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Senate File 179  
Agriculture  
Scott, Chairman  
Merritt  
Shaff

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SENATE FILE 179

By RODGERS, NORPEL, GALLAGHER, MILLER of Des Moines, CURTIS, CULVER, COLEMAN, HEYING, GRIFFIN, DeKOSTER, NYSTROM, PLYMAT, WILLITS, ORR, ROBINSON, LAMBORN, BERGMAN, TIEDEN, SCHWENGELS, HULTMAN and GLUBA (Junker, Doyle, Fullerton, Scheelhaase, Tofte, Hines, Higgins, Dieleman, Bina, Hullinger, Stromer, Hansen, Wyckoff, Jordan, Stephens, Hennessey, Daggett, Halvorson, Evans, Woods, Wells, Millen, Drake, Newhard, Harper, McElroy, Mennenga, Poncy, Howell, Schroeder, Nealson of Muscatine, Danker, Gilloon, Hinkhouse, Pellett, Connors, Pavich, Walter, Jochum, Oakley, Lindeen, Miller of Buchanan, Rinas, Dyrland, Caffrey, Middleswart, Kreamer, Lageschulte, Patchett, Welden, Egenes, Den Herder, Bortell, Spencer, Menke, Norland, Hargrave, Crawford, Anderson, Lonergan, Small, Harvey, Griffee, Dunton, Varley, Krause and Cusack)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the business of purchasing livestock for  
2 slaughter, and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section one hundred seventy-two A point one  
2 (172A.1), subsection three (3), Code 1975, is amended to read  
3 as follows:

4 3. "Dealer" or "broker" means any person ~~determined-by~~  
5 ~~the-department-of-agriculture-to-be~~ engaged in the business  
6 either of slaughtering live animals, or of receiving or buying  
7 live animals for slaughter.

8 Sec. 2. Section one hundred seventy-two A point two  
9 (172A.2), Code 1975, is amended by striking the section and  
10 inserting in lieu thereof the following:

11 172A.2 LICENSE REQUIRED. A dealer, broker, or agent shall  
12 be subject to the following:

13 1. No person shall act as a dealer or broker without first  
14 being licensed. No dealer or broker shall employ any person  
15 to act on behalf of the dealer or broker unless the dealer  
16 or broker is licensed, has designated that person to act as  
17 an agent in the dealer's or broker's behalf, has notified  
18 the department of that agency in the dealer's or broker's  
19 application for that agent's license, and has received that  
20 agent's license issued by the department. The act, failure,  
21 or omission of an agent, officer, or other person, whether  
22 or not licensed as an agent, when acting for or employed by  
23 a dealer or broker, within the scope of employment of that  
24 person, shall be deemed the act, failure, or omission of the  
25 dealer or broker as well as of that person. The license of  
26 a dealer or broker shall expire on the last day of June  
27 following the date of issue. The annual fee for the license  
28 of a dealer or broker is twenty-five dollars.

29 2. A dealer or broker shall obtain a separate license  
30 for each business location, and shall furnish and maintain  
31 separate proof of financial responsibility for each business  
32 location. A broker or dealer who does not maintain a business  
33 location in this state shall obtain a license to engage in  
34 business transactions in this state. For the purpose of  
35 determining the required minimum bond for a business location,

1 only the purchases made at or for the single location shall  
2 be included. The required minimum bond for a dealer or broker  
3 not maintaining a business location in this state shall be  
4 determined by including all purchases made in this state.  
5 A dealer or broker shall maintain separate business records  
6 for each location, as prescribed by rule of the department,  
7 and the failure to comply with any rule of the department  
8 shall constitute a violation of this chapter.

9 3. No person shall act as an agent for a dealer or broker  
10 without first being licensed as an agent of that dealer or  
11 broker. An application for an agent's license may be submitted  
12 only by a dealer or broker, and shall contain a verification  
13 by that dealer or broker of the designation of the named  
14 person as agent. The license of an agent shall be void as  
15 of the day written notice of the termination of employment  
16 of that agent is received by the department from the dealer  
17 or broker. The license of an agent shall expire on the last  
18 day of June following the date of issue. The annual fee for  
19 the license is ten dollars.

20 Sec. 3. Section one hundred seventy-two A point four  
21 (172A.4), Code 1975, is amended by striking the section and  
22 inserting in lieu thereof the following:

23 172A.4 FINANCIAL RESPONSIBILITY.

24 1. No license shall be issued by the department to a  
25 dealer or broker unless the dealer or broker has submitted  
26 proof of financial responsibility with the application for  
27 that license. Failure to maintain proof of financial  
28 responsibility as provided in this section shall constitute  
29 grounds for revocation of the license. A dealer or broker  
30 shall submit and maintain proof of financial responsibility  
31 by surety bond or by deposit bond as provided in this section.

32 2. a. A dealer or broker may submit and maintain a bond  
33 of a surety company authorized to do business in the state  
34 of Iowa in the form prescribed by, and executed to the  
35 satisfaction of the commissioner of insurance. The bond shall

1 be conditioned for the payment of one or more judgments against  
2 the dealer or broker arising from the nonpayment of obligations  
3 to sellers of animals or from fraud or misrepresentation  
4 against sellers of animals.

5 b. The minimum amount of a surety bond required of a  
6 dealer or broker shall be determined monthly in accordance  
7 with this paragraph. The amount of the surety bond shall  
8 be not less than the nearest multiple of five thousand dollars  
9 which is greater than twice the average daily value of  
10 purchases of livestock during the calendar month preceding  
11 the month in which the bond determination is being made.  
12 For the purpose of determining average daily value, the total  
13 purchases for the month shall be divided by the actual number  
14 of days business was transacted by the licensee during that  
15 month. In no case shall the amount of the bond be less than  
16 five thousand dollars.

17 c. The average daily value of purchases for the initial  
18 month of operation of a dealer or broker not previously  
19 licensed under this chapter, or of one which cannot establish  
20 an actual average by purchase records for a calendar month  
21 the last day of which is not earlier than sixty days prior  
22 to the first day of the month in which the determination is  
23 to be made, shall be the estimate made in good faith of the  
24 purchases to be made during that month.

25 d. Based upon the monthly determinations required by this  
26 subsection, for any month in which twice the average daily  
27 value of purchases of livestock exceeds the required minimum  
28 amount of surety bond, the dealer or broker shall cause an  
29 increase in the amount of the surety bond to meet the minimum  
30 requirement. When an increase of bond amount is required,  
31 the dealer or broker, without notice, shall cause the bond  
32 to be increased in amount and shall file the endorsement  
33 with the department not later than the fifteenth calendar  
34 day of the month following the month for which the average  
35 daily value of purchases exceeds the actual bond amount:

1 Provided that if the specified day falls on Saturday, Sunday,  
2 or a legal state holiday, the endorsement shall be filed on  
3 the next business day of the department after the fifteenth  
4 calendar day.

5 e. A surety bond may not provide for a reduction of the  
6 bond, and the amount of a bond may not be reduced, except  
7 upon the expiration of ninety days after the date the existing  
8 amount of the bond became effective.

9 f. A surety bond may not provide for termination, and  
10 may not be terminated, except upon the giving of written  
11 notice by the surety to the department not less than ten days  
12 prior to the proposed termination date. In addition, a surety  
13 bond may not be terminated by cancellation by the surety  
14 except upon publication by the surety, not earlier than ten  
15 days and not later than three days prior to the proposed  
16 termination date, of a notice of intent to cancel in a  
17 newspaper of general circulation in the county in which the  
18 dealer or broker maintains the business location. If no  
19 business location is maintained in this state, the notice  
20 shall be published in a newspaper which is issued daily in  
21 any geographic area of the state in which the dealer or broker  
22 transacts substantial business.

23 g. A surety bond shall be a continuing bond and shall  
24 secure the payment of liabilities of the dealer or broker  
25 incurred between its effective date and its termination date.  
26 A surety shall not be liable for any amount in excess of the  
27 amount of the bond. The termination of a bond shall not  
28 release the surety from liability arising out of acts or  
29 transactions occurring prior to the date of termination.

30 3. a. A dealer or broker not submitting a surety bond  
31 shall deposit and maintain with the department a deposit bond  
32 of the required minimum amount in money or negotiable bonds  
33 of the United States or of the state of Iowa of a political  
34 subdivision of the state of Iowa. The value of negotiable  
35 bonds shall be the market value of those bonds on a day not

1 more than four days prior to the date of deposit. The deposit  
2 bond shall be accompanied by the certification of an attorney  
3 licensed to practice in the state in which the broker or  
4 dealer maintains its principal place of business that the  
5 bonds submitted qualify as a deposit bond as required by this  
6 section. The deposit shall be made under a deposit agreement  
7 prescribed by the commissioner of insurance containing terms  
8 equivalent to those required of a surety bond. The minimum  
9 amount of the deposit shall be determined in the exact manner  
10 as the amount of a surety bond as provided in subsection one  
11 (1) of this section, and a dealer or broker shall maintain  
12 a minimum deposit bond in the manner required by subsection  
13 one (1) of this section. The deposit shall not be subject  
14 to attachment for any claim or levy of execution upon a  
15 judgment based on any claim, except those claims secured by  
16 the deposit.

17 b. The termination of a deposit agreement shall not release  
18 the party furnishing the deposit from any liability arising  
19 out of acts or transactions occurring prior to the termination  
20 date. The department shall not release a deposit until the  
21 expiration of ninety days after the termination date, and  
22 then only if no claims secured by the agreement have been  
23 filed with the department. If any claim has been filed with  
24 the department, the deposit shall not be released except upon  
25 an order of the district court.

26 c. A deposit of money or qualified bonds may be reduced  
27 in amount only as provided in this paragraph. If the deposit  
28 bond exceeds the amount required to be maintained, and the  
29 deposit agreement provides for a reduction, a deposit may  
30 be reduced to an amount not less than the required minimum  
31 amount. No reduction may be made except upon the expiration  
32 of ninety days after the existing bond amount was deposited.

33 d. All moneys and securities deposited with the department  
34 shall be handled in the following manner:

35 (1) All securities deposited with the department shall

1 remain in its custody.

2 (2) All moneys shall be delivered to the treasurer of  
3 state and invested in the manner set forth in section four  
4 hundred fifty-two point ten (452.10) of the Code, and the  
5 treasurer shall not relinquish the moneys except upon the  
6 written order of the department.

7 (3) The owner shall be entitled to receive all income from  
8 moneys and securities so deposited and the department shall  
9 issue a receipt for each deposit setting forth this fact.

10 3. Any person damaged either by nonpayment of obligations  
11 or by any misrepresentation or fraud on the part of a broker  
12 or dealer may maintain an action against the broker or dealer  
13 and the surety on the bond provided for in this section or  
14 for the application of the deposit in the custody of the  
15 department. In the event that the aggregate judgments on  
16 the bond or the deposit exceed the total amount of the bond  
17 or deposit, the amount payable on account of any judgment  
18 shall be in the same proportion to the bond or deposit as  
19 the individual judgment bears to the aggregate judgments.

20 4. An action by a claimant on a surety bond or on a deposit  
21 bond shall be barred unless the person damaged files a written  
22 notice of the claim with the department within ninety days  
23 from the date of the alleged act or transaction resulting  
24 in the loss, or within ninety days after the discovery of  
25 fraud or misrepresentation on the part of the person complained  
26 against: Provided, however, that a claim alleging fraud or  
27 misrepresentation shall be barred unless notice of the claim  
28 is given to the department not later than one year following  
29 the date of the transaction in connection with which the fraud  
30 or misrepresentation is alleged to have been committed. Upon  
31 receipt of a written notice of a claim, the department shall  
32 mail a written notice thereof, by certified mail, to the  
33 dealer or broker against whom the claim is asserted, and to  
34 the surety on the bond, if any. The department may give  
35 notice of more than one claim in a single written notice,

1 and the failure of a dealer, broker or surety to receive  
2 notice from the department shall not constitute a bar or  
3 defense to any claim.

4 Sec. 4. Section one hundred seventy-two A point five  
5 (172A.5), Code 1975, is amended to read as follows:

6 172A.5 BONDED-PACKERS-EXEMPT FEDERALLY REGULATED LICENSEES.

7 1. Any dealer or broker who has a bond required by the  
8 United States department of agriculture under the Packers  
9 and Stockyards Act of 1921 as amended, Title VII, sections  
10 181 through 231, United States Code, ~~shall-be-exempt-from~~  
11 ~~the-provisions-of-this-chapter~~ may submit that bond to the  
12 department and maintain it in lieu of the surety bond or  
13 deposit bond required by section one hundred seventy-two A  
14 point four (172A.4) of this chapter, if that bond is of an  
15 amount not less than the minimum bond required by this chapter.  
16 If that bond is less than the minimum required bond, the  
17 dealer or broker may submit and maintain the federally approved  
18 bond along with a supplemental bond of such amount that the  
19 two bonds together meet the minimum bond amount required by  
20 this chapter.

21 2. Except as provided in subsection one (1) of this  
22 section, and subsection six (6) of section one hundred seventy-  
23 two A point twelve (172A.12) of this chapter, a dealer or  
24 broker regulated under federal law shall comply with and be  
25 subject to the provisions of this chapter.

26 Sec. 5. Section one hundred seventy-two A point seven  
27 (172A.7) Code 1975, is amended to read as follows:

28 172A.7 ACCESS-TO-RECORDS---Every RECORDS OF LICENSEES.

29 1. A dealer or broker shall during all reasonable times  
30 permit an authorized representative of the department to  
31 examine all records relating to his business necessary in  
32 the enforcement of this chapter.

33 2. A dealer or broker shall submit to the department not  
34 later than the fifteenth calendar day of each month, records  
35 of the licensed activities of that dealer or broker in this

1 state for the preceding month. The department shall prescribe  
2 by rule the form and content of information to be submitted  
3 pursuant to this subsection.

4 Sec. 6. Chapter one hundred seventy-two A (172A), Code  
5 1975, is amended by adding the following new sections:

6 NEW SECTION. 172A.10 ABATEMENT. If an unlicensed dealer  
7 or broker engages in activities for which a license is required  
8 by this chapter, or if a dealer or broker fails to maintain  
9 proof of financial responsibility, a continuation of activities  
10 for which the license is required shall constitute a nuisance  
11 and the attorney general, in the name and on behalf of the  
12 department, may bring an action to abate that nuisance. The  
13 action may be heard upon not less than five days notice to  
14 the defendant dealer or broker.

15 NEW SECTION. 172A.11 METHOD OF PAYMENT. No dealer or  
16 broker shall cause the purchase of any livestock except upon  
17 payment to the seller by certified check delivered or mailed  
18 with postage prepaid to the seller within the following  
19 applicable time period:

20 1. If the livestock is purchased pursuant to a method  
21 of evaluation whereby the actual value of the livestock is  
22 not determinable prior to slaughter, the dealer or broker  
23 shall pay the seller not later than seventy-two hours after  
24 the dealer or broker acquires rights in the livestock, eighty  
25 percent of an estimate of the total value of the livestock  
26 given in good faith. Any balance of the purchase price shall  
27 be paid not later than the seventh calendar day after the  
28 date of purchase.

29 2. Pursuant to all other methods of purchase, the dealer  
30 or broker shall pay the seller in full not later than seventy-  
31 two hours after the dealer or broker acquires rights in the  
32 livestock.

33 NEW SECTION. 172A.12 CUSTODIAL ACCOUNTS.

34 1. Each payment made by a livestock buyer to a licensee  
35 is a trust fund until the licensee's custodial account required

1 by subsection two (2) of this section has been paid in full  
2 in connection with the purchase and funds deposited in  
3 custodial accounts are also trust funds.

4 2. Every licensee shall establish and maintain a separate  
5 bank account designated as "Custodial Account for Seller's  
6 Proceeds", or by some similar identifying designation, under  
7 terms and conditions with the bank where established, to  
8 disclose that the depositor is acting as a fiduciary with  
9 respect thereto and that the funds in the account are trust  
10 funds.

11 3. Before the close of the next banking business day after  
12 proceeds are received by a licensee from the sale of livestock  
13 or livestock products the licensee shall deposit the net  
14 proceeds in the custodial account. On or before the third  
15 banking business day after each purchase of livestock by a  
16 licensee the licensee shall deposit or have on deposit in  
17 the custodial account an amount equal to the amount immediately  
18 payable to the person from whom the livestock were purchased  
19 whether or not proceeds from sales have been collected or  
20 received by the licensee. In the case of a partial payment  
21 permitted under subsection one (1) of section one hundred  
22 seventy-two A point eleven (172A.11) of this chapter, any  
23 unpaid balance shall be deposited in the custodial account  
24 not later than the fifth banking business day after the  
25 purchase.

26 4. The custodial account shall be drawn on only for  
27 payments to sellers of livestock.

28 5. Every licensee shall keep those accounts and records  
29 specified by rule of the department as will at all times  
30 disclose the handling of the funds in the custodial account.

31 6. A licensee who is required by a law of the United  
32 States, or by a rule adopted by a federal agency to maintain  
33 a custodial account shall be exempt from the requirements  
34 of this section.

35 7. The department may prescribe by rule the accounting

1 procedures to be used in determining net proceeds pursuant  
2 to subsection three (3) of this section.

3 8. Failure to comply with this section shall constitute  
4 grounds for revocation of a license.

5 NEW SECTION. 172A.13 REVOCATION OF LICENSE. The license  
6 of a dealer, broker, or agent shall be revocable by the  
7 department for any knowing failure by the person to comply  
8 with a provision of this chapter. If the person has been  
9 issued more than one license, grounds for revocation of a  
10 single license shall constitute grounds for revocation of  
11 all licenses issued to that person.

12 NEW SECTION. 172A.14 CLASS ACTIONS BY DEPARTMENT. The  
13 department may commence and maintain a class action against  
14 a licensee and any surety of a licensee on behalf of all  
15 claimants protected by the financial responsibility required  
16 by this chapter. The department shall receive and hold in  
17 trust any judgment rendered for the benefit of those claimants.  
18 In the event a class action is brought by the department,  
19 costs and expenses incurred by the department shall be paid  
20 by the executive council as provided in section nineteen point  
21 ten (19.10) of the Code.

22 Sec. 7. This Act, being deemed of immediate importance,  
23 shall take effect and be in force from and after its  
24 publication in The Sioux City Journal, a newspaper published  
25 in Sioux City, Iowa, and in The Quad-City Times, a  
26 newspaper published in Davenport, Iowa.

27 EXPLANATION

28 This bill modifies chapter 172A relating to the licensing  
29 and bonding of slaughterhouses and buyers. This bill makes  
30 the following major changes:

- 31 1. A license will be required for each business location.
- 32 2. Each business location is required to submit either
- 33 a surety bond or a deposit bond.
- 34 3. The commissioner of insurance is made responsible for
- 35 prescribing and approving the form of bonds and deposit

1 agreements.

2 4. A bond is required to equal not less than twice the  
3 average daily purchases for the preceding month.

4 5. A licensee is required to submit an endorsement  
5 upgrading a bond whenever the existing bond becomes less than  
6 that required. The department is not required to give a  
7 notice before this obligation arises, and failure to increase  
8 a bond is grounds for immediate injunctive relief and  
9 revocation of one or all licenses of the dealer or broker.

10 6. The bill eliminates the provision permitting the  
11 acceptance of a financial statement in lieu of a bond or  
12 deposit.

13 7. The definitions of "dealer" and "broker" are modified  
14 to eliminate the determination of the department relative  
15 to who is or is not engaging in business as a dealer or broker.  
16 This is an issue of law, and the present definition arguably  
17 permits an unlicensed person to engage in the business until  
18 the person is given a notice by the department.

19 8. The liability of a dealer or broker for acts or  
20 omissions of an agent is expanded to include all acts or  
21 omissions within the scope of employment.

22 9. Termination of a bond other than by cancellation by  
23 the surety requires a 10-day written notice to the department.  
24 In order to cancel a bond, a surety must give the written  
25 notice plus publish a notice of cancellation.

26 10. In the case of a deposit bond, if claims have been  
27 filed the department may not release the deposit except upon  
28 an order of the district court.

29 11. The bill eliminates the requirement that a claimant  
30 give notice to the licensee and the surety and the department.  
31 This bill requires a claimant to give notice only to the  
32 department. The department then advises the licensee and  
33 the surety by certified mail.

34 12. The bill also gives new express authority to the  
35 department to revoke licenses, and to obtain injunctive relief,

1 whenever there is a violation of the chapter.  
2 13. Licensees are required to make some payment to sellers  
3 within 72 hours after a sale, and by certified check.  
4 14. Licensees are required to maintain custodial accounts  
5 in order that accurate records of the business practices of  
6 licensees are available for inspection by the department.  
7 15. Federally bonded dealers and brokers are required  
8 to be licensed by the department, and must maintain a bond  
9 at least equal to that required of a person not bonded under  
10 federal law.

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