

## LIVESTOCK AUCTION MARKET ACT

Administration: This Act, except sections 54-1183 through 54-1185, is administered by the Nebraska Department of Agriculture, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-2351.

Revisions: This Act was last revised during the 2013 Nebraska Legislature.

Rules: A regulation has been promulgated under this Act known as Title 23, Chapter 12, Nebraska Administrative Code - Livestock Auction Market Regulations.

<u>Section</u>	<u>Subject</u>	<u>Index</u>
54-1156. ....	Act, how cited.	
54-1157. ....	Declaration of policy.	
54-1158. ....	Terms, defined.	
54-1159. ....	Places exempt from act.	
54-1161. ....	License required; application for license; contents.	
54-1162. ....	Hearing; notice.	
54-1163. ....	Hearing; determination; factors; issuance of license.	
54-1165. ....	License fee; payments; disposition.	
54-1166. ....	Livestock auction markets; license personal to holder; transfer; termination.	
54-1168. ....	Records required; available for inspection.	
54-1169. ....	Department; complaint; notice of hearing; process; hearings; findings; suspension or revocation of license.	
54-1170. ....	Director; transcripts; appeal; procedure.	
54-1171. ....	Violations; penalties; injunction.	
54-1172. ....	Livestock Auction Market Fund; creation; use; investment.	
54-1173. ....	Livestock Auction Market Fund; license and permit fees; occupation tax; unexpended balance; disposition.	
54-1174. ....	Certified copy of license and bond; use as evidence.	
54-1177. ....	Certified copy of license; posting; fee.	
54-1178. ....	Maintenance in sanitary condition; rules and regulations.	
54-1180. ....	Inspection of livestock; duties; fees; use; disposition; notice of change.	
54-1181. ....	Veterinarians; agreement for services; contents; compensation; liability for torts, when.	
54-1181.01. ....	Violations; penalty.	
54-1182. ....	Livestock sold; treatment by veterinarians; release; documentation; rules and regulations.	
54-1183. ....	Livestock auction market or packing plant; brand inspection; election to provide.	
54-1184. ....	Livestock auction market or packing plant; election; how made.	
54-1185. ....	Livestock auction market or packing plant; brand inspection; how conducted; fees; guarantee.	

54-1156. Act, how cited. Sections 54-1156 to 54-1185 shall be known and may be cited as the Livestock Auction Market Act.

54-1157. Declaration of policy. It is hereby declared to be the policy of the State of Nebraska, and the purpose of the Livestock Auction Market Act, to encourage, stimulate, and stabilize the agricultural economy of the state in general, and the livestock economy in particular, by encouraging the construction, development, and productive operation of livestock auction markets as key industries of the state and those markets' particular trade areas, with all benefits of fully open, free, competitive factors, in respect to sales and purchases of livestock.

54-1158. Terms, defined. As used in the Livestock Auction Market Act, unless the context otherwise requires:

(1) Accredited veterinarian means a veterinarian duly licensed by the State of Nebraska and approved by the deputy administrator of the United States Department of Agriculture in accordance with 9 C.F.R. part 161 as the regulations existed on September 1, 2001;

(2) Department means the Department of Agriculture;

(3) Designated veterinarian means an accredited veterinarian who has been designated and authorized by the State Veterinarian to make inspections of livestock at livestock auction markets as may be required by law or regulation whether such livestock is moved in interstate or intrastate commerce;

(4) Director means the Director of Agriculture;

(5) Livestock means cattle, calves, swine, sheep, and goats;

(6) Livestock auction market means any place, establishment, or facility commonly known as a livestock auction market, sales ring, or the like, conducted or operated for compensation as an auction market for livestock, consisting of pens or other enclosures, and their appurtenances, in which livestock are received, held, sold, or kept for sale or shipment;

(7) Livestock auction market operator means any person engaged in the business of conducting or operating a livestock auction market, whether personally or through agents or employees;

(8) Market license means the license for a livestock auction market authorized to be issued under the act;

(9) Person means any individual, firm, association, partnership, limited liability company, or corporation; and

(10) State Veterinarian means the veterinarian in charge of the Bureau of Animal Industry within the department or his or her designee, subordinate to the director.

54-1159. Places exempt from act. The Livestock Auction Market Act shall not be construed to include:

(1) Any place or operation where Future Farmers of America, 4-H groups, or private fairs conduct sales of livestock;

(2) Any place or operation conducted for a dispersal sale of the livestock of farmers, dairypersons, or livestock breeders or feeders, where no other livestock is sold or offered for sale; or

(3) Any place or operation where a breeder or an association of breeders of livestock assemble and offer for sale and sell under their own management any livestock, when such breeders assume all responsibility of such sale and the title of livestock sold. This shall apply to all purebred livestock association sales.

54-1161. License required; application for license; contents. No person shall conduct or operate a livestock auction market unless he or she holds a market license therefor, upon which the current annual market license fee has been paid. Any person making application for a new market license shall do so to the director in writing, verified by the applicant, on a form prescribed by the department, showing the following:

(1) The name and address of the applicant and, if the applicant is an individual, his or her social security number, with statement of the names and addresses of all persons having any financial interest in the applicant and the amount of such interest;

(2) Financial responsibility of the applicant in the form of a statement of all assets and liabilities;

(3) A legal description of the property and its exact location with a complete description of the facilities proposed to be used in connection with such livestock auction market;

(4) The schedule of charges applicant proposes for all services proposed to be rendered; and

(5) A detailed statement of the facts upon which the applicant relies showing the general confines of the trade area proposed to be served by such livestock auction market, the benefits to be derived by the livestock industry, and the services proposed to be rendered.

Such application shall be accompanied by the annual fee as prescribed in section 54-1165.

54-1162. Hearing; notice. Upon the filing of the application as provided in section 54-1161, the director shall fix a reasonable time for the hearing at a place designated by him or her at which time a hearing shall be held on the proposed location of the livestock auction market. The director forthwith shall cause a copy of such application, together with notice of the time and place of hearing, to be served by mail not less than fifteen days prior to such hearing, upon the following:

(1) All duly organized statewide livestock associations in the state who have filed written requests with the department to receive notice of such hearings and such other livestock associations as in the opinion of the director would be interested in such application; and

(2) All livestock auction market operators in the state.

The director shall give further notice of such hearing by publication of the notice thereof once in a daily or weekly newspaper circulated in the city or village where such hearing is to be held, as in the opinion of the director will give reasonable public notice of such time and place of hearing to persons interested therein.

54-1163. Hearing; determination; factors; issuance of license. The hearing required by section 54-1162 shall be heard by the director and the State Veterinarian. If the director and the State Veterinarian determine, after such hearing, that the proposed livestock auction market would beneficially serve the livestock economy, the department shall issue a market license to the applicant. In determining whether or not the application should be granted or denied, reasonable consideration shall be given to:

(1) The ability of the applicant to comply with the federal Packers and Stockyards Act, 1921, 7 U.S.C. 181 et seq., as amended;

(2) The financial stability, business integrity, and fiduciary responsibility of the applicant;

(3) The adequacy of the facilities described to permit the performance of market services proposed in the application;

(4) The present needs for market services or additional services as expressed by livestock growers and feeders in the community; and

(5) Whether the proposed livestock auction market would be permanent and continuous.

54-1165. License fee; payments; disposition. Every livestock auction market operator shall pay annually, on or before August 1, a market license fee of one hundred fifty dollars to the department for each livestock auction market operated by him or her, which payment shall constitute a renewal for one year. Fees so paid shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund for the expenses of administration of the Livestock Auction Market Act.

54-1166. Livestock auction markets; license personal to holder; transfer; termination. Except as otherwise provided in this section, each market license shall be personal to the holder and the facilities covered thereby and transferable without a hearing. The market license covering any livestock auction market which does not hold a sale for a period of one year shall terminate automatically one year from the date of the last sale conducted by the livestock auction market and the license holder whose license is so terminated may request a hearing by filing a written request for such hearing within twenty days after the termination of the license.

54-1168. Records required; available for inspection. Every market license holder under the Livestock Auction Market Act shall keep an accurate record of all transactions conducted in the ordinary course of his or her business. Such records shall be available for examination of the director, or his or her duly authorized representative, in respect to a market license issued under such act.

54-1169. Department; complaint; notice of hearing; process; hearings; findings; suspension or revocation of license. (1) The department may, upon its own motion, whenever it has reason to believe the Livestock Auction Market Act has been violated, or upon verified complaint of any person in writing, investigate the actions of any market license holder, and if the department finds probable cause to do so, shall file a complaint against the market license holder which shall be set down for hearing before the director and the State Veterinarian upon fifteen days' notice served upon such market license holder either by personal service upon him or her or by registered or certified mail or telegram prior to such hearing.

(2) The director shall have the power to administer oaths, certify to all official acts, and subpoena any person in this state as a witness, to compel the producing of books and papers, and to take the testimony of any person on deposition in the same manner as is prescribed by law in the procedure before the courts of this state in civil cases. Processes issued by the director shall extend to all parts of the state and may be served by any person authorized to serve processes. Each witness who shall appear by the order of the director at any hearing shall receive for such attendance the same fees allowed by law to witnesses in civil cases appearing in the district court and mileage at the same rate provided in section 81-1176, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness has not been required to attend at the request of any party, but has been subpoenaed by the director, his or her fees and mileage shall be paid by the director in the same manner as other expenses are paid under the Livestock Auction Market Act.

(3) All powers of the director as provided in this section shall likewise be applicable to hearings held on applications for the issuance of a market license.

(4) Formal finding by the director and the State Veterinarian after due hearing that any market license holder (a) has ceased to conduct a livestock auction market business, (b) has been guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock, (c) has violated any of the provisions of the Livestock Auction Market Act, or (d) has violated any of the rules or regulations adopted and promulgated under the act, shall be sufficient cause for the suspension or revocation of the market license of the offending livestock auction market operator.

54-1170. Director; transcripts; appeal; procedure. The director shall keep a complete transcript of all proceedings and evidence presented in any hearing under the Livestock Auction Market Act. The applicant for a market license, any protestant formally appearing in the hearing for such market license, the holder of any market license suspended or revoked, or any party to a transfer application may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

54-1171. Violations; penalties; injunction. Any person who violates any provision or requirements of the Livestock Auction Market Act is guilty of a Class II misdemeanor. Each day any person operates or conducts a livestock auction market in this state without a license as prescribed in such act is considered a separate offense. The director may institute proceedings to enjoin the operation of a livestock auction market if the person sought to be enjoined is operating a livestock auction market without a market license in good standing as provided in such act.

54-1172. Livestock Auction Market Fund; creation; use; investment. Salaries and expenses of employees, costs of hearings, and all other costs of administration of the Livestock Auction Market Act shall be paid from the Livestock Auction Market Fund which is hereby created. Any money in the Livestock Auction Market Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

54-1173. Livestock Auction Market Fund; license and permit fees; occupation tax; unexpended balance; disposition. The license and permit fees collected as provided by the Livestock Auction Market Act and are an occupation tax and shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund. All money so collected shall be appropriated to the uses of the Department of Agriculture for the purpose of administering such act and shall be paid out only on vouchers approved by the director and upon the warrant or warrants issued by the Director of Administrative Services. Any unexpended balance in such fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium; otherwise it shall lapse into the General Fund.

54-1174. Certified copy of license and bond; use as evidence. A copy of any license and bond provided for in the Livestock Auction Market Act and certified by the director may be procured upon payment of a fee of one dollar for each copy and shall be received as competent evidence in any court in the State of Nebraska without further proof.

54-1177. Certified copy of license; posting; fee. A certified copy of an issued license may be procured by the holder of the original upon payment of a fee of one dollar therefor. The original or certified copy of such license shall be posted during sale periods in a conspicuous place on the premises where the livestock auction market is conducted.

54-1178. Maintenance in sanitary condition; rules and regulations. Every livestock auction market shall be maintained in a sanitary condition under the rules and regulations as prescribed by the director.

54-1180. Inspection of livestock; duties; fees; use; disposition; notice of change. All cattle, calves, swine, sheep, and goats, upon entering a livestock auction market, shall be inspected for health before being offered for sale. Such inspection shall be made by a designated veterinarian. The fees for such inspection shall be established by rules and regulations of the State Veterinarian and shall be collected by the operator of the livestock auction market. Such fees shall be used to pay the fees of necessary inspections and for no other purpose and shall be remitted as may be provided by regulation. The fees shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund and shall be expended exclusively to pay the fees of providing necessary inspections at the livestock auction market which has remitted such fees. Each designated veterinarian making market inspections shall be paid twenty-five dollars for each regularly scheduled sale day in each calendar month as a guaranteed minimum salary for providing adequate inspection services. If the fees collected each calendar month by the market operator do not equal such amount, the market operator shall make up the difference in his or her remittance to the state. The rules and regulations establishing fees for such inspection shall not be adopted, amended, or repealed until after notice by mail to each market licensee and designated veterinarian of the time and place of hearing on the question of adoption, amendment, or repeal of such rules and regulations; such notice shall be mailed at least ten days prior to the date of hearing and shall be sufficient if addressed to the last-known address of each market licensee and designated veterinarian shown on the records of the department.

54-1181. Veterinarians; agreement for services; contents; compensation; liability for torts, when. The State Veterinarian shall make the designation of the veterinarians required by sections 54-1180 and 54-1182 by entering into an agreement with any duly accredited veterinarian for his or her professional services in performing necessary inspections. Such agreement shall provide that the State Veterinarian may terminate it at any time for what he or she deems to be just cause and shall further provide that the state pay such veterinarian a fee as established by section 54-1180, which amount shall be paid monthly from the Livestock Auction Market Fund. Such agreement shall make the designated veterinarian an agent for the Department of Agriculture to perform the duties assigned by sections 54-1180 to 54-1182, and the rules and regulations prescribed by the State Veterinarian, but shall not be deemed to make the designated veterinarian an officer or employee of the state. The orders of such designated veterinarian, issued in the performance of the duties assigned under sections 54-1180 to 54-1182 and the rules and regulations prescribed by the State Veterinarian, shall have the same force and effect as though such order had been made by the State Veterinarian. Designated veterinarians shall not be liable for reasonable acts performed to carry out the duties as set forth in sections 54-1180 and 54-1182 and the rules and regulations prescribed by the State Veterinarian pursuant to such sections.

54-1181.01. Violations; penalty. Any person engaging in livestock commerce at a licensed livestock auction market who violates any provision of sections 54-1180 and 54-1181, or any rules or regulations duly promulgated thereunder, shall be guilty of a Class II misdemeanor.

54-1182. Livestock sold; treatment by veterinarians; release; documentation; rules and regulations. Any livestock sold or disposed of at a livestock auction market, before removal therefrom, shall be released by the designated veterinarian and treated to conform with the health requirements of the rules and regulations prescribed by the State Veterinarian for the movement of livestock. When required, the designated veterinarian shall furnish each owner with documentation showing such inspection, treatment, or quarantine. No such livestock for interstate or intrastate shipment shall be released until all the requirements of the state of its destination have been complied with. Any diseased or exposed livestock shall be handled in accordance with the rules and regulations as prescribed by the State Veterinarian.

54-1183. Livestock auction market or packing plant; brand inspection; election to provide. The owner or operator of any livestock auction market or packing plant located in any county outside the brand inspection area created in section 54-1,109 may voluntarily elect to provide brand inspection for all cattle brought to such livestock auction market or packing plant from within the brand inspection area upon compliance with sections 54-1183 to 54-1185.

54-1184. Livestock auction market or packing plant; election; how made. The election provided for by section 54-1183 shall be made by (1) filing with the Secretary of State, in a form to be prescribed by the secretary, a written notice of such election and agreement to be bound by section 54-1185 and (2) by posting conspicuously on the premises a notice of the fact that brand inspection is provided at such livestock auction market or packing plant.

54-1185. Livestock auction market or packing plant; brand inspection; how conducted; fees; guarantee. Inspection provided for in sections 54-1183 to 54-1185 shall be conducted in the manner established by the Livestock Brand Act. The owner or operator making such election may be required to guarantee to the Nebraska Brand Committee that inspection fees derived from such livestock auction market or packing plant will be sufficient, in each twelve-month period, to pay the per diem and mileage of the inspectors required and that he or she will reimburse the committee for any deficit incurred in any such twelve-month period. Such guarantee shall be secured by a corporate surety bond, to be approved by the Secretary of State, in a penal sum to be established by the Nebraska Brand Committee.

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