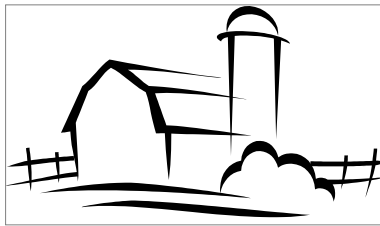

Occupational Regulation Review

Livestock Dealers



**Report of the Agriculture Committee Pursuant to the
Occupational Board Reform Act (§§84-933 to 84-948)**

December 15, 2019

Introduction

The Occupational Board Reform Act (§§84-33 to 84-948 of the Nebraska Revised Statutes) was enacted by the Nebraska Legislature to establish a process for systematic examination of occupational regulations in Nebraska. The Act assigns a primary responsibility to the standing committees of the Legislature to perform periodic evaluation of those occupational regulations that fall within the subject matter jurisdiction of each committee.

§84-940 defines occupational regulation to mean “a statute, rule, regulation, practice, policy or other state law requiring an individual to possess certain personal qualifications or to comply with registration requirements to use an occupational title or work in a lawful occupation.” Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.

Licensing of livestock dealers under the Nebraska Livestock Dealers Licensing Act is an occupational regulation that falls under the jurisdiction of the Agriculture Committee. This report is submitted to fulfil the requirements of the Agriculture Committee under §84-948 of the Occupational Board Reform Act with respect to livestock dealers.

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Occupation: Livestock Dealer

Occupational Board: Department of Agriculture

Statutory Citation: Nebraska Livestock Dealer Licensing Act
(§§54-1701 to 54-1711)

Description of Occupation:

Livestock dealers provide services as an intermediary in the marketing of livestock as either an agent or employee of a livestock seller or purchaser or as an independent business. As an agent for one or more purchasers, dealers utilize established business relationships with livestock producers/suppliers and acquired expertise in assessing livestock for quality and suitability for a purchaser's needs and negotiate directly with livestock sellers on behalf of their clients to establish a price paid and other terms of a transaction. As an agent of one or more sellers, dealers seek to locate buyers for their clients' livestock and negotiate price, delivery and other terms. As an agent or employee of a seller or buyer, dealers purchase or sell livestock on the account of the client or employer and are paid wages as an employee, or are paid or retain commissions for their services. Dealers may also purchase livestock on their own account which they temporarily own for purpose of eventual resale, with compensation in the form of any markup of the resale price over the purchase price.

Description of Occupational Regulation:

Livestock dealers are regulated by both the Nebraska Department of Agriculture under the Livestock Dealer's Licensing Act and by the USDA under the Packers and Stockyards Act.

Nebraska Livestock Dealers Licensing Act:

The Act defines a dealer as any person or business entity engaged in the business of buying or selling livestock for purpose of resale within the state either for his or her own account or as the employee or agent of the seller or buyer, and also includes any person buying or selling from a concentration point (e.g. auction market).

The act excludes the following from the definition of a dealer:

- An agent or employee buying or selling livestock exclusively for the account of a licensed dealer
- Farmers or ranchers purchasing livestock utilized in in their own operation
- Persons arranging for sales through breed registry associations
- Person buying or selling livestock for research, exhibition, education or entertainment including 4-H and FFA group livestock sales.
- Persons dealing in species other than cattle, swine and sheep (the term "livestock" as defined for purposes of the act are confined to these three species).

The Act does not limit or prescribe the use of the term "livestock dealer" as an occupational title but prohibits engaging in livestock dealing activities without a valid license issued by the Director. Conditions of licensure include:

- \$50 initial and annual renewal license fee
- Documentation verifying either:
 - registration as a dealer under the federal Packers & Stockyards Act (P&SA) and verification that the dealer maintains a bond or other financial assurance required for registration under the P&SA, or
 - If not registered & bonded under the P&SA, verification the applicant maintains a bond in the amount of the greater of \$5000 or the bond amount required under the P&SA payable to the Department of Agriculture.
- Listing of any facilities used by the dealer as concentration points for holding livestock and or presenting for sale, and design and maintenance of such facilities in compliance with minimal standards prescribed by the State Veterinarian
- Compliance with recordkeeping accurately recording information relating to sales transactions and information regarding ownership of dealer businesses.

The Department of Agriculture has authority to deny, restrict or revoke licensure for violations of animal health laws and regulations. Violations of the Act, including engaging in livestock dealing without licensure, or violations of regulations or orders of the Director of Agriculture, is a class III misdemeanor and each day of continued violation is a separate offense.

Packers & Stockyards Act (7 U.S.C. §§181 – 231)

The Packers & Stockyards Act (P&SA) is administered by the Packers and Stockyards Program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), a division of USDA. Implementing regulations are codified at 9 CFR 201-206. The P&SA seeks to ensure fair trade practices and competitive markets for livestock, meat, and poultry, including fostering fair and open competition and guarding against deceptive and fraudulent practices. Livestock dealers are primarily affected by P&SA provisions and activities in the financial responsibility sphere that seek to protect livestock producers and other market participants from financial risks due to fraudulent or insolvent actors in the marketplace. Livestock dealers are also subject to anti-competitive oversight and may not engage in discriminatory or deceptive trade practices.

The P&SA defines a dealer as any person engaged in the business of buying or selling in commerce, either on his own account or as the employee or agent of the vendor or purchaser. By regulation (9 CFR 201.10), any individual employed on salary or similar employment compensation as a livestock buyer by a packer must be individually registered as a dealer. The P&SA excludes the following from the definition of dealer:

- Persons registered as a marketing agency
- Persons marketing their own livestock or buying livestock for their own stocking or feeding purposes
- Persons dealing in species other than cattle, sheep, swine, horses, mules or goats (the term “livestock” for purposes of the act are confined to these species).

Section 7-203 of the Act prohibits any person from carrying on the business of a market agency or dealer without being registered with the Secretary of Agriculture. Terms of registration include:

- File verification of bond securing the obligations of the dealer. The amount of the bond shall be calculated as 2 business day's average purchases rounded up to the nearest \$5000 increment, but shall not be less than \$10,000. For amounts beyond \$75,000, the amount is \$75,000 plus 10% of the amount calculated in excess of \$75,000 rounded up to the nearest \$5000 increment. For packer buyers (persons employed by packers to purchase livestock direct to slaughter or wholly owned dealer subsidiaries of a packer) the packer shall maintain the bond.
- Maintain records to accurately record all transactions and file annual reports of the dealer's activity

In addition to bonding, dealers are subject to a series of regulatory requirements regarding payment and accounting of funds. Failure to adhere to required business practices is cause for denial or revocation of registration and possible civil or criminal enforcement as an unfair or deceptive trade practice.

- Prompt Payment – Dealers are required to make payment for livestock purchases by the close of the business day following the transfer of possession. Livestock sellers may not waive prompt payment protection except by written agreement
- Custodial Accounts – P&SA require dealers to maintain payments received from clients in a custodial account. Transfers and expenditures from the custodial account are limited.
- Financial Soundness – Dealers must demonstrate minimal net worth
- Unfair, Discriminatory, or Deceptive Practices - Dealers are prohibited from giving undue preference or advantage to, or discriminating against, certain buyers and sellers over others, circulating false information to affect market prices or induce sales or purchases, engaging in collusive business relationships with other dealers or marketing agencies, and buying and selling on weight absent actual weighing on certified scales with weighing observed by weigh masters.

Occupational Board Information:

Report contents specified under subdivisions (3)(a) through (f) of §84-948 are not applicable to this occupation.

The Nebraska Department of Agriculture, a code agency, is solely responsible for the receipt and processing of license applications, and the issuance, monitoring and discipline of license infractions. Licensure processing is assigned to staff of the Bureau of Animal Industry, a division of the Department of Agriculture, who issue and renew licenses as a largely ministerial act for license applicants meeting the minimal license fee payment and information filing requirements prescribed in statute. The act prescribes no personal qualifications as defined pursuant to §84-941 of the Occupational Board Reform Act to qualify for licensure or engage in the occupation. Licensure decisions, standards of qualifications for licensure, or disciplinary enforcement of violations of the Act or licensure are not delegated to a separate industry licensing board.

Regulatory Data:

The Executive Board of the Legislature created an electronic survey to help committees accomplish the task of reviewing occupational regulations. Survey results for all executive entities responsible for completing the surveys are published on the Legislature's website at https://nebraskalegislature.gov/reports/committeesurvey_view.php. The survey response for the Department of Agriculture, the agency which implements the Nebraska Livestock Dealers Act, may be found at this site.

License Issuance and Oversight Activity:

The following table summarizes the Department of Agriculture's report of the number of active licensed livestock dealers (licensed issued and renewed annually), license fee revenues and the number of disciplinary actions imposed against licensees for the past five complete fiscal years

Dealer Licensure - 5 Year Summary of Regulatory Activity

	2014/15	2015/16	2016/17	2017/18	2018/19
Licensed Persons	169	168	171	174	156
Annual Revenue*	\$8,850	\$9,700	\$7,800	\$8,650	\$7,750
Disciplinary Actions	None				
Inspections, Audits or Other Regulatory Contacts	None				

- Revenues are primarily license fees but may include late fees and any veterinary inspection fees collected from dealers

Description of Disciplinary Actions:

The Department reports no revocations, denials or other license discipline actions were taken against active licensees or license applicants during the previous five years, nor members of the public acting as a dealer without licensure.

Inspections or other administrative actions:

There are no regular or required inspection or other tasks assigned to the Department. The Department may perform inspection of a dealer's records, facilities or livestock in possession in the course of a disease tracing event or in response to a complaint.

Cost of Regulation:

Fees collected under the act are deposited into the Livestock Auction Market Cash Fund which also receives annual license fees for livestock auction markets, rendering and pet food establishments, and fees paid for veterinary inspections required to be performed at auction markets and other livestock concentration points. Commingled funds are utilized to support the Department's general livestock health activities and regulatory compliance enforcement that apply to various movements and transfers of ownership of livestock.

The Department reports one shared staff to implement the licensure program. Dealer license issuance and renewal is a largely ministerial task. Expenditures to implement the dealer licensing program are not tracked separately and is an incidental expense under the Department's overall livestock health expenditures.

Comparison to Other States' Regulation:

A summary of selected state dealer requirements in relation to the purposes of this report from the Department of Agriculture survey is pasted below. The Department survey includes each bordering state dealer licensing requirement and a selection of other Midwest states.

With the exception of Colorado, Nebraska licensure requirements appear to be comparable to the selected states.¹ While other states also include a bonding requirement, most states only require verification that the licensee is registered and bonded under the P&SA. Similar to Nebraska, the primary purpose of the dealer licensure or registration is to support animal health regulations enforcement.

The Livestock Marketing Association (LMA), an industry trade group, provided a state-by-state spread sheet compilation of state livestock marketing entity licensing regulations. The LMA compilation is for purposes not directly applicable to the purposes of this report. However, it was possible to discern from the LMA data the following: 1) Only a small minority of states do not require some manner of licensure or registration to engage in livestock dealing, 2) Nebraska is somewhat unique in licensing dealers under a distinct stand-alone act. In a number of states, livestock dealers are included among entities to be licensed under state livestock marketing acts and most of these state licensing acts are contained in livestock health regulations; and 3) A small number of states have dealer licensing regulations similar to Colorado where the purpose of the regulation is to assure financial responsibility of entities purchasing farm products.

Selected State Livestock Dealer Licensure/Registration Requirements

Iowa – Requires livestock dealer permits for any person engaged in the business of buying, selling, or assembling livestock by consignment for the purpose of resale either interstate or intrastate. \$50 annual fee and required to be bonded through P&SA.

Kansas – Requires licensing of livestock dealers or order buyers, and includes any person engaged in the business of buying or selling livestock in commerce, either on that person's own account or as the employee or agent of the seller or purchaser, or any person engaged in the business of buying or selling livestock in commerce on a commission basis and shall

¹ Colorado does not separately license livestock dealers, but dealers in livestock are included in the definition of dealers in farm products. Colorado's dealer regulation is primarily a consumer protection act to assure payment to growers.

include any person who buys or sells livestock with the use of a video. \$75 annual fee and required to be bonded through P&SA.

Missouri – Requires registration of livestock dealers for those who buy, sell, or exchange livestock; and such registered livestock dealers shall keep records regarding such sales and purchases to prevent the spread of livestock disease. No cost to register, but registration must be renewed annually.

Montana - "Livestock dealer" means a person engaged in the business of purchasing livestock: (i) for immediate resale; (ii) for interstate shipment; or (iii) on a commission or fee basis: (A) for the account of others; or (B) for or on behalf of a dealer or a market. \$50 for first-time license; \$50 for each additional buyer; and \$250 for annual renewals. Must be bonded through P&SA.

North Dakota – Requires license as a livestock dealer for any person that buys horses, mules, cattle, hogs, goats, or sheep from a producer or a livestock auction market: (i) on the person's own account, more than once per year for the purpose of resale within 30 days; (ii) on commission; or (iii) for slaughter. \$50 and required to be bonded through P&SA.

South Dakota – Requires licensing for livestock dealers, which are persons engaged in the business of buying, selling, and dealing in livestock from producers or livestock auction markets for resale or shipment within or without the state or for resale in the local market. \$50 and required to be bonded through P&SA.

Colorado – Dealers in livestock are included in the definition of dealer in farm products which includes persons purchasing farm products for processing, persons reselling farm products within 90 days of purchase, persons who broker farm product sales or buy and sell as agents of buying or selling entities, and persons selling or holding farm products for commission. Colorado requires farm product dealers to be licensed and bonded. License fee is \$25 annually for small volume dealers (less than \$20,000 annual purchases), \$275 for all others. Dealers of livestock exclusively who are bonded under P&SA are not required to meet state bond requirement.

Texas – Uses different terminology. Texas licenses "commission merchants," persons who pursue the business of selling livestock on consignment for a commission or other charges; solicits consignment of livestock as a livestock commission merchant; or advertises or holds himself/herself out to be a livestock commission merchant. Required to be bonded with P&SA but no licensing fee was readily available

Wyoming – Licenses livestock dealers, which are persons engaged in the business of buying or selling livestock in commerce, either for his own account or as an employee or agent of the seller or buyer; or any person who engages in the regular business of buying or selling livestock in commerce on a commission basis as set forth in rules by the Wyoming livestock board. License fee not readily located. Must be bonded through P&SA.

Occupational Board Reform Act Analysis:

Assumptions underlying the creation of the occupational regulation:

§54-1701 of the The Livestock Dealer Licensing Act declares the purpose of the Act as follows:

Sections 54-1701 to 54-1711 shall be deemed an exercise of the police powers of the State of Nebraska for the protection of the agricultural public to facilitate the control and prevention of diseases in domestic animals by requiring compliance with the laws of this state enacted for that purpose together with such regulations as may have been or may be made pursuant thereto.

The Livestock Dealers Licensing Act was enacted in 1969 through LB 1184 introduced by Senator Willard Waldo. The statement of policy above is consistent with a stated need during the hearing for LB 1184 to eliminate a gap in the state's livestock disease enforcement. Both Senator Waldo and then state veterinarian Dr. H. S. Flora testified that livestock movements arranged through dealers often bypassed veterinary inspection regulations, holding facility sanitary requirements, and other regulations to prevent the introduction and spread of livestock disease.

Occupational board statement of efficacy:

Statement of effectiveness of the occupational license? Records and accredited veterinary requirements provide the Department with the ability to trace diseased or exposed animals for disease prevention and control purposes when such animals have moved through commerce channels.

What is the potential harm if this occupation is no longer licensed, certified, or regulated: The inability to effectively trace exposed, suspect or infected animals moving in commerce could be devastating to the State's livestock industry.

Occupational regulation in relation to Occupational Board Reform Act Policy

§84-946 of the Occupational Board Reform Act declares a policy of the state of Nebraska to protect the fundamental right of an individual to pursue a lawful occupation and to use the least restrictive regulation necessary to meet the perceived need for regulation.

The requirement for state licensure does not function as a true occupational license as contemplated by the Occupational Board Reform Act. It is not a purpose of state licensure to limit participation in the occupation to persons meeting minimal competency, or to regulate the livestock dealer occupation for ethics. While knowledge of livestock breeds and their characteristics, having familiarity with and establishing working relationships with actors within the livestock industry, and skill in judging quality and value of individual livestock animals or groups of animals are essential attributes, no formal specialized education or training, or other demonstration of competency, is required as a qualification for licensure. Persons engaged as dealers typically enter the occupation as an outgrowth of skills and knowledge acquired through experience in the livestock industry.

Dealer licensure functions primarily as a registration to notify the Department of Agriculture of actors and facilities that are subject the Department's animal health oversight. The Act and

implementing regulations require dealers follow state animal health regulations applicable upon movements or transfers of ownership of animals and regulations applicable to animal holding and handling facilities utilized by the dealer. Livestock Dealer licensure plays an important role in facilitating livestock disease traceability.

While the registration function of state licensure may assist the public in identifying actors whose services are bonded, qualification for state licensure essentially only requires that applicants verify they meet the registration and bonding requirements that apply to livestock dealers nationwide under the P&SA. As a practical matter, the state act imposes no new bonding burdens to enter the occupation that do not already apply to dealers under federal law. The state act authorizes denial or revocation of licensure due to a dealer's default on payments but serves only a secondary, incidental function as a consumer protection act. The state act largely defers to federal investigation and enforcement of regulations that protect sellers and buyers from the financial risks of fraudulent, insolvent or incompetent actors.