

F I N A L R E P O R T

LIVESTOCK LAWS STUDY COMMITTEE

December, 1975

Senate Concurrent Resolution 143 and House Concurrent Resolution 156, introduced during the 1974 Session of the Sixty-fifth General Assembly, requested the creation of an interim committee to review certain aspects of the livestock laws of Iowa. Specifically, the resolutions requested a study

"relating to the problems of livestock health and safety as they may be affected by livestock identification and of the laws, regulations and trade practices concerning the health and inspection of livestock sold through marketing agencies, including the problems related to the sale of livestock by producers and livestock marketing agencies and the implied warranty provisions of the uniform commercial code relating to such sales".

The resolutions required the submission of a report and bill drafts to the 1975 Session of the General Assembly. To accomplish this study the legislative Council created the Livestock Laws Study Committee, composed of ten members, five from each house.

This Study Committee held its initial meeting in Des Moines on July 16, 1974, with a membership of the following persons:

Senator Irvin Bergman
Senator Berle Priebe
Senator Kenneth Scott
Senator Roger Shaff
Senator Dale Tieden
Representative Wayne Bennett
Representative Frank Crabb
Representative Emil Husak
Representative C. W. Hutchins
Representative Lester Menke

Senator Shaff and Representative Crabb were elected Chairman and Vice Chairman, respectively, by unanimous vote of the Committee.

At the request of the Committee, representatives of various segments of the livestock industry appeared at the first meeting to present information respecting problem areas and proposed solutions. The Committee concluded that the resolutions and recently introduced legislative proposals keyed upon three basic goals; identification of livestock to permit the tracing of disease to its source, identification to aid in the prevention or reduction of the incidence of theft, and elimination of the applicability of implied warranties to livestock marketing transactions.

Because of a belief that the information received at that meeting was inadequate and that individual livestock producers were not represented, the Committee decided to hold public hearings at strategic locations within the state. As a result, meetings were held in the cities of Cherokee, Chariton, Albia, Belle Plaine, Webster City and Algona.

More than 120 persons attended these meetings, representing either themselves or an association of business firm, and at the Algona meeting more than 240 high school students attended to observe. The participants at the meetings constituted a broad spectrum of interests, and included veterinarians, county extension agents, cattle order buyers, cow-calf farmers, feeder cattle producers, sale barn operators, slaughter buyers, commission marketers, a United States Department of Agriculture meat inspector, a county sheriff, and representatives of the Iowa Cattlemen's Association, the Iowa Department of Agriculture, and the Iowa State University School of Veterinary Medicine. Also appearing were attorneys, a cattle branding service owner, a livestock trucker, a representative of a lending institution which finances livestock farming operations, and representatives of the Iowa Board of Veterinary Medical Examiners.

The Committee discovered that the three goals set out above involve two fundamental problems; livestock health and livestock theft. Because of the often conflicting interests of industry factors, the interstate nature of livestock production and marketing, and the susceptibility of live animals to stress and disease at any stage of the production and marketing process, livestock health was the focal point of the remarks of most representatives of the industry. Theft problems, it was learned, are concentrated primarily in the southwestern and south central counties of the state, and thus the producers from those counties were relatively more interested in theft reducing measures, including animal identification by means of branding.

HEALTH AND IDENTIFICATION PROBLEMS

The testimony obtained from the hearings relating to livestock health, identification for health control, and implied warranty problems arising from unhealthy livestock presented the following information and views:

1. Methods of Identification

There does not exist at present any single simple and inexpensive method of individually marking all livestock in order to establish the identity or source of a given animal. Methods such as ear-tagging and slap-tattooing which are currently used in the swine industry are not readily adaptable for use in the cattle

industry. In addition, whereas swine identification programs have been the subject of federal interest and regulation, the cattle industry is not under uniform identification standards, and interstate marketing compounds the difficulties of identification and source tracing. Although there is under development an electronic system of identification utilizing capsule transmitters implanted in the animal, this method will not be available for industry-wide use for several years. There is a considerable body of opinion that electronic branding will meet most of the identification needs.

2. Livestock Health Factors.

Livestock health is affected by many factors over which no single individual has absolute control. Environmental conditions such as extremes in temperature and precipitation or drought, and the availability or nonavailability of adequate pasturage, each have an impact on the general state of health of livestock. Proper herd management is required at all times, including proper food, water, and medical treatment. Adequate care might be lacking at any place in the chain of life from birth to slaughter, but might not be manifested by detectable illness until after a sale transaction. In such a case, the cause might be poor management shortly before sale, improper handling during the marketing transportation process, or a failure to adequately provide for the animals after the transfer of ownership. Thus, an eventual loss of livestock might well be caused by the negligence of the seller, the buyer, the marketing agency, or even a combination of the three. In addition, the loss may not arise from negligence at all, but rather from the inherent risks of the system of production and supply.

It has been estimated that disease loss in Iowa feeder cattle alone amounts to one and one-half percent to two percent, thus making disease control a very important goal for the livestock industry and for the economy as a whole.

3. Livestock Movement.

Movement of livestock is fundamental to the industry. Approximately fifty percent of the cattle marketed in Iowa come from sources outside the state. In addition, the market mechanism has produced so-called "trader cattle" or "tourist cattle" which are alleged by some to constitute the bulk of illness-prone livestock. Because of this widespread transporting of livestock, potential health problems are magnified, in terms of both frequency and severity.

The health of an animal is affected by stress situations. Likewise, the "emotional" condition of an animal is affected by penning, branding, trucking, and changing of its environment. For example, when a producer rounds up his herd and trucks it to market and the animals are penned, herded about, and then trucked again to a feeder lot, the animals are placed in various stress situations

which increase their susceptibility to disease outbreak, which may result in losses to the herd.

Imported cattle may spend a couple of days in trucks on the road. Imported or domestic cattle, instead of going directly to a feeder lot from the market agency, may be purchased by a trader and moved through two or more markets in search of the right price. Such "tourist" cattle, being under stress for relatively greater lengths of time, are even more subject to the outbreak of disease.

In addition to those stress factors, an accompanying feature of livestock movement is the commingling of livestock from different sources. It was stated that while the average herd size in the State of Iowa is fifty head, purchase orders are usually larger, thus requiring the mixing of animals from different herds, with the resulting danger of disease spread. Commingling also can result where two small volume farmers combine their herds for more economical shipping, or where a person ships some of his neighbor's cattle, either intentionally or inadvertently, to market with his own.

4. Protection of the Buyer.

In addition to the desire to prevent net losses to the entire system, the individual producers are in need of some protection against loss. Many individuals who addressed the Committee expressed the opinion that even though there are inherent risks in the industry, and even given that a person should have some knowledge of the business before he engages in the buying and selling of livestock, some protection for the buyer is still required.

A commonly voiced complaint is that buyers are unable to determine the source of livestock in the ring for sale. Several individuals complained of the "laundering" of cattle produced in the relatively more disease laden southern states by shipping them first to the western states and then back to midwestern markets, with the accompanying misrepresentation that the animals are the more hardy western stock. A number of buyers also were of the opinion that marketing agencies uniformly ought to be required to inform buyers prior to each sale of the source and nature of presale handling of the livestock for the preceding thirty-day period. A second type of disclosure requested is the nature of medication given to the livestock. The quarantine provisions of recently introduced bills were commented upon by several individuals, none of whom favored the quarantine as a solution.

Representatives of marketing agencies also were rather vocal about protection of the buyer. As will be discussed later, this faction of the industry is almost uniformly against the present implied warranty law, and likewise opposes any further complications of the marketing mechanism. Referring to a proposal to require marketing agencies to certify to a thirty-day history,

representatives stated that the paperwork along would required new employees, and that in many instances the agency cannot obtain animal history or is misled by the seller. The Committee was cautioned that a thirty-day history requirement might reduce the volume of livestock reaching Iowa markets below necessary levels. Several representatives of the agencies noted that they currently provide animal history when requested by potential buyers. Others stated, however, that they do not divulge this information if the seller requests to remain unnamed.

Much of the discussion of protection of the buyer centered upon trader or tourist livestock. It was agreed almost uniformly that tourist cattle pose a higher risk of loss, but there was considerable disagreement over what should be done to solve this problem. At least two cattle feeders stated that they buy direct from the producers rather than through market agencies, thus avoiding the problem altogether. It was stated by several individuals that the number of tourist cattle being sold at the markets may be as high as five percent or more. One feeder stated that he was able to reduce health problems by ninety percent through direct buying. A cow-calf producer suggested, however, that direct buying would not be popular with him because of the lost time and other problems arising while trying to negotiate sales.

None of the individuals appearing suggested that tourist livestock be prohibited from the market, but most who were engaged in the production process expressed the desire of knowing which animals had toured the markets. They stated that the relatively higher risk of these animals would be reflected in the lower prices given by the buyer, and suggested that there would continue to be a market for these animals.

The marketing agency representatives were less favorable toward positive identification of tourist cattle. Basically, the argument seems to be that livestock branded as "tourist" become stigmatized and difficult to sell. Several auction operators stated that the asking price for known "tourists" always is started lower, and that the experienced buyers acknowledge this "notice" that the animals are less desirable.

Another commonly stated view of agency representatives was that the tourist cattle submarket helps to stabilize the market in general, thus resulting in benefits to livestock buyers and sellers: By means of trading between market regions, surplus and shortages are counteracted and price variations are made less extreme.

5. Implied Warranties.

The change in Iowa livestock laws most insisted upon, at least by some industry people, relates to the implied warranty provisions of the Uniform Commercial Code. As interpreted by the Supreme Court, these provisions, unless disclaimed, are applicable

to every "seller", which includes a producer, an auction operator, and any other individual in the marketing chain.

The marketing agencies appearing expressed a nearly unanimous opinion that they should not incur liability under implied warranty, stating that since they essentially have no control over the care and treatment of livestock, and thus no control over the health of the animals sold, they should not be legally responsible for guaranteeing the health of the animals. Several of these individuals stated that they were likely defendants for lawsuits merely because they are close at hand when the buyer suffers a loss, and because they might be a more likely source of recovery than would a producer with financial problems.

The implied warranty provisions also were criticized simply because of their applicability to livestock sales. The many factors affecting health are cited as reasons to exempt livestock sales, there being no practical way, it is urged, of eliminating the risks inherent in the industry. It was noted by one member of the Committee that a producer-seller could be held liable for losses to a buyer's total herd of cattle even if the seller had no knowledge that the animals he sold were ill at the time of sale, and even if he were not negligent in caring for the animals prior to sale. An attorney appearing at one of the hearings stated that his only complaint about implied warranty is that a person can be held liable even without fault. Various marketing agencies commented that implied warranty may force them out of business with the resulting loss in the number of markets, decreased competition, and generally lower prices. Several persons were in agreement that the buyer should be protected only from fraud, negligence, and from the failure to disclose known defects.

6. Veterinary Inspections.

Tied to the discussions of animals health were the remarks respecting veterinary inspections currently given at the various marketing agencies. Under present practice, veterinarians are hired by the agency, but are paid from fees charged against the seller. Some individuals estimated that a veterinarian may earn as much as thirty thousand dollars a year from these inspections. For this fee the veterinarian is required to visually inspect each animal prior to sale, and to sign a certificate that he has done so. The certificate is given to the buyer.

All veterinarians who attended the hearings were in agreement that they could not guarantee the health of any animal. It was often expressed that the volume of present markets prohibits anything more extensive than a quick visual examination, and that more thorough exams would slow the market process and would raise the cost considerably.

Some individuals expressed concern that the presence of a veterinarian might be misleading to a buyer who assumes that the certification is a warranty of health. Others suggested that the

inspection fees produce no benefit because educated buyers are as likely as veterinarians to detect trouble. One person stated that under present law a seller is liable without negligence or even without knowledge, and therefore veterinary inspections serve no useful purpose.

One veterinarian commented that buyers are becoming more sophisticated and that less reliance is placed in the veterinarian. He also noted that if the veterinarian is required to warrant health, then a positive identification method is imperative.

Several individuals suggested that some veterinarians have signed blank certifications which are then used by the marketing agency without benefit of an actual examination. Representatives of the State Board of Veterinary Medical Examiners responded to this charge stating that although the rumor was common, no one was willing to come forward to testify at a formal hearing.

LIVESTOCK THEFT PROBLEMS

The comments of industry people respecting proposals to solve theft problems presented somewhat less disagreement than is indicated in the previous discussion. Considerable discussion developed at each hearing relative to branding and brand inspection systems, and considerable opposition was expressed to any mandatory branding or mandatory brand inspection scheme. The Committee presented for discussion purposes the California brand inspection system, and several speakers spoke with favor about the Nebraska system. Testimony also was presented, however, which stated that the brand inspection systems in use in other states are not functioning well, and that they are poorly administered and not providing what they purport to provide.

Remarks were presented by a law enforcement officer and others that current laws do not permit adequate enforcement. The most often voiced criticism was that the law currently does not provide for any means of identifying animals in transit, either individually or to their owner, and thus enforcement officers have no means of determining when a theft is being committed.

Several of the southern Iowa producers urged that changes be made to put "more teeth" in the law. It was stated that the current brand registration fees provide no benefit because the published records are outdated and are not available for use by enforcement agencies. A representative of an ad hoc group of cow-calf producers proposed the following changes:

1. Provide that the brand registration fees not revert to the general fund, but be used to upgrade the registration system.

2. Require the possession of a brand release or other document as a condition to lawful possession of livestock bearing the brand of another.
3. Provide for frequent publication or supplementing of the brand records with copies distributed to enforcement agencies.
4. Require possession of a trip ticket whenever animals are being transported. The document would require an identification of the animals, and also identification of the owner, including the owner's brand registration number.
5. Provide for enhanced criminal penalties for deterrence.

Adverse criticism of the trip ticket proposal was presented which opposed three features: any mandatory inspection prior to issuance of the certificate, any additional paperwork for stock haulers where waybills or other documents are currently required, and any requirement that an individual farmer have a trip ticket to move his own livestock between his own properties. Some market agencies opposed the trip ticket on the grounds that the agencies would be required to issue trip tickets to each buyer, and thus would have to hire additional employees. Producers outside of the southern counties were much less interested in the trip ticket concept, but generally suggested that vigorous enforcement of present law is necessary. A livestock trucker commented that the trip ticket concept might inconvenience some producers because they would have to be present to sign the ticket at the time of shipping, or would have to prepare the tickets in advance.

NUISANCE LAWS

At its meeting on December 2, 1974, the Committee considered the problems being faced by feedlot operators because of the Iowa nuisance laws. The Committee reviewed chapter 657 of the Code, and the application of that chapter to feedlot operators. Several members of the Committee expressed concern that as residential development increases in the rural areas, feedlot operators will come under increased pressure to cease their operations because of the alleged interference with the right to enjoy these residential properties.

The Committee discussed the alternatives which face the legislature, either to leave the law as it is, or to protect these feedlot operators by creating some limitations on the nuisance law. The Committee unanimously agreed to submit a bill draft to the General Assembly which would provide some protection for these farming operations.

COMMITTEE RECOMMENDATIONS

1. Implied Warranties in Livestock Sales.

The Committee determined that a livestock sale should be exempt from the implied warranty provisions of the Uniform Commercial Code upon the condition that the seller, and any marketing agency involved in the transaction provides to the buyer, upon request, information respecting the ownership and custody of the animal, referred to in this report as "animal history information", for the thirty-day period immediately preceding the date of sale. A person shall be exempt only if the person supplies all of the information required to be provided in the ownership certificate.

The secretary of agriculture is required to specify the form of the information required to be given, and the secretary shall make forms available for use by sellers and other persons.

A marketing agency shall be required to maintain on file, and to present for inspection upon request, available animal history information. Prior to the consummation of a sale of livestock, a livestock auction or other marketing agency shall announce to the prospective buyers that thirty-day animal history is available. If the information is not available, then no comment need be made.

It is the intent of the Committee that marketing agencies shall not be required to submit animal history information unless it is provided to them by the seller or consignor of the animals. The provision of history is optional with the owner of the animals, and is not a requisite to the sale of any animal. It is the intent of the Committee, however, that unless thirty-day history is provided, no person shall be exempted by the provisions of the bill proposed by this Committee.

Criminal penalties shall be included which shall prohibit marketing agencies from failing to provide animal history submitted by a seller, and which shall prohibit the alteration or forgery by any person of animal history certificates.

2. Livestock Movement Certificates.

The Committee recommends that any movement of cattle be documented by the possession of a movement certificate. This document should enable law enforcement officers to reduce the incidence of cattle theft. The Committee further recommends that law enforcement officers be given the authority to detain a person transporting cattle in order to verify that the person has the required movement certificate.

The Committee recommends that the secretary of agriculture prescribe the form of the certificate. The secretary by rule may permit the use of standard livestock shipping contracts, or other forms which are required by state or federal law to accompany shipments of cattle, in lieu of the prescribed form, if the form contains substantially all of the information required to be contained in the form prescribed by the secretary.

The prescribed form shall contain information identifying the seller, the origin of the animals, the person transporting the animals, the vehicle being used, the destination and recipient of the animals, and describing the animals themselves.

The Committee also recommends that law enforcement officers have blank forms in their possession. In the event that a person is detained by an officer and the person does not have the required documentation, the peace officer shall require the person to complete and sign the document in his presence. The officer would retain the document for follow-up investigation, and if it subsequently were determined that the person did not have lawful possession, the individual could be identified for prosecution. A person who refused to complete the document would be subject to arrest.

Penalties are to be provided for making or altering movement certificates with the intent to defraud, and for failure to complete the movement certificate at the request of a law enforcement officer.

3. Brand Laws.

The Committee recommends that the appropriate standing committees consider changes to the brand law of this state. The Committee concludes that the present brand recording and publication provisions are inadequate, and that persons who desire to brand animals for identification purposes need increased protections. The Committee concludes that improved administration of the brand laws probably can be accomplished only by an increase in funding for that purpose, and that the individuals who do brand would be willing to pay fees in excess of those presently required for the purpose of receiving greater protections.

The Committee further concludes that the degree of protection desired probably can be achieved only through the requirement of a brand release, or a bill of sale designed for that purpose, which would accompany any animal bearing a brand registered to a person other than the person in possession.

The Committee further concludes that penalties probably would be required which prohibit the buying and selling of branded animals without a brand release executed by the owner of the brand.

4. Nuisance Claims Against Feedlot Operators.

The Committee concludes that chapter 657 of the Code should be amended to limit claims against feedlot operators as follows:

a. No criminal or civil action shall arise against a feedlot operator on the grounds of noxious odors or environmental pollution if the person is in compliance with applicable regulations adopted by the department of environmental quality.

b. No civil action shall arise against a feedlot operator where the person alleging injury or prejudice acquired his property right subsequent to the date the feedlot commenced operations. Existing operations may be expanded if done so by the person originally establishing the feedlot operation.

c. Operations existing on the effective date of the Act shall be protected for a period of ten years from injunctions against feedlot operations if the individual complies with applicable department regulations for that period.

PROPOSED LEGISLATION

The Committee will submit and recommend legislation relating to implied warranties in livestock sales; legislation relating to livestock movement certificates; and legislation relating to nuisances.

The Committee will submit legislation relating to brand laws without recommendation.

These drafts will be distributed by the Legislative Service Bureau when they have been prepared in final form.