54-1176, and 54-1182, Revised Statutes Supplement, 2000, are repealed.

Sec. 26. The following sections are outright repealed: Sections 54-1164, 54-2002 to 54-2011, 54-2013, and 54-2015 to 54-2019, Reissue Revised Statutes of Nebraska, and sections 54-2001, 54-2012, and 54-2014, Revised Statutes Supplement, 2000.