

Approved _____ Date _____

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Susan Roenbaugh at
Chairperson

9:00 a.m. on February 15, 1990 in room 423-S of the Capitol.

All members were present ~~except~~

Committee staff present: Raney Gilliland, Legislative Research
Lynne Holt, Legislative Research
Jill Wolters, Revisor of Statutes Office
Pat Brunton, Committee Secretary

Conferees appearing before the committee: Gayle Mollenkamp, State Representative
Rich McKee, Kansas Livestock Association
Donald Kirkham, Livestock Dealer,
Valley Falls

Chairman Roenbaugh opened hearings on HB 2787 - concerning bonding of livestock dealers.

Representative Mollenkamp testified in support of HB 2787 with a proposed amendment redefining livestock dealer to include video dealers. He further stated another important portion is the penalty section of the bill. (Attachment I).

Questions and answers followed his testimony.

Rich McKee informed the committee the Kansas Livestock Association has taken no position on this bill as of now but it will be debated by the membership at a meeting later this month.

Questions and answers followed.

Donald Kirkham testified in opposition of the bill stating he has real problems with a state bond as this would penalize the reputable dealers.

A lengthy question and answer period followed his testimony.

Hearings were closed by Chairman Roenbaugh on HB 2787.

The meeting adjourned at 9:50 a.m. The next meeting of the House Agriculture and Small Business Committee will be February 16, 1990, Room 423-S, State Capitol, at 9:00 a.m.

THE BANK
225 Center
Oakley, Ks. 67748

Gayle Mollenkamp, State Representative
1010 S.W. Polk, Apt # 10
Topeka, Ks. 66612

January 22nd, 1990

Dear Gayle:

RE: Haverfield Brothers

Last week, I was informed by Keen Brantley, Attourney for the Haverfield Brothers, that Superior Livestock, the video auction company that was involved in the cattle sale, has a bond in the amount of \$10,000.00. In the Haverfield Brothers case, the amount of the sale was \$256,000.00 in round figures. This does not seem to be an adequate bond in my opinion and I am sure in yours. I have been told that Superior Livestock held a video auction in conjunction with the National Western Stock Show in Denver last week with 56,000 head consigned. Again, I feel that a bond of \$10,000. is ludicrous for a sale of this size. I realize that the State of Kansas has no control over sales in Colorado, but would assume that some of the cattle came from Kansas.

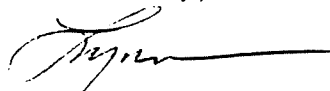
I am not quite sure how the amount of bond is determined or by whom for an out of state corporation holding video auctions with the livestock owned by Kansas farmers and ranchers and mortgaged to Kansas banks but it appears that the legislature should get involved in setting minimum standards. It appears that the minimum bond should be set at \$500,000.00 for a company that holds sales of this magnitude. I would ask that you give som thought as to setting a minimum bond for all cattle buyers and especially Video auction companies that operate in Kansas.

I was informed just this morning that a video auction company has been formed in Hays Kansas by an individual that has been issued a cease and desist order from the Packers and Stockyards people at least twice when operating as a cattle buyer. Now he has formed a video auction company and probably does not have a bond or has a bond of \$10,000.00 like Superior. It would be a travesty of justice to allow an individual with this type of history, the writing of bad checks etc to continue to be allowed to hold video auctions.

If you have any questions or answers to my strong objections or opinions, let me know and I will try to do further research. I know from our last visit that you feel that something has to be done to protect Kansas farmers & ranchers and I hope that includes Central Filing to help protect Kansas banks as well.

Thanks for taking the time to read this and I hope to hear from you soon.

Sincerely,



Lynn Marcy, Exec. V.P.

cc: Kansas Bankers Association

AG. SB
2-15-90
ATTACHMENT I

Livestock confusion spurs call for title law changes

By LINDA MOWERY-DENNING
Great Plains Editor

RUSSELL SPRINGS — A complicated livestock transaction that threatens to put two Logan County ranchers out of business has sparked calls for changes in the state's clear title law.

"I plan to bring this to the attention of the Legislature," Rep. Gayle Mollenkamp, R-Russell Springs, said. "We're going to try to work something out. I don't have specifics yet, but we're going to try and come up with something that protects everyone."

Mollenkamp became involved in the issue after his neighbors, Calvin Haverfield, 31, and his brother, Jay, 27, sold 385 head of livestock to a cattle broker, who sold them to another cattle broker, who delivered them to Grant County Feeders in Ulysses.

Jay Haverfield said the check of the second cattle broker, Stuart Tyner of Garden City, bounced,

therefore making worthless the check the first cattle broker, Robert Daily of Ashland, wrote to the Russell Springs ranchers.

The Haverfields have a check for \$254,517.26 and no way to cash it.

Meanwhile, Tyner has apparently left the Garden City area. Telephone calls to his home reached a recording, which said the number had been disconnected.

Grant County Feeders, which paid the cattle broker an undisclosed down payment for the Haverfield livestock, refuse to release the cattle.

"We had a contract, and the cattle were delivered. As far as we're concerned that contract was legal and binding," said Jim Stroh of Grant County Feeders. "We're willing to pay for the cattle when a judge tells us who to pay. We want to be sure we're protected and don't have to pay for the cattle twice."

At least two lawsuits have been filed in Grant County District Court in connection with Tyner and the

"I plan to bring this to the attention of the Legislature. We're going to try to work something out."

— Rep. Gayle Mollenkamp, R-Russell Springs

livestock sale, which Stroh describes as a "screwed up mess. Everybody has to sue everybody else to find out who should sue who."

Jay Haverfield said Tyner's bank, Western State Bank at Garden City, has claimed an interest in the proceeds from the cattle.

Tom Walker, an official at the bank, said he couldn't comment on the case because of pending litigation.

The Bank of Winona also is involved in the case because the facility made a loan to the Haverfields with the cattle as collateral.

Lynn Marcy, an executive vice president, said under the state's old

clear title law his bank probably could have confiscated the cattle with a court order. But not under new legislation passed several years ago.

Jim Mazg of the Kansas Bankers Association said in 1964 the state gave creditors the authority to demand payment from the buyers of livestock and other property in cases where they purchased collateral and the seller or debtor spent the proceeds instead of repaying the loan.

Then, in 1985, Congress overturned the provision and gave Kansas and other states two options:

■ They could establish a central notification system to record loans against livestock and crops, and

furnish copies of their files to potential buyers. If a buyer somehow failed to discover a lien and make out the check to both the seller and his lender, he could be held liable if the seller didn't repay his loan.

■ States also could opt for pre-notification. Under this option, creditors were required to give their lenders a list of possible buyers for their livestock, crops and other collateral. It was then the lender's responsibility to notify potential buyers of claims against the property. If a creditor sold to a buyer not on the list, he was to notify his banker of the sale.

The first option was supported by groups such as the Kansas Bankers Association. The second option, with the backing of the Kansas Livestock Association and the Kansas Grain and Feed Association, was approved by the legislature.

"The way the law was before it was the buyer who was left out to dry. The way it is now the owner and the one

who loans the money are left out to dry," Mollenkamp said.

He said even somehow giving sellers and their lenders more time to investigate a potential sale without losing the opportunity to market when prices are favorable would help.

But Grant County Feeders' Stroh said he isn't sure a change in the state's clear title law could have prevented the problems.

"The problem is the guy (Tyner) shipped and everything was left up in the air," he said.

Rich McKee of the Topeka-based livestock association said the present law puts disputes over spent collateral where they should be — between the seller and his banker, instead of between the banker and a third party, the buyer.

"It sounds to me like there are several people claiming title to these cattle," he said. "Let's be thankful something like this doesn't often happen."

Wheat research stunted

Seed firms pull out of costly research

By Harris News Service

HUTCHINSON — At the outset of the 1990s, wheat farmers on the Great Plains sat poised on the edge of a "brave new world" in wheat varieties.

No longer would agricultural col-



Magnolia-I-135 interchange plan on city's agenda

A controversial plan for an interchange at Interstate 135 and Magnolia Road will be considered Monday by the Salina City Commission.

The meeting will begin at 4 p.m. in Room 206 of the City-County Building and will be open to the public.

At issue is whether the city should

The interchange would help merge and retail outlets east of the Interstate and an industrial area.

HOUSE BILL No. 2787

By Representatives Mollenkamp, Amos, Crumbaker, Flower, Fry, Gatlin, Graeber, Gross, Guldner, Hamm, Holmes, Larkin, J.C. Long, Lucas, McClure, Mead, D. Miller, Moomaw, O'Neal, Patrick, Reinhardt, Samuelson, Shallenburger, Shore, Smith and Vancrum

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AN ACT concerning livestock dealers; relating to the bonding thereof; amending K.S.A. 47-1807 and repealing the existing section.

47-1804 and

redefining livestock dealers to include video dealers;

sections

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Every livestock dealer required to be registered pursuant to K.S.A. 47-1805, and amendments thereto, upon notification by the livestock commissioner of the amount of bond required, shall file with the livestock commissioner a bond with good corporate surety qualified under the laws of the state of Kansas in a sum computed by determining the average sales or purchases, or both, of livestock during two business days in the preceding 12 months and by using 260 days as the basis of computing the number of business days in such a period. In cases where a business operation is being commenced, an estimated amount of business to be transacted during the next 12 months may be used subject to adjustment later, if indicated. In no event shall the bond be for an amount less than \$5,000.

(b) The bond shall be in favor of the state of Kansas for the benefit of all persons interested, their legal representatives, attorneys or assigns and shall be conditioned on the faithful performance of all the registrant's duties as a livestock dealer. Any person injured by the breach of any obligation of the livestock dealer may commence suit on the bond in any court of competent jurisdiction to recover damages that the person has sustained, but any suit commenced shall either be a class action or shall join as parties plaintiff or parties defendant or other persons who may be affected by such suit on the bond. No bond shall be cancelled by the surety on less than 60 days' notice by mail to the livestock commissioner and the principal except that no such notice shall be required for cancellation of any bond by reason of nonpayment of the premium thereon. The liability

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of the surety on the bond may continue for each successive registration period the bond covers. The total liability of the surety shall be limited to the amount stated on the current bond or on an appropriate rider or endorsement to the current bond. It is the intent of this statute that the bonds be nonaccumulative, that stacking of bonds not occur in excess of the face value of the current bond.

(c) Whenever the livestock commissioner determines that any bond given by any livestock dealer is inadequate and insufficient security against any loss that might arise under the terms of the bond, the livestock commissioner shall require any additional bond that the livestock commissioner considers necessary to provide adequate security. If the livestock commissioner considers the financial condition of the surety upon any livestock dealer and the livestock dealer's bond to be impaired, the livestock commissioner shall require any substituted or additional bond that the livestock commissioner considers necessary.

(d) In all actions hereafter commenced in which judgment is rendered against any surety company on any surety bond furnished under the provisions of this section, if it appears from the evidence that the surety company has refused without just cause to pay the loss upon demand, the court shall allow the plaintiff a reasonable sum as attorney fees to be recovered and collected as a part of the costs. When a tender is made by the surety company before the commencement of the action in which judgment is rendered and the amount recovered is not in excess of the tender, no such costs shall be allowed.

(e) Any person violating or failing to comply with the provisions of this section shall be deemed guilty of a class A misdemeanor.

(f) This section shall be part of and supplemental to article 18 of chapter 47 of the Kansas Statutes Annotated.

See Insert

~~Sec. 2.³ K.S.A. 47-1807 is hereby amended to read as follows: 47-1807. Any person violating or failing to comply with the provisions of this act shall be deemed guilty of a class A misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$500.~~

are

~~Sec. 3.⁴ K.S.A. 47-1807 is hereby repealed.~~

Sec. 4.⁵ This act shall take effect and be in force from and after its publication in the statute book.

47-1804 and

Sec. 2. K.S.A. 47-1804 is hereby amended to read as follows:
47-1804. As used in this act, unless the context otherwise requires:

(a) "Commissioner" means the livestock commissioner of the state of Kansas.

(b) "Livestock" means cattle, swine, horses, sheep, goats and poultry.

(c) "Livestock dealer" means 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 include any person who buys or sells livestock with the use of a video. "Livestock dealer" does not include any person who buys or sells livestock as part of that person's own breeding, feeding or dairy operation, nor any person who receives livestock exclusively for immediate slaughter.

(d) "Person" means any individual, partnership, corporation, company, firm or association. "Person" does not include any public livestock market operator licensed under K.S.A. 47-1001 et seq., and amendments thereto, or any feed lot operator licensed under K.S.A. 47-1501 et seq., and amendments thereto.