

# CHAPTER 172A

## BONDING OF SLAUGHTERHOUSE OPERATORS

Referred to in §166A.2

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### 172A.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. “Agent” means a person engaged in the buying or soliciting in this state of livestock for slaughter exclusively on behalf of a dealer or broker.
2. “Animals” or “livestock” includes cattle, calves, swine, sheep, goats, turkeys, chickens, or horses.
3. “Dealer” or “broker” means any person, other than an agent, who is engaged in this state in the business of slaughtering live animals or receiving, buying or soliciting live animals for slaughter, the meat products of which are directly or indirectly to be offered for resale or for public consumption.
4. “Person” means an individual, partnership, association or corporation, or any other business unit.

[C73, 75, 77, 79, 81, §172A.1]

86 Acts, ch 1245, §623; 2012 Acts, ch 1095, §61

[P] Further definitions; see §159.1

[T] Subsection 2 amended

### 172A.2 License required.

No person shall act as a dealer or broker without first being licensed. No person shall act for any dealer or broker as an agent unless such dealer or broker is licensed, has designated such agent to act in the dealer’s or broker’s behalf, and has notified the secretary of the designation in the dealer’s or broker’s application for license or has given official notice in writing of the appointment of the agent and the secretary has issued to the agent an agent’s license. A dealer or broker shall be accountable and responsible for contracts made by an agent in the course of the agent’s employment. The license of an agent whose employment by the dealer or broker is terminated shall be void on the date written notice of termination is received by the secretary. The license of a dealer, broker, or agent, unless revoked, shall expire on the last day of June following the date of issue. The annual fee for the license of a dealer or broker is fifty dollars. The annual fee for an agent’s license is ten dollars.

No person may be issued a license if that person previously has had a license revoked, or previously was issued a license and the secretary suspended that license, unless the order of suspension or revocation is thereafter terminated by the secretary.

[C73, 75, 77, 79, 81, §172A.2]

### 172A.3 Application for license.

Application for a license as a dealer or broker or as an agent shall be made in writing to the department. The application shall state the nature of the business, the municipal corporation, township and county, the post office address at which the business is to be conducted, and such additional information as the department may prescribe.

The applicant upon satisfying the department of the applicant’s character and good faith in seeking to engage in such business and upon complying with such other requirements

specified in this chapter, shall be issued by the department a license to conduct the business of a dealer, broker, or agent at the place named in the application.

[C73, 75, 77, 79, 81, §172A.3]

#### **172A.4 Proof of financial responsibility required.**

1. A license shall not be issued by the secretary to a dealer or broker until the applicant has furnished proof of financial responsibility as provided in this section. The proof may be in the following forms:

a. (1) A bond of a surety company authorized to do business in the state of Iowa in the form prescribed by and to the satisfaction of the secretary, conditioned for the payment of a judgment against the applicant furnishing the bond because of nonpayment of obligations in connection with the purchase of animals.

(a) The amount of bond for an established dealer or broker who does not maintain a business location in this state shall be not less than the nearest multiple of five thousand dollars above twice the average daily value of purchases of livestock originating in this state, handled by such applicant during the preceding twelve months or such parts thereof as the applicant was purchasing livestock. The bond of a person who does not maintain a business location in this state shall be conditioned for the payment only of those claims which arise from purchases of livestock originating in this state.

(b) The amount of bond for an established dealer or broker who maintains one or more business locations in this state shall be not less than the nearest multiple of five thousand dollars above twice the average daily value of purchases of livestock originating in this state handled by the applicant during the preceding twelve months or such parts thereof as the applicant was purchasing livestock. The bond of a person who maintains one or more business locations in this state shall be conditioned for the payment only of those claims which arise from purchases of livestock originating in this state.

(c) If a new dealer or broker not previously covered by this chapter applies for a license, the amount of bond shall be based on twice the estimated average daily value of purchases of livestock originating in this state.

(d) For the purpose of computing average daily value, two hundred sixty is deemed the number of business days in a year.

(e) Whenever a dealer or broker's weekly purchases exceed one hundred fifty percent of the dealer's or broker's average weekly volume, the department shall require additional bond in an amount determined by the department.

(2) The licensee and surety of the bond shall be held and firmly bound unto the secretary as trustee for all persons who may be damaged because of nonpayment of obligations in connection with the purchase of animals originating in this state. Any person damaged because of such nonpayment may maintain suit in the person's own behalf to recover on the bond, even though not named as a party to the bond.

(3) For purposes of this paragraph "a", "*purchases of livestock originating in this state*" shall not include purchases by dealers or brokers from their subsidiaries.

b. A bond equivalent may be filed in lieu of a bond. The bond equivalent shall be in the form of a trust agreement and the fund of the trust shall be in the form of fully negotiable obligations of the United States or certificates of deposit insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

(1) The trust agreement shall be in the form prescribed by the secretary and executed to the satisfaction of the secretary. The trustee of the trust agreement shall be an institution located in this state in which the funds are invested or deposited.

(2) The trust agreement shall provide as beneficiary, the secretary for the benefit of those persons damaged because of nonpayment of obligations in connection with the purchase of animals originating in this state. The fund in trust shall be an amount calculated in the exact manner as provided in paragraph "a". The fund in trust shall not be subject to attachment for any other claim, or to levy of execution upon a judgment based on any other claim.

c. A person who is not a resident of this state and who either maintains no business location in this state or maintains one or more business locations in this state, and a person who is a resident of this state and who maintains more than one business location in this

state, may submit a consolidated proof of financial responsibility. The consolidated proof of financial responsibility shall consist of a bond or a trust agreement meeting all of the requirements of this section, except that the calculation of the amount of the bond or the amount of the trust fund shall be based on the average daily value of all purchases of livestock originating in this state. A person who submits consolidated proof of financial responsibility shall maintain separate records for each business location, and shall maintain such other records respecting purchases of livestock as the secretary by rule shall prescribe.

2. a. Any person damaged by nonpayment of obligations or by any misrepresentation or fraud on the part of a broker or dealer may maintain an action against the broker or dealer, and the sureties on the bonds or the trustee of a trust fund. The aggregate liability of the sureties or the trust for all such damage shall not exceed the amount of the bond or trust. In the event that the aggregate claims exceed the total amount of the bond or trust, the amount payable on account of any claim shall be in the same proportion to the amount of the bond or trust as the individual claim bears to the aggregate claims.

b. Unless the person damaged files claim with the dealer or broker, and with the sureties or trustee, and with the department within ninety days after the date of the transaction on which the claim is based, the claimant shall be barred from maintaining an action on the bond or trust and from receiving any proceeds from the bond or trust.

3. Whenever the secretary determines that the business volume of the applicant or licensee is such as to render the bond or trust inadequate, the amount of the bond or trust shall be, upon notice, adjusted.

4. All bonds and trust agreements shall contain a provision requiring that at least thirty days' prior notice in writing be given to the secretary by the party terminating the bond or trust agreement as a condition precedent to termination.

5. a. Whenever a bond or a trust agreement is to be terminated by a cancellation by the surety or trustee, the secretary shall cause to be published notices of the proposed cancellation not less than ten days prior to the date the cancellation is effective. The notices shall be published as follows:

(1) In the Iowa administrative code.

(2) In a newspaper of general circulation in the county in which the licensee maintains a business location, or if the licensee maintains no business location in this state, then in the county where the licensee transacts a substantial part of the licensee's business.

(3) By general news release to all news media. Failure by the secretary to cause the publication of notice as required by this subparagraph shall not be deemed to prevent or delay the cancellation.

b. The termination of a bond or a trust agreement shall not release the parties from any liability arising out of the facts or transactions occurring prior to the termination date.

c. Trust funds shall not be withdrawn from trust by a licensee until the expiration of ninety days after the date of termination of the trust, and then only if no claims secured by the agreement have been filed with the secretary. If any claims have been filed with the secretary, the withdrawal of funds by the licensee shall not be permitted until the claims have been satisfied or released and evidence of the satisfaction or release filed with the secretary.

[C73, 75, 77, 79, 81, §172A.4]

2009 Acts, ch 41, §65

#### **172A.5 Bonded packers registration.**

A dealer or broker who has a bond required by the United States department of agriculture under the Packers and Stockyards Act of 1921 as amended, 7 U.S.C. § 181 – 231, shall be exempt from the provisions of this chapter upon registration with the secretary. Registration shall be effective upon filing with the secretary a certified copy of the bond filed with the United States department of agriculture, and shall continue in effect until that bond is terminated.

[C73, 75, 77, 79, 81, §172A.5]

2010 Acts, ch 1061, §38

**172A.6 Low volume dealers exempt from license and bond.**

The license and financial responsibility provisions of this chapter do not apply to a person who is licensed as provided in chapter 137F who purchases livestock for slaughter valued at less than an average daily value of two thousand five hundred dollars during any period of the preceding twelve months. A person licensed under that chapter is subject to other provisions of this chapter, including the regulatory and penal provisions of this chapter.

The provisions of this chapter shall not apply to any other person who purchases livestock for slaughter valued at less than an average daily value of two thousand five hundred dollars based upon the preceding twelve months or such part thereof as the person was purchasing livestock.

[C73, 75, 77, 79, 81, §172A.6]

98 Acts, ch 1032, §4; 98 Acts, ch 1162, §25, 30; 2000 Acts, ch 1100, §1

**172A.7 Access to records.**

Every dealer or broker shall during all reasonable times permit an authorized representative of the department to examine all records relating to the business necessary in the enforcement of this chapter.

[C73, 75, 77, 79, 81, §172A.7]

**172A.8 Reciprocal agreements.**

The department shall have the power and authority to enter into reciprocal agreements with the authorized representatives of other federal or state jurisdictions for the exchange of information and audit reports on a cooperative basis which may assist the department in the proper administration of this chapter.

[C73, 75, 77, 79, 81, §172A.8]

**172A.9 Payment for livestock.**

1. Each dealer, or broker purchasing livestock, before the close of the next business day following either the purchase of livestock or the determination of the amount of the purchase price, whichever is later, shall transmit or deliver to the seller or the seller's duly authorized agent the full amount of the purchase price. If livestock is bought on a yield or grade and yield basis, a dealer or broker shall upon the express request in writing of the seller, transmit or deliver to the seller or the seller's duly authorized agent before the close of the next business day following such purchase or delivery, whichever is later, up to eighty percent of the estimated purchase price, and pay the remaining balance on the next business day following the determination of the purchase price.

2. Payment to the seller shall be made by cash, check, or wire transfer of funds. If payment to the seller is by check, the check shall be drawn on a bank located in this state or on a bank located in an adjacent state and in the nearest city to Iowa in which a check processing center of a federal reserve bank district is located. For the purpose of this subsection, "wire transfer" means any telephonic, telegraphic, electronic, or similar communication between the bank of the purchaser and the bank of the seller which results in the transfer of funds or credits of the purchaser to an account of the seller.

3. Provisions of this section may be modified by an agreement signed by both the buyer and the seller or their duly authorized agents at the time of the sale. However, such an agreement shall not be a condition of sale unless expressly requested by the seller.

4. Failure to comply with this section shall be a violation of this chapter.

[C77, 79, 81, §172A.9]

Referred to in §172A.11

**172A.10 Injunctions — criminal penalties.**

If any person who is required by this chapter to be licensed fails to obtain the required license, or if any person who is required by this chapter to maintain proof of financial responsibility, or if any licensee fails to discontinue engaging in licensed activities when that person's license has been suspended, such failure shall be deemed a nuisance and the secretary may bring an action on behalf of the state to enjoin such nuisance. Such actions

may be heard on not less than five days notice to the person whose activities are sought to be enjoined. The failure to obtain a license when required, or the failure to maintain proof of financial responsibility shall constitute a violation of this chapter.

Any person convicted of violating any provision of this chapter shall be guilty of a serious misdemeanor.

[C73, 75, §172A.9; C77, 79, 81, §172A.10]

[P] Nuisances in general, chapter 657

#### **172A.11 Suspension of license.**

1. *a.* The secretary shall have the authority to suspend the license of any dealer or broker or agent if upon hearing it is found that the dealer or broker or agent has committed any of the following acts or omissions:

- (1) Failure to submit a larger bond amount or trust fund when ordered by the secretary.
- (2) Failure to pay for purchases of livestock in the manner required by section 172A.9.

*b.* An order of suspension issued by the secretary shall be effective for an indefinite period, unless and until the person establishes to the satisfaction of the secretary that the person has taken reasonable precautions to prevent a recurrence of the act or omission in the future.

2. *a.* The secretary shall have the authority temporarily to suspend without hearing the license of any licensee in any of the following circumstances:

(1) The licensee fails to maintain proof of financial responsibility, or the surety on the licensee's bond loses its authorization to issue bonds in this state, or the trustee of a trust fund loses its authorization to engage in the business of a fiduciary.

(2) Claims are filed with the secretary against the bond or trust in an aggregate amount equal to ten percent or more of the amount of the bond.

*b.* A temporary suspension shall be effective on the date of issuance of the order of suspension, and until a revocation hearing has been held and the secretary either has entered an order of revocation of the license, or has terminated the order of suspension.

[C77, 79, 81, §172A.11]

2009 Acts, ch 41, §263

#### **172A.12 Revocation of license.**

1. The secretary shall have the authority to revoke the license of a dealer or broker or agent upon notice and hearing if any of the following conditions exist:

*a.* Grounds exist for the temporary suspension of the license without hearing, and it is established that the person is or will be unable to meet obligations to producers of livestock when due.

*b.* The person has refused access to the secretary to the books and records of the person as required by this chapter.

*c.* Any other conditions exist which in the opinion of the secretary reasonably establish that it would be financially detrimental to livestock producers of this state to permit the person to engage in licensed activities in this state.

2. An order of revocation shall be effective upon the issuance of the order of revocation, and until the order is rescinded by the secretary, or until the decision of the secretary is reversed by a final order of a court of this state.

[C77, 79, 81, §172A.12]

#### **172A.13 Rules.**

The secretary is authorized to adopt rules pursuant to chapter 17A which are reasonable and necessary for the enforcement of this chapter.

[C77, 79, 81, §172A.13]

#### **172A.14 Reserved.**

#### **172A.15 through 172A.18 Transferred to § 163.34 – 163.37.**