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HOUSE BILL NO. 153
INTRODUCED BY B. LER
BY REQUEST OF THE DEPARTMENT OF LIVESTOCK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING LIVESTOCK AUCTIONS; UPDATING LAWS REGARDING LIVESTOCK VIDEO AUCTIONS; REMOVING CERTAIN REQUIREMENTS FROM LIVESTOCK OPERATION CERTIFICATION APPLICATIONS; AMENDING SECTIONS 81-8-213, 81-8-251, 81-8-252, 81-8-264, AND 81-8-265, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 81-8-213, MCA, is amended to read:

"81-8-213. Definitions. As used in this part, the following definitions apply:

- (1) "Board" means the board of livestock provided for in 2-15-3102.
- (2) "Custodial account for shippers' proceeds" or "custodial account" means a separate account established and maintained by a ~~market agency or a satellite video livestock~~ livestock market or livestock video auction market engaged in selling livestock on a commission or agency basis. The account must be maintained in a Montana bank insured by the federal deposit insurance corporation and used to maintain and disburse all funds due to consignors from livestock sold on a commission basis. All checks or banking instruments to consignors in payment of the net proceeds from the sale of consigned livestock must be issued on the custodial account. This account must disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.
- (3) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.
- (4) "Immediate resale" means a sale of livestock within 60 days of the purchase of the livestock.
- (5) "Livestock" means cattle, calves, hogs, pigs, horses, mules, sheep, lambs, and goats.
- (6) (a) "Livestock dealer" means a person engaged in the business of ~~purchasing livestock;~~
(i) ~~for immediate resale;~~

1 ~~(ii) for interstate shipment; or~~
 2 ~~(iii) on a commission or fee basis;~~
 3 ~~(A) for the account of others; or~~
 4 ~~(B) for or on behalf of a dealer or a market~~ buying or selling livestock in commerce on the person's
 5 own account or as an employee or agent of a vendor or purchaser.

6 (b) The term does not include:

7 (i) a farmer or rancher who buys or sells livestock in the ordinary course of a farming or ranching
 8 operation; or

9 (ii) a livestock market.

10 (7) ~~(a) "Livestock market" means a place where a person for compensation assembles livestock~~
 11 ~~for sale, except:~~

12 (i) a person engaged in the business of buying or selling livestock in commerce on a commission
 13 basis;

14 (ii) a person engaged in the business of furnishing stockyard services; or

15 (iii) a livestock video auction as defined in this section.

16 (b) The term does not include:

17 ~~(a)(i)~~ a place used solely for a dispersal sale of the livestock of a farmer, dairy producer, livestock
 18 breeder, or feeder who is discontinuing business and at which other livestock is not sold or offered for sale;

19 ~~(b)(ii)~~ a farm, ranch, or place where livestock either raised or kept for the grazing season or for
 20 fattening is sold and to which other livestock is not brought for sale or to be offered for sale;

21 ~~(c)(iii)~~ the premises of a butcher, packer, or processor who receives animals exclusively for
 22 immediate slaughter;

23 ~~(d)(iv)~~ the premises of a person engaged in the raising of livestock for breeding purposes only, who
 24 limits sale to livestock of the person's own production; or

25 ~~(e)(v)~~ a place where a breeder or an association of breeders of livestock of any class assembles and
 26 offers for sale and sells under the breeder's or the association's own management any livestock, when the
 27 breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

28 (8) "Livestock video auction" means a person who conducts the business of buying or selling

1 livestock on a commission or fee basis through the use of online, video, or other electronic means and who
 2 provides the means for handling receivables or proceeds resulting from these types of transactions.

3 ~~(8)~~(9) "Person" means an individual, firm, association, partnership, or corporation.

4 ~~(9) "Satellite video livestock auction market" or "video auction market" means a place or~~
 5 ~~establishment operated or conducted for compensation or profit as a public market where livestock located in~~
 6 ~~this state are sold or offered for sale at a facility within the state through the use of a satellite video at a public~~
 7 ~~auction.~~

8 (10) "Test station sale" means the sale of livestock from a place where livestock is taken to measure
 9 rates of gain under uniform feeding conditions when that place is not owned by the owner of the livestock."

10

11 **Section 2.** Section 81-8-251, MCA, is amended to read:

12 **"81-8-251. Certificate to operate livestock market required -- application.** (1) A person may not
 13 operate a livestock market unless the person first obtains from the department a certificate declaring that public
 14 convenience and necessity require the operation.

15 (2) The application for a certificate of public convenience must be in writing, verified by the
 16 applicant, and filed with the department. The application must specify the following:

17 (a) (i) the names of the persons applying for a certificate together with their permanent addresses;

18 or

19 (ii) ~~If~~ if the applicant is a firm, association, partnership, or corporation, the names of its directors,
 20 officers, and members, if applicable;

21 (b) the place where the applicant proposes to operate a livestock market;

22 (c) a complete description of the property and facilities proposed to be used for the livestock
 23 market;

24 (d) the commissions or charges the applicant proposes to impose on the consignors' livestock for
 25 services rendered by the applicant in the operation of the livestock market;

26 ~~(e) the location of other livestock markets within a radius of 200 miles of the proposed livestock~~
 27 ~~market and the names and addresses of the operators of those markets;~~

28 ~~(f)~~(e) a detailed statement of the facts ~~upon~~ on which the applicant relies to show public convenience

1 and necessity for the livestock market, including the trade area to be served, the economic benefits to the
 2 livestock industry, and the services to be offered, ~~and the anticipated revenue from inspection that may be~~
 3 ~~derived by the state;~~

4 ~~(g)~~(f) if the applicant is a foreign corporation, its principal place of business outside the state, the
 5 state in which it is incorporated, and a showing that it is in compliance with the laws relating to foreign
 6 corporations doing business in this state;

7 ~~(h)~~(g) a detailed financial statement showing that current assets exceed current liabilities and that
 8 long-term assets exceed long-term liabilities; and

9 ~~(i)~~(h) any additional information the department may require."

10

11 **Section 3.** Section 81-8-252, MCA, is amended to read:

12 **"81-8-252. Hearing on application for certificate -- decision.** (1) Upon the filing of ~~the~~ an
 13 application for a certificate of public convenience pursuant to 81-8-251, the department shall fix a time and
 14 place for a hearing ~~thereon~~ on the application, which may not be less than 10 days after the filing. The
 15 department shall have a copy of the application, excluding the financial statement described in 81-8-251~~(2)(h)~~
 16 (2)(g), and notice of the hearing served by mail ~~upon~~ on:

17 (a) the operators of any other livestock markets that in the opinion of the department might be
 18 affected by the granting of ~~any such~~ the certificate;

19 (b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers
 20 association;

21 (c) the secretary of the district livestock association, if any;

22 (d) the secretary of the livestock association or associations, if any, within the vicinity of the
 23 proposed livestock market, if known to the department; and

24 (e) any railroad company operating into or through the town or city in which the proposed livestock
 25 market will be located.

26 (2) If, after the hearing on the application, the department finds from the evidence that public
 27 convenience and necessity require the authorization of the proposed livestock market, a certificate must be
 28 issued to the applicant. In determining whether public convenience and necessity require the livestock market,

1 the department shall give reasonable consideration to the service rendered by other existing livestock markets
 2 in this state and the effect ~~upon~~ on them if the proposed livestock market is authorized and shall give due
 3 consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months
 4 of the year."

5

6 **Section 4.** Section 81-8-264, MCA, is amended to read:

7 **"81-8-264. ~~Satellite video livestock auction market~~ Livestock video auction -- license to**
 8 **transact business -- license fee -- contract -- renewal.** (1) A ~~satellite video livestock auction market~~ livestock
 9 video auction may transact business in this state only through a licensed livestock dealer or through a livestock
 10 market that is domiciled in the state. The livestock video auction is subject to the same regulation as the
 11 domiciled livestock market.

12 (2) A livestock dealer or a livestock market that proposes to transact business with a ~~video auction~~
 13 ~~market~~ livestock video auction pursuant to subsection (1) shall file an application for a license with the
 14 department on a form prescribed by the department with the following information:

- 15 (a) the nature of the business for which a license is requested;
 16 (b) the name and address of the livestock dealer or the livestock market;
 17 (c) the name and address of the ~~video auction market~~ livestock video auction; and
 18 (d) any additional information that the department may require.

19 (3) The application must be accompanied by:

- 20 (a) a fee established by the department commensurate with the costs of administering 81-8-265

21 and this section;

- 22 (b) evidence that the department may require indicating that the ~~video auction market~~ livestock
 23 video auction is financially responsible and bonded to transact business and has established a custodial
 24 account for shippers' proceeds; and

25 (c) a copy of the contract between the licensed livestock dealer or the livestock market and the
 26 ~~video auction market~~ livestock video auction. The contract must provide:

- 27 (i) for reasonable access by the department to all records and documents relating to the activities
 28 of the ~~video auction market~~ livestock video auction; and

1 (ii) that the livestock dealer or the livestock market and the ~~video-auction-market~~ livestock video
2 auction are jointly and severally liable, with the right of contribution, for all business transacted within the state.

3 (4) If the contract described in subsection (3)(c) is terminated, rescinded, breached, or materially
4 altered, the livestock dealer or the livestock market shall immediately notify the department. Failure to notify the
5 department is considered to be:

6 (a) a failure to keep and maintain suitable records with the department; and

7 (b) a false entry or statement of fact in an application filed with the department.

8 (5) On or before May 1 of each year, a livestock dealer or a livestock market shall renew the
9 license by fulfilling the requirements of subsections (1) through (4).

10 (6) The license fee must be remitted to the state treasurer to the credit of the department."
11

12 **Section 5.** Section 81-8-265, MCA, is amended to read:

13 **"81-8-265. Refusal to issue or renew license -- suspension or revocation.** (1) The department
14 may refuse to issue or renew a license in accordance with the provisions of 81-8-273.

15 (2) The department may suspend or revoke a license in accordance with the provisions of 81-8-
16 274.

17 (3) If the contract between the livestock dealer or the livestock market and the ~~video-auction~~
18 ~~market~~ livestock video auction is terminated, rescinded, breached, or otherwise materially altered by either
19 party, the department may refuse to renew the license or may suspend or revoke the license."
20

21 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

22 - END -