

LIVESTOCK LAWS SUBCOMMITTEE  
OF THE  
STANDING COMMITTEES ON AGRICULTURE

Report to the Members of the  
Second Session of the Sixty-sixth General Assembly  
State of Iowa  
1976

F I N A L   R E P O R T

LIVESTOCK LAWS JOINT SUBCOMMITTEE  
OF THE  
SENATE AND HOUSE STANDING COMMITTEES ON AGRICULTURE

November, 1975

This joint subcommittee was created during the 1975 legislative interim by the Legislative Council as a result of House Resolution 40 and House Concurrent Resolutions 81 and 82. The respective Chairmen of Standing Committees on Agriculture appointed Senators Hilarius L. Heying, Milo Merritt, and Dale Tieden, and Representatives Frank Crabb, Alvin V. Miller, and Linda A. Svoboda, to represent the Senate and House in the study. The organizational meeting was held on September 12, 1975, and Senator Heying and Representative Miller were elected Chairperson and Vice Chairperson, respectively.

House Resolution 40 provided in pertinent part that the Subcommittee determine

"whether to accord a lien to sellers of livestock for slaughter . . . and . . . such other protections as might be afforded such producers"

to insure them against loss. House Concurrent Resolution 81 provided for a study of

"the problems relating to marketing of livestock, including proper identification of livestock and the disclosure of previous owners, and to the clarification of the implied warranty provisions" as they relate to the marketing of livestock.

House Concurrent Resolution 82 required

"a study of bovine and swine brucellosis (and to) consider the incidence of this disease in Iowa and its economic and public health aspects, and the advantages and most appropriate methods of eradicating the disease...."

Each resolution also provided for the reporting of appropriate bill drafts to the General Assembly.

The Subcommittee held four meetings and received testimony from several sources including the Animal and Plant Health Inspection Service of the United States Department of Agriculture, the Iowa Department of Agriculture, the Iowa Cattlemen's Association, the Iowa Dairy Products Association, and the Iowa Livestock Auction Association. The Subcommittee determined that the following subject areas deserved legislative modification for the reasons indicated:

1. The use of state moneys to defray part of the cost of the vaccination of cattle for brucellosis.

The Subcommittee RECOMMENDS that the provisions contained in Chapter 164 of the Code should be repealed to the extent that they permit the use of state or county funds to subsidize producers for the vaccination of female cattle against brucellosis. The Subcommittee discovered the vaccine in use is only about 65% effective, and that even then the benefits can only be seen in specific local geographical areas where brucellosis is active. Balanced against the potential benefits of its use are the facts that the vaccine can result in "titers", animals which produce a positive brucellosis test, not as a result of the disease itself but rather because of the presence of the vaccine. These titers are slaughtered because of the positive test, even though it ultimately is determined that they were not diseased. In addition, in several states where the public subsidy has been eliminated, there has resulted a decrease in the number of animals receiving vaccine, but at the same time no evidence of any increase in the incidence of brucellosis. A majority of the Subcommittee were of the opinion that the \$103,602 in county moneys spent in the state of Iowa during fiscal year 1975 for the subsidy did not produce a tangible benefit to the state and therefore that the disadvantages indicated that the subsidy program should be discontinued.

2. The identification of, and the applicability of the implied warranties of sale to, livestock marketed in Iowa.

The Subcommittee reviewed the proceedings of the 1974 legislative interim Study Committee on Livestock Laws and the provisions of Senate File 368, filed March 27, 1975. The Subcommittee also received testimony from various members of the livestock production and marketing industries. The Subcommittee concluded that there is a need for identifying marketed livestock and also for limiting the applicability of the implied warranties of the law of sales in the case of livestock sale transactions. The Subcommittee also concluded, however, that adequate protection of producers and buyers and marketing agencies demands that the buyer be given certain information about livestock being sold if the buyer is to lose the protection of the implied warranty provisions in a particular sale transaction. The Subcommittee determined that the competing interests of the various industries require a trade-off of privileges and immunities and that the representatives of these industries should attempt to reach an agreement on proposed legislation. The Subcommittee received testimony that the industry representatives are negotiating in good faith on a proposed bill, and based upon this testimony the Subcommittee RECOMMENDS that the respective Standing Committees on Agriculture support the concepts of Senate File 368, but that they consider the joint recommendations of the industry representatives which are expected to be presented upon the convening of the General Assembly in 1976. The Subcommittee makes no finding with respect either to the particular provisions of Senate File 368 or to industry proposals.

3. The creation of a producer's lien and other protections to insure payment to sellers of slaughter livestock.

The Subcommittee reviewed the provisions of House File 625 enacted during the 1975 session which relate to the bonding of livestock dealers and brokers. The Subcommittee received testimony respecting that Act, proposals to create a producers' insurance fund at either the state or federal level, and a proposal giving the seller of slaughter livestock in cash sale transactions certain prior rights as against creditors of the buyer.

The Subcommittee concluded that House File 625 is a substantial improvement over the prior bonding law and that the Act has generally been received well by the industry. The Subcommittee finds that certain technical corrections are needed in the Act, however, and that the cost of the bonds has in some instances exceeded the costs which were suggested by the bonding industry during hearings held on that bill during the 1975 session. The Subcommittee makes the following recommendations:

The Subcommittee RECOMMENDS that House File 625 as enacted be retained for the present time, but that it be amended for grammatical and technical clarity to solidify legislative intent.

The Subcommittee further RECOMMENDS that those dealers or brokers who actually purchase livestock on an average of five and one-half days per week or more be entitled to calculate the required amount of bond using a six-day as opposed to a five-day week. The Subcommittee concluded that the present law requires that those dealers or brokers purchasing six days a week carry a bond approximately 20% higher than that which would be required if actual average daily values were utilized, and that this results in an excess cost without beneficial protection of sellers.

The Subcommittee was informed by the Iowa Department of Agriculture that auction markets have taken a position that they are exempt from the bonding requirements on the grounds that they do not purchase or solicit the sale of livestock for slaughter. The Department indicated they oppose that position and that they are attempting to bring the issue to a resolution. The Subcommittee concluded that the intent of the General Assembly in enacting House File 625 was that auction markets be included in the definition of dealer or broker, and the Subcommittee therefore RECOMMENDS that the Standing Committees on Agriculture monitor the efforts of the Department in the matter of auction markets and RECOMMENDS that those Committees take appropriate action during the 1976 session if required.

The Subcommittee RECOMMENDS that the draft attached to this Report and identified as the "Dole Proposal" be considered by the Standing Committees on Agriculture and that a public hearing be

held for the purpose of determining the feasibility of adopting that proposal and repealing the bonding requirement of Iowa law. The Subcommittee received testimony from Professor Richard F. Dole of the College of Law, State University of Iowa, and from Mr. Steven A. Carter, Sioux City attorney and one of the creditors' attorneys in the American Beef bankruptcy proceeding. Both of those individuals commented that the concept contained in the Dole Proposal would eliminate the high costs involved in "packer bonding" and would produce equivalent, if not more significant, protection for the seller than the presently required bond or trust.

The Subcommittee was informed that the effect of the Dole Proposal is to place sellers, and sellers' creditors such as the local Iowa bank and local feed dealer, in a position of preference as against a creditor of the packing company who finances the packer's operations and takes a security interest in the inventory and accounts of the packer. As a result, the Subcommittee was told, the financing company will maintain a watchful eye over the packers' operations and will assure that sellers are paid in order to protect its financial investments. In relative terms, the protection of Iowa interests would be greater while the bond and administrative costs would be greatly reduced.

Various spokesmen from industries which would be affected by the Dole Proposal were questioned by the Subcommittee about the feasibility of the Dole Proposal. The Subcommittee determined that the fundamental question which arises is whether or not enactment of such a provision would prevent smaller packing companies and newly created packing companies from being able to obtain the financing necessary to enable them to operate. The Subcommittee was unable to obtain testimony from the smaller companies and from their financing companies, and thus is unable to answer the question. The Subcommittee finds, however, that the potential benefits to all Iowans of the Dole Proposal warrant the serious consideration of it by the Standing Committees.

The Subcommittee considered action in two other areas, but concluded that legislative action not be recommended. These subject areas and the conclusions of the Subcommittee are as follows:

1. Amend the provisions of House File 870 enacted during the 1975 session, to discourage the vaccination of female cattle for brucellosis after six months of age.

The Subcommittee concluded that because of the tendency of the vaccine to remain viable when injected into animals over six months of age, and because of the resulting increased incidence of "titers", the General Assembly should discourage vaccination after that age. However, representatives of the cattle producing industry stated that the only practical time to vaccinate cows is between the ages of eight and ten months, and that to require vaccination sooner would result in nonobservance of the statutory

age limit. The Subcommittee therefore concluded that modifying the upper age limit for the brucellosis vaccination of calves would be ineffective.

2. Permit livestock dealers and brokers to pay for purchases by using commercial drafts in addition to the cash, check, and wire transfer methods.

The Subcommittee considered the recommendation by Dubuque Packing Company of Dubuque, Iowa, that packing companies have the option of issuing commercial drafts payable through a bank as a means of payment for livestock purchased. Mr. Clifford Less, Corporate Counsel, explained that by using drafts rather than checks prior to the enactment of House File 625, the Dubuque Packing Company had been able to protect the investment of Iowa banks who had mortgages on livestock sold by producers to the company. Mr. Less advised that the draft method of payment added about one day to the clearance time of the instrument, thereby enabling the company to verify the ownership of livestock it purchased.

The Subcommittee noted the potential benefits to Iowa banks that the draft method of payment provided. The Subcommittee also noted that many of the abusive practices complained of at hearings on House File 625 involved the use of commercial drafts. Professor Dole suggested that enacting the option of paying by commercial draft could jeopardize the effectiveness of his proposal. The Subcommittee concluded that the potential disadvantages of the commercial draft method of payment outweighed the benefits which might be derived and the Subcommittee thus determined not to take action on the commercial draft proposal.

The bill drafts prepared to carry out the recommendation of the Subcommittee are attached to this Report and are recommended by the Subcommittee for enactment.

Respectfully submitted,

Senator Hilarius L. Heying  
Chairperson

554.2507 Effect of seller's tender—delivery on condition.

1. Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

2.a. -2- Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

2.b.(1) If a commercial buyer of livestock fails to make the payment due, as against all adverse claimants who can not prove estoppel, a cash seller is entitled to reclaim the livestock from the commercial buyer, in lieu of recovering the price, upon making a written demand within ten days after the failure of payment. If misrepresentation of ability to pay cash has been made to the particular cash seller in writing within three months before delivery, the ten day limitation does not apply.

(2) If a cash seller's ability to identify the livestock has been impaired by the conduct of a commercial buyer, including ordinary processing, as against all adverse claimants who can not prove estoppel, the cash seller may reclaim equivalent value from the commercial buyer, in lieu of recovering the price, upon making written demand within the time specified in subsection (1). A written demand for reclamation of equivalent value entitles a cash seller to reclaim any livestock or livestock products of the commercial buyer, designated by the cash seller in the written demand or otherwise,

which are not identifiable as those of another cash seller and have not been sold by the commercial buyer to a buyer in the ordinary course under this Article (section 2-403). A written demand for reclamation of equivalent value also entitles a cash seller to reclaim from the commercial buyer cash proceeds derived from the sale of livestock or livestock products, designated by the cash seller in the written demand or otherwise, which are not identifiable as those of another cash seller.

(3) Except as provided in this subsection, a cash seller may not base a right to reclaim livestock or its designated equivalent value, in lieu of recovery of the price, upon a commercial buyer's fraudulent or innocent representation of ability to pay cash. Successful reclamation of livestock or its designated equivalent value in lieu of recovery of the price excludes all other remedies.

LIVESTOCK LAWS SUBCOMMITTEE  
Study Bill No. 5  
November 6, 1975

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR .

1 An Act relating to slaughter livestock purchasers, and modify-  
2 ing the method of certifying that a purchaser has estab-  
3 lished financial responsibility under federal law.

4 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 four  
2 (172A.4), Code 1975, as amended by House File six hundred  
3 twenty-five (625), Sixty-sixth General Assembly, 1975 Session,  
4 section five (5), subsection six (6), is amended to read as  
5 follows:

6 6. A person who is not a resident of this state and who  
7 either maintains no business location in this state or main-  
8 tains one or more business locations in this state, and a  
9 person who is a resident of this state and who maintains more  
10 than one business location in this state, may submit a  
11 consolidated proof of financial responsibility. The  
12 consolidated proof of financial responsibility shall consist  
13 of a bond or a trust agreement meeting all of the requirements  
14 of this section, except that the calculation of the amount  
15 of the bond or the amount of the trust fund shall be based  
16 on twice the average daily value of all purchases of livestock  
17 originating in this state. A person who submits consolidated  
18 proof of financial responsibility shall maintain separate  
19 records for each business location, and shall maintain such  
20 other records respecting purchases of livestock as the  
21 secretary by rule shall prescribe.

22 EXPLANATION

23 This bill is to clarify the intent of the requirement that  
24 the bond submitted as proof of consolidated financial  
25 responsibility must be twice the average daily value of pur-  
26 chases of livestock originating in this state. Although it  
27 was not the intent of the general assembly to give an advantage  
28 to those filing consolidated proof, it has been argued by  
29 some packers that the language suggests that a bond for that  
30 purpose needs to be equal only to the average daily value  
31 rather than twice that amount.

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LIVESTOCK LAWS SUBCOMMITTEE  
Study Bill No. 4  
November 6, 1975

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to slaughter livestock purchasers, and clari-  
2 fying the amount of bond required for a consolidated proof  
3 of financial responsibility.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. House File six hundred twenty-five (625),  
2 Sixty-sixth General Assembly, 1975 Session, section five (5),  
3 subsection one (1), paragraph d, amending section one hundred  
4 seventy-two A point four (172A.4), Code 1975, is amended to  
5 read as follows:

6 d. For the purpose of computing average daily value,  
7 ~~two-hundred-sixty-is-deemed~~ the number of business days in  
8 a year shall be deemed to be two hundred sixty. However,  
9 a dealer or broker who actually purchases livestock an average  
10 of six days each week shall be entitled to use three hundred  
11 twelve as the number of business days in a year. For purposes  
12 of this paragraph "an average of six days each week" shall  
13 mean an average exceeding five and one-half days per week.

14 EXPLANATION

15 This bill entitles a packer who purchases livestock six  
16 days a week during the year to compute average daily value  
17 using 312 days. Under present law, that packer must use 260  
18 days as the divisor and as a result the amount of bond required  
19 is actually about 20% greater than the average two-day kill  
20 based on actual days of operation.

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November 6, 1975

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the business of the slaughtering of  
2 livestock and amending the method of determining the  
3 required amount of a bond.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA.

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1 or trust in an aggregate amount equal to ten percent or more  
2 of the amount of the bond or trust.

3 EXPLANATION

4 This bill makes technical corrections to House File 625,  
5 the "packer bonding" bill in order to clean it up prior to  
6 its printing in the Code.

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1 Section 1. Section one hundred seventy-two A point four  
2 (172A.4), Code 1975, as amended by House File six hundred  
3 twenty-five (625), Acts of the Sixty-sixth General Assembly,  
4 1975 Session, section five (5), unnumbered paragraph one (1),  
5 is amended to read as follows:

6 172A.4 PROOF OF FINANCIAL RESPONSIBILITY REQUIRED. No  
7 license shall be issued by the secretary to a dealer or broker  
8 until the applicant has furnished proof of financial  
9 responsibility as provided in this section. The proof may  
10 be in the ~~following forms:~~ form authorized by subsection one  
11 (1) or subsection two (2) of this section.

12 Sec. 2. House File six hundred twenty-five (625), Acts  
13 of the Sixty-sixth General Assembly, 1975 Session, section  
14 nine (9), unnumbered paragraph one (1), is amended to read  
15 as follows:

16 If any person ~~who is required by this chapter to be licensed~~  
17 ~~fails to obtain~~ acts as a broker, dealer, or agent without  
18 obtaining the required license, or if any person who is  
19 required by this chapter to maintain proof of financial  
20 responsibility engages in business without the required proof,  
21 or if any licensee ~~fails to discontinue engaging~~ continues  
22 to engage in licensed activities when that person's license  
23 has been suspended, ~~such failure~~ the person's actions shall  
24 be deemed a nuisance and the secretary may bring an action  
25 on behalf of the state to enjoin such nuisance. Such actions  
26 may be heard on not less than ~~five~~ five days notice to the person  
27 whose activities are sought to be enjoined. The failure to  
28 obtain a license when required, or the failure to maintain  
29 proof of financial responsibility shall constitute a violation  
30 of this chapter.

31 Sec. 3. House File six hundred twenty-five (625), Acts  
32 of the Sixty-sixth General Assembly, 1975 Session, section  
33 ten (10), subsection two (2), paragraph b, is amended to read  
34 as follows:

35 b. Claims are filed with the secretary against the bond

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

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

Approved \_\_\_\_\_

# A BILL FOR

1 An Act relating to the business of slaughtering of  
2 livestock and making technical corrections to chapter  
3 172A of the Code.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA.

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1 Section 1. Section one hundred sixty-four point three  
2 (164.3), Code 1975, as amended by House File eight hundred  
3 seventy (870), Acts of the Sixty-sixth General Assembly, 1975  
4 Session, section two (2), is amended to read as follows:

5 164.3 FEMALE CALVES VACCINATED. All native female cattle  
6 of a dairy breed between the ages of two and six months and  
7 all native female cattle of a beef breed between the ages  
8 of two months and ten months may be officially vaccinated  
9 for brucellosis according to the method approved by the United  
10 States department of agriculture. The expense of such  
11 vaccination shall be borne ~~in-the-same-manner-as-set-forth~~  
12 in-section-164:6 by the owner or other person requesting the  
13 vaccination.

14 Sec. 2. Section one hundred sixty-four point twenty-three  
15 (164.23), Code 1975, is amended to read as follows:

16 164.23 TAX LEVY. In each county in the state, the board  
17 of supervisors shall each year, when it makes the levy for  
18 taxes, levy a tax sufficient to provide a fund to pay the  
19 indemnity, as set out in section 164.21, and ~~other~~ the  
20 inspection and testing expenses provided in this chapter,  
21 and expenses of the inspection and testing program provided  
22 in chapter 163A, and such levy shall not exceed in any year  
23 thirteen and one-half cents per thousand dollars of assessed  
24 value of the taxable value of all the property in the county.

25 EXPLANATION

26 This bill repeals the provision whereby public funds are  
27 used to defray the cost of brucellosis vaccination of cattle:  
28 The owner of cattle shall pay the entire amount of the fees  
29 charged by a veterinarian for administering vaccine.

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LIVESTOCK LAWS SUBCOMMITTEE  
STUDY BILL #1  
November 6, 1975

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the vaccination of female calves for  
2 bovine brucellosis.  
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 five  
2 (172A.5), Code 1975, as amended by House File six hundred  
3 twenty-five (625), Acts of the Sixty-sixth General Assembly,  
4 1975 Session, section six (6), is amended to read as follows:

5 172A.5 BONDED PACKERS REGISTRATION. A dealer or broker  
6 who has a bond or trust agreement required by the United  
7 States department of agriculture under the Packers and Stock-  
8 yards Act of 1921, as amended, Title VII, sections 181 through  
9 231, United States Code, shall be exempt from the bonding  
10 provisions of this chapter upon registration with the  
11 secretary. Registration shall be effective upon the filing  
12 by the dealer or broker with the secretary a certified copy  
13 of the bond or trust agreement filed with the United States  
14 department of agriculture, and an affidavit of the dealer  
15 or broker in a form determined by the secretary that the bond  
16 or trust agreement is in effect and is submitted for the purpose  
17 of securing an exemption from the bond or trust agreement  
18 otherwise required by this chapter. Such registration shall  
19 continue in effect until that bond or trust agreement is  
20 terminated or until the privilege of that dealer or broker  
21 is suspended or revoked by the secretary for cause pursuant  
22 to this chapter.

23 EXPLANATION

24 This bill eliminates the requirement of filing a certified  
25 copy of a federal bond as proof of financial responsibility,  
26 and thus being able to qualify as exempt from the state bonding  
27 requirement. The packers and stockyards administration is  
28 the only agency who can certify such a bond, and they have  
29 indicated that they are unable to certify those bonds. This  
30 amendment would require that the packer sign an affidavit  
31 in addition to filing a regular copy of the bond, and this  
32 should provide the same amount of protection. The submission  
33 of a fraudulent affidavit would be grounds for immediate  
34 suspension of a license. The bill also adds the reference  
35 to "trust agreement" to recognize the alternative method of  
36 submitting proof to federal authorities.