

CHAPTER NO. 566

HOUSE BILL NO. 800

INTRODUCED BY ELLERD

IN THE HOUSE

February 14, 1979	Introduced and referred to Committee on Agriculture, Livestock, and Irrigation.
February 21, 1979	Intent statement attached. Committee recommend bill do pass. Report adopted.
February 22, 1979	Printed and placed on members' desks. Second reading, do pass as amended.
February 23, 1979	Correctly engrossed. Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Agriculture, Livestock, and Irrigation.
March 23, 1979	Committee recommend bill be concurred in. Report adopted. Statement of Intent be amended. Report adopted.
March 24, 1979	Second reading, concurred in.
March 27, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 28, 1979

Returned from second house.
Concurred in as amended
with Intent statement amended.

March 31, 1979

Second reading, amendments
adopted.

April 2, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 800
2 INTRODUCED BY Ellis

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 LAW REGULATING LIVESTOCK MARKETS, DEALERS, AND BROKERS;
6 REPEALING SECTIONS 81-8-101 THROUGH 81-8-109, 81-8-121
7 THROUGH 81-8-133, AND 81-8-201 THROUGH 81-8-210, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Short title. [This act] may be cited as the
11 "Montana Livestock Marketing Act".

12 Section 2. Purpose. The purpose of [this act] is to:

13 (1) simplify, clarify, and modernize the law governing
14 livestock marketing businesses and livestock marketing
15 transactions;

16 (2) encourage, stimulate, and stabilize the livestock
17 economy of the state; and

18 (3) promote open, free, and competitive factors in the
19 market place in relation to all market conditions involving
20 the sale and purchase of livestock.

21 Section 3. Definitions. As used in [this act], the
22 following definitions apply:

23 (1) "Board" means the board of livestock provided for
24 in 2-15-3102.

25 (2) "Department" means the department of livestock

1 provided for in Title 2, chapter 15, part 31.

2 (3) "Livestock" means cattle, calves, hogs, pigs,
3 horses, mules, sheep, lambs, and goats.

4 (4) "Livestock broker" means a business, not including
5 facilities, conducted for the receiving, handling, and care
6 of livestock and involving livestock purchased by it for its
7 own account for resale, for the account of any principal for
8 delivery to him, or for slaughter. It does not include a
9 farmer or rancher who buys or sells livestock in the
10 ordinary course of his farming or ranching operation.

11 (5) "Livestock dealer" means a business conducted in
12 facilities utilized for the receiving, handling, and care of
13 livestock purchased by it for its own account for resale,
14 for the account of any principal for delivery to him, or for
15 slaughter. It does not include a farmer or rancher who buys
16 or sells livestock in the ordinary course of his farming or
17 ranching operation.

18 (6) "Livestock market" means a place where a person
19 for compensation assembles livestock for sale, except:

20 (a) a place used solely for a dispersal sale of the
21 livestock of a farmer, dairyman, livestock breeder, or
22 feeder who is discontinuing business and at which no other
23 livestock is sold or offered for sale;

24 (b) a farm, ranch, or place where livestock either
25 raised or kept thereon for the grazing season or for

1 fattening is sold and to which no other livestock is brought
2 for sale or to be offered for sale;

3 (c) the premises of a butcher, packer, or processor
4 who receives animals exclusively for immediate slaughter;

5 (d) the premises of a person engaged in the raising of
6 livestock for breeding purposes only, who limits his sale to
7 livestock of his own production;

8 (e) a place where a breeder or an association of
9 breeders of livestock of any class assembles and offers for
10 sale and sells under his or its own management any livestock
11 of his or its own breeding and raising, when the breeder or
12 association of breeders assumes all responsibility for the
13 sale and the title of livestock sold.

14 (7) "Person" means an individual, firm, association,
15 partnership, or corporation.

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

20 Section 4. Regulation of livestock markets, dealers,
21 and brokers. The department shall:

22 (1) supervise and regulate livestock markets,
23 livestock brokers, and livestock dealers in this state;

24 (2) regulate the properties, facilities, operations,
25 services and practices of all livestock markets, livestock

1 brokers, and livestock dealers;

2 (3) supervise and regulate livestock markets in all
3 matters affecting the relationship between the livestock
4 market and owners of livestock and between the livestock
5 market and purchasers of livestock;

6 (4) prescribe by general order or otherwise rules in
7 conformity with [this act] applicable to all livestock
8 markets, livestock brokers, and livestock dealers and not in
9 conflict with the laws of the United States or regulations
10 of the United States department of agriculture or other
11 federal agencies;

12 (5) enforce [this act] and adopt rules necessary to
13 carry out [this act].

14 Section 5. Posting of certificate or license. Every
15 person certified or licensed under the provisions of [this
16 act] shall conspicuously post at his place of business for
17 inspection by any other person the certificate or license
18 issued by the department.

19 Section 6. Financial responsibility. (1) Every
20 livestock market, livestock broker, or livestock dealer
21 shall maintain a financial condition of total assets in
22 excess of total liability, including total current assets in
23 excess of total current liabilities.

24 (2) Payment for livestock purchased shall be made upon
25 completion of the sales transaction. Payment in all

1 livestock transactions shall be made by cash, check, or
2 draft, as defined in 30-3-104; by electronic funds transfer,
3 as defined in 32-6-103; or by any other bankable instrument.

4 Section 7. Penalties. (1) A person found, after notice
5 and hearing, to be in violation of [section 6] shall be
6 assessed a civil penalty by the department of not less than
7 \$100 or more than \$5,000, have his license or certificate
8 suspended or revoked, or both.

9 (2) A person found, after notice and hearing, to have
10 committed a subsequent violation of [section 6] after the
11 department has assessed a penalty pursuant to subsection (1)
12 shall be fined not less than \$250 or more than \$5,000 and
13 have his license or certificate suspended or revoked.

14 (3) The maker of any bankable instrument who knowingly
15 and without right fails to honor or causes another to
16 dishonor that instrument once it is issued or delivered in
17 payment for a livestock purchase is guilty of a felony and
18 on conviction may be imprisoned for not more than 5 years or
19 fined not more than \$10,000, or both.

20 Section 8. Title warranty of livestock sold. A
21 livestock market, livestock broker, or livestock dealer
22 shall warrant to the purchaser thereof the title of all
23 livestock sold. A livestock market is liable to the rightful
24 owner of all livestock sold for the net proceeds for such
25 livestock whether or not the rightful owner was known to the

1 market at the time of the sale.

2 Section 9. Certificate to operate livestock market
3 required -- application. (1) A person may not operate a
4 livestock market unless he first obtains from the department
5 a certificate declaring that public convenience and
6 necessity require the operation.

7 (2) The application for a certificate of public
8 convenience shall be in writing, verified by the applicant,
9 and filed with the department. It shall specify the
10 following:

11 (a) the names of the persons applying for a
12 certificate together with their permanent addresses. If the
13 applicant is a firm, association, partnership, or
14 corporation, the names of its directors, officers, and
15 members, if applicable;

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

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

20 (d) the commissions or charges the applicant proposes
21 to impose on the consignors' livestock for services rendered
22 to them by the applicant in the operation of the livestock
23 market;

24 (e) the location of other livestock markets within a
25 radius of 200 miles of the proposed livestock market and the

1 names and addresses of the operators thereof;

2 (f) a detailed statement of the facts upon which the
3 applicant relies to show public convenience and necessity
4 for the livestock market, including the trade area to be
5 served, the economic benefits to the livestock industry, the
6 services to be offered, and the anticipated revenue from
7 inspection that may be derived by the state;

8 (g) if the applicant is a foreign corporation, its
9 principal place of business outside the state, the state in
10 which it is incorporated, and a showing that it is in
11 compliance with the laws relating to foreign corporations
12 doing business in this state;

13 (h) a detailed financial statement showing that
14 current assets exceed current liabilities and that long-term
15 assets exceed long-term liabilities;

16 (i) any additional information the department may
17 require.

18 Section 10. Certificate to operate livestock market --
19 hearings -- limitations on issuance. (1) Upon the filing of
20 the application, the department shall fix a time and place
21 for a hearing thereon, which may not be less than 10 days
22 after the filing. The department shall have a copy of the
23 application and notice of hearing served by mail upon:

24 (a) the operators of any other livestock markets that
25 in the opinion of the department might be affected by the

1 granting of any such certificate;

2 (b) the secretaries of the Montana stockgrowers
3 association and the Montana woolgrowers association;

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

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

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

12 (2) If, after the hearing on the application, the
13 department finds from the evidence that public convenience
14 and necessity require the authorization of the proposed
15 livestock market, a certificate must be issued to the
16 applicant. In determining whether public convenience and
17 necessity require the livestock market, the department shall
18 give reasonable consideration to the service rendered by
19 other existing livestock markets in this state and the
20 effect upon them if the proposed livestock market is
21 authorized and shall give due consideration to the
22 likelihood of the proposed service being permanent and
23 continuous throughout 12 months of the year.

24 Section 11. Livestock markets -- transfer of
25 certificates. The department may approve the transfer of

1 ownership of a certificate of public convenience and
 2 necessity issued pursuant to [this act] without a
 3 determination and showing of public convenience and
 4 necessity. Such approval may be granted only after a public
 5 hearing at which the transferee's qualifications to operate
 6 a livestock market have been thoroughly examined and found
 7 sufficient to properly operate a livestock market. A minimum
 8 of 10 days' notice by mail must be given to all persons to
 9 whom notice is sent pursuant to the provisions of [section
 10 10] of a hearing to consider an initial application for a
 11 certificate.

12 Section 12. Livestock markets -- fee. A person
 13 operating a livestock market shall pay annually on May 1 a
 14 fee of \$100 to the department. All fees shall be paid into
 15 the state treasury and credited to the earmarked revenue
 16 fund for the use of the department.

17 Section 13. Livestock markets -- bond required. (1)
 18 Every person operating a livestock market in this state
 19 shall provide a bond in favor of this state, upon a form and
 20 with sureties to be approved by the board, in the minimum
 21 sum of \$10,000 or such greater sum as the board may
 22 determine, conditioned upon:

23 (a) the payment immediately upon the sale of the
 24 livestock of all money received, less reasonable expenses
 25 and commissions, by the livestock market to the rightful

1 owner of livestock so consigned and delivered to it for
 2 sale; and

3 (b) a full compliance with [this act] including all
 4 rules adopted under [this act].

5 (2) When approved, the bond shall be filed with the
 6 board.

7 (3) A civil action may be brought in the name of the
 8 state upon the bond for the use and benefit of a person who
 9 suffers loss or damage from violations thereof and may be
 10 brought by the person suffering loss or damage in the county
 11 of his residence.

12 Section 14. Livestock markets -- cancellation or
 13 suspension of certificate. (1) The department may cancel or
 14 suspend the certificate of an operator of a livestock market
 15 if it finds that the operator:

16 (a) is guilty of fraud or misrepresentation as to the
 17 titles, charges, number, brands, weights, proceeds of sale,
 18 or ownership of livestock;

19 (b) is in violation of any of the provisions of [this
 20 act];

21 (c) is in violation of any of the rules adopted by the
 22 department; or

23 (d) is in violation of Title 81, chapter 3, part 2.

24 (2) The department on its own initiative or on written
 25 complaint may investigate a livestock market and may file a

1 complaint against the livestock market with the board. The
 2 complaint shall be set for hearing before the board, and the
 3 department shall serve notice of the hearing on the
 4 livestock market at least 10 days before such hearing.

5 (3) An investigation or hearing initiated by the
 6 department under [this act] may be held before an examiner
 7 designated by the board. Any finding or order made by an
 8 examiner, if confirmed by the board, is the order or finding
 9 of the board.

10 Section 15. Appeal by holder of or applicant for
 11 certificate -- bond -- procedure. An appeal of a decision of
 12 the department refusing to grant an application for a
 13 certificate or suspending or revoking a certificate of a
 14 livestock market shall be taken to the district court of the
 15 county in which the proposed livestock market is to be
 16 located or in which the authorized livestock market has its
 17 principal place of business. The appellant shall file a bond
 18 with the clerk of the district court in the sum of \$300, to
 19 be approved by the judge, conditioned to pay all costs that
 20 may be awarded against the appellant in the event of an
 21 adverse decision or the decision of the department being
 22 affirmed. The cost of preparing transcripts shall be paid by
 23 appellant. In a case of suspension or revocation of a
 24 certificate, the filing of the notice and bond stays the
 25 order of the department until the final determination of the

1 appeal. If the appellant fails to perfect the appeal, the
 2 stay shall automatically terminate.

3 Section 16. Regulation of certain nonmarket sales. (1)
 4 A person not a livestock market operator authorized under
 5 [this act] conducting the sale of livestock in a breed sale,
 6 a breed association sale, or at a test station sale, except
 7 when all of the livestock are his and are being sold from
 8 his own place, shall obtain approval from the department
 9 before conducting the sale.

10 (2) The department, as conditions to granting
 11 approval, may require:

12 (a) the names and addresses of those conducting the
 13 sales;

14 (b) the date and time when and the place where the
 15 sale will be conducted;

16 (c) a detailed statement of the assets and liabilities
 17 of the persons conducting the sale;

18 (d) the establishment of a custodial account into
 19 which all money received for the sale of livestock must be
 20 deposited;

21 (e) the posting of a reasonable bond in an amount
 22 determined by the department;

23 (f) the commissions or charges proposed to be imposed
 24 on the owners of livestock for services associated with the
 25 sale;

1 (g) a guarantee to pay all consignors in full within a
2 reasonable time as set by the department;

3 (h) such other information as the department considers
4 necessary.

5 (3) Livestock sold through a nonmarket sale as
6 described by this section must be bred, raised, and owned by
7 members of the association sponsoring the sale or be bred,
8 raised, and owned by the persons selling the livestock at
9 the test station sale.

10 Section 17. Occasional off-premises sales authorized.

11 (1) The department may authorize occasional off-premises
12 sales by authorized livestock markets and may establish the
13 conditions under which approval for an off-premises sale may
14 be granted, including any change in bonding requirements the
15 department considers necessary.

16 (2) No livestock market for which a certificate has
17 been issued under [this act] may conduct an off-premises
18 sale without obtaining prior approval of the department.

19 Section 18. Livestock markets -- record keeping --
20 reports. Each livestock market shall keep accounts, records,
21 and memoranda and shall make reports which the board
22 requires, and the board and its authorized agents and
23 employees shall at all times have access to the accounts,
24 records, and memoranda for inspection and examination.

25 Section 19. Dispersal sales. Dispersal sales conducted

1 through a livestock market must meet the requirements of
2 [this act].

3 Section 20. Inspection of public markets. Livestock
4 inspectors, including stock inspectors of a county or
5 district, the sheriff of a county, or a representative of
6 the department of livestock, may enter upon the premises
7 where livestock is being held or sold and shall be accorded
8 every facility by the owners thereof in determining whether
9 a violation of the law is being committed or is likely to be
10 committed. The inspection may not unnecessarily interfere
11 with the conduct of the sales. Livestock sold at the market
12 may not be delivered to the purchaser until he has first
13 received an inspection certificate issued by one of the
14 officers mentioned in this section, showing clearly and
15 explicitly that the person making the inspection is
16 satisfied as to the ownership of the livestock and the
17 health of all livestock so sold.

18 Section 21. Quarantine of diseased animals. If the
19 livestock inspector at a sale finds any livestock afflicted
20 with an infectious or contagious disease, he shall
21 immediately take possession of the livestock and place it in
22 quarantine, to be disposed of as directed by the department.

23 Section 22. Sale of animals of unknown ownership. (1)
24 If there is any question respecting the ownership of
25 livestock sold, the livestock inspector may take possession

HB 200

1 of the livestock. The livestock inspector shall notify the
2 person in charge of the market and conducting the sales and
3 the person who has purchased the livestock at the sale
4 within a reasonable time.

5 (2) Whenever livestock is sold, the ownership of which
6 is not known or cannot be determined by the livestock
7 inspector, it may be sold as strays and the net proceeds
8 derived from the sale shall be handled as provided in
9 [section 23].

10 Section 23. Duties when ownership in doubt. An
11 operator of a livestock market shall, when notified by the
12 authorized brand inspector that there is a question as to
13 whether any designated livestock sold through the market is
14 lawfully owned by the consignor thereof, hold the proceeds
15 received from the sale of the livestock for a reasonable
16 time, not to exceed 30 days, to permit the consignor to
17 establish ownership. If at the expiration of that time the
18 consignor fails to establish his lawful ownership of the
19 livestock, the proceeds must be transmitted by the operator
20 of the livestock market to the department. The department
21 may dispose of the proceeds in accordance with chapter 4,
22 part 6, of Title 81, relating to the distribution of stray
23 money, and the department's receipt therefor shall relieve
24 the operator of the livestock market from further
25 responsibility for the proceeds. Proof of ownership and

1 account of all sales of livestock must be transmitted by the
2 authorized brand inspector to the department.

3 Section 24. Penalties. A person who violates any
4 provision of [sections 9 through 23] or rules adopted by the
5 department under [sections 9 through 23] is guilty of a
6 misdemeanor and upon conviction shall be fined not less than
7 \$100 or more than \$600, imprisoned in the county jail not
8 less than 30 days or more than 6 months, or both. A person
9 who has been convicted of a violation of [sections 9 through
10 23] and who subsequently is found guilty of another
11 violation of [sections 9 through 23] shall be fined not less
12 than \$200 or more than \$1,000, imprisoned in the county jail
13 for not less than 3 months or more than 6 months, or both,
14 and the department may cancel his certificate.

15 Section 25. Livestock brokers and livestock dealers --
16 licenses. (1) No person may operate as a livestock broker or
17 livestock dealer without a license. A person who wishes to
18 operate as a livestock broker or livestock dealer shall file
19 with the department an application for a license to transact
20 such business on a form prescribed by the department stating
21 the type of license sought and the following information:

22 (a) the names of the persons applying for the
23 certificate together with their permanent addresses and, if
24 the applicant is a firm, association, partnership, or
25 corporation, the names of its directors, officers, and

1 members, if applicable;

2 (b) the post-office address and principal place of
3 business of the applicant;

4 (c) if the applicant is a foreign corporation, its
5 principal place of business outside the state, the name of
6 the state in which it is incorporated, and a statement
7 showing that it has complied with the laws of this state
8 relating to foreign corporations and its right to do
9 business in this state;

10 (d) a detailed financial statement setting forth all
11 assets and liabilities of the applicant pertinent to the
12 business for which the license is sought;

13 (e) if the applicant is a livestock dealer, a
14 description of the facilities at which he proposes to
15 operate.

16 (2) An application fee of \$50 must be submitted with
17 each application for a livestock broker's or livestock
18 dealer's license. The fee shall be the first annual fee if
19 the license is granted.

20 (3) Livestock brokers and livestock dealers shall pay
21 an annual fee of \$50 and supply a current financial
22 statement. The fee is payable on May 1 to the state
23 treasurer to the credit of the department.

24 (4) When an applicant has paid the fee and met the
25 requirements of this section, the department shall issue to

1 the applicant a license which entitles the licensee to
2 engage in the business specified in his application for a
3 period of 1 year unless the license is suspended or revoked
4 under [this act].

5 Section 26. Refusal of livestock broker's or livestock
6 dealer's license. The department shall refuse to issue or
7 renew a license if the applicant:

8 (1) has failed to maintain a financial condition of
9 total assets in excess of total liabilities, including total
10 current assets; in excess of total current liabilities;

11 (2) is in violation of any of the provisions of [this
12 act];

13 (3) has knowingly made false or misleading statements
14 as to the health or physical condition of livestock or
15 practiced fraud or misrepresentation in connection with the
16 buying or receiving of livestock or the selling, exchanging,
17 soliciting, or negotiating of the sale of livestock or the
18 weighing of the same;

19 (4) has failed to keep records of all purchases and
20 sales or refused to grant inspection of such records by
21 authorized agents of the department;

22 (5) is in violation of the rules adopted by the
23 department;

24 (6) has failed to comply with a lawful order of the
25 department;

1 (7) has not filed a surety bond in the form and amount
2 required under [section 27];

3 (8) has been found by the department to have failed to
4 pay, without reasonable cause, obligations incurred in
5 connection with livestock transactions;

6 (9) has been suspended by the order of the secretary
7 of agriculture of the United States department of
8 agriculture under provisions of the Packers and Stockyards
9 Act, 1921, as amended, 7 U.S.C. 181, et seq.

10 Section 27. Livestock brokers and livestock dealers --
11 bond required. (1) A livestock broker or livestock dealer
12 applying for a license under [this act] shall maintain a
13 bond in the form and amount set forth in this section, or if
14 he is registered and bonded under the Packers and Stockyards
15 Act, 1921, 7 U.S.C. 181, et seq., he shall file a statement
16 with the department showing he is maintaining a bond or its
17 equivalent under the packers and stockyards act. The
18 department may require evidence of the bond to be filed with
19 it.

20 (2) The amount of the bond shall be set by the
21 department but may not be less than \$5,000. The bond shall
22 contain the following conditions:

23 "This bond is conditioned on the principal paying to
24 the rightful recipient the purchase price of all livestock
25 he purchases for himself or others and on the principal

1 safely keeping and properly disbursing all funds received on
2 behalf of others."

3 (3) Each bond shall contain provisions that a person
4 damaged by failure of the principal to comply with the
5 condition clause of the bond may bring an action to recover
6 on the bond. At least 30 days' notice in writing shall be
7 given to the department by any party terminating the bond.

8 Section 28. Inspection of records. A livestock broker
9 or livestock dealer shall maintain records that disclose all
10 purchases and sales of livestock. A livestock broker or
11 livestock dealer shall, at all reasonable times, give the
12 department access to and let the department copy any of the
13 records relating to his business.

14 Section 29. Livestock brokers and livestock dealers --
15 suspension and revocation of license -- procedure. Whenever
16 the department finds that any livestock broker or livestock
17 dealer has violated the provisions of [this act], the
18 department may, by order, suspend the license of such person
19 for a period not to exceed 1 year, and if the violation is
20 repeated, the department may, by order, after hearing,
21 permanently revoke the license of such person. Before any
22 license issued under [this act] may be suspended or revoked,
23 the licensee shall be furnished with a copy of the complaint
24 made against him and a hearing shall be had before the
25 department to determine whether the license should be

1 suspended or revoked. The licensee shall be given notice of
 2 the time and the place of such hearing. The notice may be
 3 served by registered or certified mail at the post-office
 4 address listed in the application. The hearing must be held
 5 not less than 10 days or more than 30 days after the mailing
 6 of the notice. At the time and place set for the hearing,
 7 the department shall take and receive evidence, under oath,
 8 with respect to the complaint, and upon such evidence
 9 received, shall promptly dismiss the proceedings or revoke
 10 or suspend the license.

11 Section 30. Termination of livestock broker or
 12 livestock dealer license. A license issued under [this act]
 13 terminates at the close of business on May 1 of each year
 14 following the issuance of the same unless the annual fee has
 15 been paid. Termination of the license will automatically
 16 occur if the bond required by [section 27] is terminated.

17 Section 31. Penalties. A person who violates any
 18 provision of [sections 25 through 28] or rules adopted by
 19 the department under [sections 25 through 28] is guilty of a
 20 misdemeanor and upon conviction shall be fined not less than
 21 \$250 or more than \$1,000 or imprisoned for not more than 6
 22 months, or both.

23 Section 32. Jurisdiction. The justices' courts have
 24 jurisdiction of all actions for violation of the provisions
 25 of [this act].

1 Section 33. Injunctive remedy. The operation of a
 2 livestock market or the buying or selling of livestock by a
 3 person not licensed or certified and bonded as required by
 4 [this act] may be enjoined by the district court on petition
 5 from the department upon a showing that a person is engaged
 6 in the business of a livestock market, livestock broker, or
 7 livestock dealer as defined in [section 3] without the
 8 license or certificate and bond required by [this act]. The
 9 court shall enjoin the person from further activities as a
 10 livestock market operator, livestock broker, or livestock
 11 dealer until the license or certificate and bond have been
 12 properly obtained. It is not necessary to show that any
 13 individual has been injured by the actions complained of in
 14 order to obtain the issuance of the injunction. The
 15 injunctive relief provided by this section is an additional
 16 remedy to the criminal penalties provided in [this act].

17 Section 34. Transition. Licenses and certificates
 18 issued before and still in effect on July 1, 1979, are valid
 19 until May 1, 1980, unless suspended or revoked pursuant to
 20 this act. The actions of persons holding such existing
 21 licenses and certificates are governed by this act.

22 Section 35. Severability. If a part of this act is
 23 invalid, all valid parts that are severable from the invalid
 24 part remain in effect. If a part of this act is invalid in
 25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the
2 invalid applications.

3 Section 36. Codification. This act is intended to be
4 codified as an integral part of Title 81, chapter 8, and the
5 provisions contained in Title 81, chapter 8, apply to this
6 act.

7 Section 37. Repealer. Sections 81-8-101 through
8 81-8-109, 81-8-121 through 81-8-133, and 81-8-201 through
9 81-8-210, MCA, are repealed.

-End-

1 STATEMENT OF INTENT RE: HB 800

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4 A statement of intent is required for this bill in that
5 it delegates authority to adopt rules in section 4.

6 The purpose of the "Montana Livestock Marketing Act" as
7 stated in the bill is to simplify, clarify, and modernize
8 the law governing livestock marketing businesses and
9 livestock marketing transactions; to promote open, free, and
10 competitive factors in the market place in relation to all
11 market conditions involving the sale and purchase of
12 livestock; and to encourage, stimulate, and stabilize the
13 livestock economy of the state.

14 The Department of Livestock is given, under section 4,
15 authority to enforce and to adopt rules necessary to carry
16 out the act. It is the legislative intent in delegating this
17 rulemaking authority that the discretion granted the
18 Department of Livestock is for the purpose of supervising
19 and regulating livestock markets, livestock brokers, and
20 livestock dealers in the state; of regulating the
21 properties, facilities, operations, services, and practices
22 of all livestock markets, livestock brokers, and livestock
23 dealers; and of supervising and regulating livestock markets
24 in all matters affecting the relationship between the
25 livestock market and owners of livestock and between the

1 livestock markets and purchasers of livestock.

2 A major concern of the act is to establish stiff
3 penalties for unfair, deceptive, and fraudulent market
4 practices. It is intended that by providing stricter
5 penalties and that by giving the Department of Livestock
6 authority to assess civil penalties for some violations,
7 livestock marketing in Montana will be strengthened.

8 It is the intent of this bill that in the adoption of
9 rules under section 4 and in the general enforcement of this
10 act that the Livestock Department's first function is to
11 protect livestock producers consigning livestock to markets
12 or selling livestock to or through dealers and brokers.
13 Secondly, it is the intent of the legislature that so long
14 as the purpose of protecting livestock producers is met, the
15 enforcement and rules under this act not unduly interfere
16 with the operations of the businesses of livestock markets,
17 livestock dealers, and livestock brokers. ~~It is the~~
18 ~~legislature's further intent that the definitions of~~
19 ~~livestock brokery, dealery, and market contained in section 3~~
20 ~~are not applicable to the kind of marketing of livestock~~
21 ~~presently undertaken by various agricultural organizations~~
22 ~~who group livestock of member producers in order to gain~~
23 ~~better prices.~~

24 First adopted by the HOUSE COMMITTEE ON AGRICULTURE,
25 LIVESTOCK, AND IRRIGATION on February 19, 1979.

1 STATEMENT OF INTENT RE: HB 800

2
3
4 A statement of intent is required for this bill in that
5 it delegates authority to adopt rules in section 4.

6 The purpose of the "Montana Livestock Marketing Act" as
7 stated in the bill is to simplify, clarify, and modernize
8 the law governing livestock marketing businesses and
9 livestock marketing transactions; to promote open, free, and
10 competitive factors in the market place in relation to all
11 market conditions involving the sale and purchase of
12 livestock; and to encourage, stimulate, and stabilize the
13 livestock economy of the state.

14 The Department of Livestock is given, under section 4,
15 authority to enforce and to adopt rules necessary to carry
16 out the act. It is the legislative intent in delegating this
17 rulemaking authority that the discretion granted the
18 Department of Livestock is for the purpose of supervising
19 and regulating livestock markets, livestock brokers, and
20 livestock dealers in the state; of regulating the
21 properties, facilities, operations, services, and practices
22 of all livestock markets, livestock brokers, and livestock
23 dealers; and of supervising and regulating livestock markets
24 in all matters affecting the relationship between the
25 livestock market and owners of livestock and between the

1 livestock markets and purchasers of livestock.

2 A major concern of the act is to establish stiff
3 penalties for unfair, deceptive, and fraudulent market
4 practices. It is intended that by providing stricter
5 penalties and that by giving the Department of Livestock
6 authority to assess civil penalties for some violations,
7 livestock marketing in Montana will be strengthened.

8 It is the intent of this bill that in the adoption of
9 rules under section 4 and in the general enforcement of this
10 act that the Livestock Department's first function is to
11 protect livestock producers consigning livestock to markets
12 or selling livestock to or through dealers and brokers.
13 Secondly, it is the intent of the legislature that so long
14 as the purpose of protecting livestock producers is met, the
15 enforcement and rules under this act not unduly interfere
16 with the operations of the businesses of livestock markets,
17 livestock dealers, and livestock brokers. It is the
18 legislature's further intent that the definitions of
19 livestock broker, dealer, and market contained in section 3
20 are not applicable to the kind of marketing of livestock
21 presently undertaken by various agricultural organizations
22 who group livestock of member producers in order to gain
23 better prices.

24 First adopted by the HOUSE COMMITTEE ON AGRICULTURE,
25 LIVESTOCK, AND IRRIGATION on February 19, 1979.

1 HOUSE BILL NO. 800
 2 INTRODUCED BY ELLERD
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 5 LAW REGULATING LIVESTOCK MARKETS, DEALERS, AND BROKERS;
 6 REPEALING SECTIONS 81-8-101 THROUGH 81-8-109, 81-8-121
 7 THROUGH 81-8-133, AND 81-8-201 THROUGH 81-8-210, MCA."
 8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 10 Section 1. Short title. [This act] may be cited as the
 11 "Montana Livestock Marketing Act".
 12 Section 2. Purpose. The purpose of [this act] is to:
 13 (1) simplify, clarify, and modernize the law governing
 14 livestock marketing businesses and livestock marketing
 15 transactions;
 16 (2) encourage, stimulate, and stabilize the livestock
 17 economy of the state; and
 18 (3) promote open, free, and competitive factors in the
 19 market place in relation to all market conditions involving
 20 the sale and purchase of livestock.
 21 Section 3. Definitions. As used in [this act], the
 22 following definitions apply:
 23 (1) "Board" means the board of livestock provided for
 24 in 2-15-3102.
 25 (2) "Department" means the department of livestock

1 provided for in Title 2, chapter 15, part 31.
 2 (3) "Livestock" means cattle, calves, hogs, pigs,
 3 horses, mules, sheep, lambs, and goats.
 4 (4) "Livestock broker" means a business, not including
 5 facilities, conducted for the receiving, handling, and care
 6 of livestock and involving livestock purchased by it for its
 7 own account for resale, for the account of any principal for
 8 delivery to him, or for slaughter. It does not include a
 9 farmer or rancher who buys or sells livestock in the
 10 ordinary course of his farming or ranching operation.
 11 (5) "Livestock dealer" means a business conducted in
 12 facilities utilized for the receiving, handling, and care of
 13 livestock purchased by it for its own account for resale,
 14 for the account of any principal for delivery to him, or for
 15 slaughter. It does not include a farmer or rancher who buys
 16 or sells livestock in the ordinary course of his farming or
 17 ranching operation.
 18 (6) "Livestock market" means a place where a person
 19 for compensation assembles livestock for sale, except:
 20 (a) a place used solely for a dispersal sale of the
 21 livestock of a farmer, dairyman, livestock breeder, or
 22 feeder who is discontinuing business and at which no other
 23 livestock is sold or offered for sale;
 24 (b) a farm, ranch, or place where livestock either
 25 raised or kept thereon for the grazing season or for

1 fattening is sold and to which no other livestock is brought
2 for sale or to be offered for sale;

3 (c) the premises of a butcher, packer, or processor
4 who receives animals exclusively for immediate slaughter;

5 (d) the premises of a person engaged in the raising of
6 livestock for breeding purposes only, who limits his sale to
7 livestock of his own production;

8 (e) a place where a breeder or an association of
9 breeders of livestock of any class assembles and offers for
10 sale and sells under his or its own management any livestock
11 of his or its own breeding and raising, when the breeder or
12 association of breeders assumes all responsibility for the
13 sale and the title of livestock sold.

14 (7) "Person" means an individual, firm, association,
15 partnership, or corporation.

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

20 Section 4. Regulation of livestock markets, dealers,
21 and brokers. The department shall:

22 (1) supervise and regulate livestock markets,
23 livestock brokers, and livestock dealers in this state;

24 (2) regulate the properties, facilities, operations,
25 services and practices of all livestock markets, livestock

1 brokers, and livestock dealers;

2 (3) supervise and regulate livestock markets in all
3 matters affecting the relationship between the livestock
4 market and owners of livestock and between the livestock
5 market and purchasers of livestock;

6 (4) prescribe by general order or otherwise rules in
7 conformity with [this act] applicable to all livestock
8 markets, livestock brokers, and livestock dealers and not in
9 conflict with the laws of the United States or regulations
10 of the United States department of agriculture or other
11 federal agencies;

12 (5) enforce [this act] and adopt rules necessary to
13 carry out [this act].

14 Section 5. Posting of certificate or license. Every
15 person certified or licensed under the provisions of [this
16 act] shall conspicuously post at his place of business for
17 inspection by any other person the certificate or license
18 issued by the department.

19 Section 6. Financial responsibility. (1) Every
20 livestock market, livestock broker, or livestock dealer
21 shall maintain a financial condition of total assets in
22 excess of total liability, including total current assets in
23 excess of total current liabilities.

24 (2) Payment for livestock purchased shall be made upon
25 completion of the sales transaction. Payment in all

1 livestock transactions shall be made by cash, check, or
 2 draft, as defined in 30-3-104; by electronic funds transfer,
 3 as defined in 32-6-103; or by any other bankable instrument.

4 Section 7. Penalties. (1) A person found, after notice
 5 and hearing, to be in violation of [section 6] shall be
 6 assessed a civil penalty by the department of not less than
 7 \$100 or more than \$5,000, have his license or certificate
 8 suspended or revoked, or both.

9 (2) A person found, after notice and hearing, to have
 10 committed a subsequent violation of [section 6] after the
 11 department has assessed a penalty pursuant to subsection (1)
 12 shall be fined not less than \$250 or more than \$5,000 and
 13 have his license or certificate suspended or revoked.

14 (3) The maker of any bankable instrument who knowingly
 15 and without right fails to honor or causes another to
 16 dishonor that instrument once it is issued or delivered in
 17 payment for a livestock purchase is guilty of a felony and
 18 on conviction may be imprisoned for not more than 5 years or
 19 fined not more than \$10,000, or both.

20 Section 8. Title warranty of livestock sold. A
 21 livestock market, livestock broker, or livestock dealer
 22 shall warrant to the purchaser thereof the title of all
 23 livestock sold. A livestock market is liable to the rightful
 24 owner of all livestock sold for the net proceeds for such
 25 livestock whether or not the rightful owner was known to the

1 market at the time of the sale.

2 Section 9. Certificate to operate livestock market
 3 required -- application. (1) A person may not operate a
 4 livestock market unless he first obtains from the department
 5 a certificate declaring that public convenience and
 6 necessity require the operation.

7 (2) The application for a certificate of public
 8 convenience shall be in writing, verified by the applicant,
 9 and filed with the department. It shall specify the
 10 following:

11 (a) the names of the persons applying for a
 12 certificate together with their permanent addresses. If the
 13 applicant is a firm, association, partnership, or
 14 corporation, the names of its directors, officers, and
 15 members, if applicable;

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

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

20 (d) the commissions or charges the applicant proposes
 21 to impose on the consignors' livestock for services rendered
 22 to them by the applicant in the operation of the livestock
 23 market;

24 (e) the location of other livestock markets within a
 25 radius of 200 miles of the proposed livestock market and the

1 names and addresses of the operators thereof;

2 (f) a detailed statement of the facts upon which the
3 applicant relies to show public convenience and necessity
4 for the livestock market, including the trade area to be
5 served, the economic benefits to the livestock industry, the
6 services to be offered, and the anticipated revenue from
7 inspection that may be derived by the state;

8 (g) if the applicant is a foreign corporation, its
9 principal place of business outside the state, the state in
10 which it is incorporated, and a showing that it is in
11 compliance with the laws relating to foreign corporations
12 doing business in this state;

13 (h) a detailed financial statement showing that
14 current assets exceed current liabilities and that long-term
15 assets exceed long-term liabilities;

16 (i) any additional information the department may
17 require.

18 Section 10. Certificate to operate livestock market --
19 hearings -- limitations on issuance. (1) Upon the filing of
20 the application, the department shall fix a time and place
21 for a hearing thereon, which may not be less than 10 days
22 after the filing. The department shall have a copy of the
23 application and notice of hearing served by mail upon:

24 (a) the operators of any other livestock markets that
25 in the opinion of the department might be affected by the

1 granting of any such certificate;

2 (b) the secretaries of the Montana stockgrowers
3 association and the Montana woolgrowers association;

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

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

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

12 (2) If, after the hearing on the application, the
13 department finds from the evidence that public convenience
14 and necessity require the authorization of the proposed
15 livestock market, a certificate must be issued to the
16 applicant. In determining whether public convenience and
17 necessity require the livestock market, the department shall
18 give reasonable consideration to the service rendered by
19 other existing livestock markets in this state and the
20 effect upon them if the proposed livestock market is
21 authorized and shall give due consideration to the
22 likelihood of the proposed service being permanent and
23 continuous throughout 12 months of the year.

24 Section 11. Livestock markets -- transfer of
25 certificates. The department may approve the transfer of

1 ownership of a certificate of public convenience and
 2 necessity issued pursuant to [this act] without a
 3 determination and showing of public convenience and
 4 necessity. Such approval may be granted only after a public
 5 hearing at which the transferee's qualifications to operate
 6 a livestock market have been thoroughly examined and found
 7 sufficient to properly operate a livestock market. A minimum
 8 of 10 days' notice by mail must be given to all persons to
 9 whom notice is sent pursuant to the provisions of [section
 10 10] of a hearing to consider an initial application for a
 11 certificate.

12 Section 12. Livestock markets -- fee. A person
 13 operating a livestock market shall pay annually on May 1 a
 14 fee of \$100 to the department. All fees shall be paid into
 15 the state treasury and credited to the earmarked revenue
 16 fund for the use of the department.

17 Section 13. Livestock markets -- bond required. (1)
 18 Every person operating a livestock market in this state
 19 shall provide a bond in favor of this state, upon a form and
 20 with sureties to be approved by the board, in the minimum
 21 sum of \$10,000 or such greater sum as the board may
 22 determine, conditioned upon:

23 (a) the payment immediately upon the sale of the
 24 livestock of all money received, less reasonable expenses
 25 and commissions, by the livestock market to the rightful

1 owner of livestock so consigned and delivered to it for
 2 sale; and

3 (b) a full compliance with [this act] including all
 4 rules adopted under [this act].

5 (2) When approved, the bond shall be filed with the
 6 board.

7 (3) A civil action may be brought in the name of the
 8 state upon the bond for the use and benefit of a person who
 9 suffers loss or damage from violations thereof and may be
 10 brought by the person suffering loss or damage in the county
 11 of his residence.

12 Section 14. Livestock markets -- cancellation or
 13 suspension of certificate. (1) The department may cancel or
 14 suspend the certificate of an operator of a livestock market
 15 if it finds that the operator:

16 (a) is guilty of fraud or misrepresentation as to the
 17 titles, charges, number, brands, weights, proceeds of sale,
 18 or ownership of livestock;

19 (b) is in violation of any of the provisions of [this
 20 act];

21 (c) is in violation of any of the rules adopted by the
 22 department; or

23 (d) is in violation of Title 81, chapter 3, part 2.

24 (2) The department on its own initiative or on written
 25 complaint may investigate a livestock market and may file a

1 complaint against the livestock market with the board. The
 2 complaint shall be set for hearing before the board, and the
 3 department shall serve notice of the hearing on the
 4 livestock market at least 10 days before such hearing.

5 (3) An investigation or hearing initiated by the
 6 department under [this act] may be held before an examiner
 7 designated by the board. Any finding or order made by an
 8 examiner, if confirmed by the board, is the order or finding
 9 of the board.

10 Section 15. Appeal by holder of or applicant for
 11 certificate -- bond -- procedure. An appeal of a decision of
 12 the department refusing to grant an application for a
 13 certificate or suspending or revoking a certificate of a
 14 livestock market shall be taken to the district court of the
 15 county in which the proposed livestock market is to be
 16 located or in which the authorized livestock market has its
 17 principal place of business. The appellant shall file a bond
 18 with the clerk of the district court in the sum of \$300, to
 19 be approved by the judge, conditioned to pay all costs that
 20 may be awarded against the appellant in the event of an
 21 adverse decision or the decision of the department being
 22 affirmed. The cost of preparing transcripts shall be paid by
 23 appellant. In a case of suspension or revocation of a
 24 certificate, the filing of the notice and bond stays the
 25 order of the department until the final determination of the

1 appeal. If the appellant fails to perfect the appeal, the
 2 stay shall automatically terminate.

3 Section 16. Regulation of certain nonmarket sales. (1)
 4 A person not a livestock market operator authorized under
 5 [this act] conducting the sale of livestock in a breed sale,
 6 a breed association sale, or at a test station sale, except
 7 when all of the livestock are his and are being sold from
 8 his own place, shall obtain approval from the department
 9 before conducting the sale.

10 (2) The department, as conditions to granting
 11 approval, may require:

12 (a) the names and addresses of those conducting the
 13 sale;

14 (b) the date and time when and the place where the
 15 sale will be conducted;

16 (c) a detailed statement of the assets and liabilities
 17 of the persons conducting the sale;

18 (d) the establishment of a custodial account into
 19 which all money received for the sale of livestock must be
 20 deposited;

21 (e) the posting of a reasonable bond in an amount
 22 determined by the department;

23 (f) the commissions or charges proposed to be imposed
 24 on the owners of livestock for services associated with the
 25 sale;

1 (g) a guarantee to pay all consignors in full within a
2 reasonable time as set by the department;

3 (h) such other information as the department considers
4 necessary.

5 (3) Livestock sold through a nonmarket sale as
6 described by this section must be bred, raised, and owned by
7 members of the association sponsoring the sale or be bred,
8 raised, and owned by the persons selling the livestock at
9 the test station sale.

10 Section 17. Occasional off-premises sales authorized.

11 (1) The department may authorize occasional off-premises
12 sales by authorized livestock markets and may establish the
13 conditions under which approval for an off-premises sale may
14 be granted, including any change in bonding requirements the
15 department considers necessary.

16 (2) No livestock market for which a certificate has
17 been issued under [this act] may conduct an off-premises
18 sale without obtaining prior approval of the department.

19 Section 18. Livestock markets -- record keeping --
20 reports. Each livestock market shall keep accounts, records,
21 and memoranda and shall make reports which the board
22 requires, and the board and its authorized agents and
23 employees shall at all times have access to the accounts,
24 records, and memoranda for inspection and examination.

25 Section 19. Dispersal sales. Dispersal sales conducted

1 through a livestock market must meet the requirements of
2 [this act].

3 Section 20. Inspection of public markets. Livestock
4 inspectors, including stock inspectors of a county or
5 district, the sheriff of a county, or a representative of
6 the department of livestock, may enter upon the premises
7 where livestock is being held or sold and shall be accorded
8 every facility by the owners thereof in determining whether
9 a violation of the law is being committed or is likely to be
10 committed. The inspection may not unnecessarily interfere
11 with the conduct of the sales. Livestock sold at the market
12 may not be delivered to the purchaser until he has first
13 received an inspection certificate issued by one of the
14 officers mentioned in this section, showing clearly and
15 explicitly that the person making the inspection is
16 satisfied as to the ownership of the livestock and the
17 health of all livestock so sold.

18 Section 21. Quarantine of diseased animals. If the
19 livestock inspector at a sale finds any livestock afflicted
20 with an infectious or contagious disease, he shall
21 immediately take possession of the livestock and place it in
22 quarantine, to be disposed of as directed by the department.

23 Section 22. Sale of animals of unknown ownership. (1)
24 If there is any question respecting the ownership of
25 livestock sold, the livestock inspector may take possession

1 of the livestock. The livestock inspector shall notify the
 2 person in charge of the market and conducting the sales and
 3 the person who has purchased the livestock at the sale
 4 within a reasonable time.

5 (2) Whenever livestock is sold, the ownership of which
 6 is not known or cannot be determined by the livestock
 7 inspector, it may be sold as strays and the net proceeds
 8 derived from the sale shall be handled as provided in
 9 [section 23].

10 Section 23. Duties when ownership in doubt. An
 11 operator of a livestock market shall, when notified by the
 12 authorized brand inspector that there is a question as to
 13 whether any designated livestock sold through the market is
 14 lawfully owned by the consignor thereof, hold the proceeds
 15 received from the sale of the livestock for a reasonable
 16 time, not to exceed 30 days, to permit the consignor to
 17 establish ownership. If at the expiration of that time the
 18 consignor fails to establish his lawful ownership of the
 19 livestock, the proceeds must be transmitted by the operator
 20 of the livestock market to the department. The department
 21 may dispose of the proceeds in accordance with chapter 4,
 22 part 6, of Title 81, relating to the distribution of stray
 23 money, and the department's receipt therefor shall relieve
 24 the operator of the livestock market from further
 25 responsibility for the proceeds. Proof of ownership and

1 account of all sales of livestock must be transmitted by the
 2 authorized brand inspector to the department.

3 Section 24. Penalties. A person who violates any
 4 provision of [sections 9 through 23] or rules adopted by the
 5 department under [sections 9 through 23] is guilty of a
 6 misdemeanor and upon conviction shall be fined not less than
 7 \$100 or more than \$600, imprisoned in the county jail not
 8 less than 30 days or more than 6 months, or both. A person
 9 who has been convicted of a violation of [sections 9 through
 10 23] and who subsequently is found guilty of another
 11 violation of [sections 9 through 23] shall be fined not less
 12 than \$200 or more than \$1,000, imprisoned in the county jail
 13 for not less than 3 months or more than 6 months, or both,
 14 and the department may cancel his certificate.

15 Section 25. Livestock brokers and livestock dealers --
 16 licenses. (1) No person may operate as a livestock broker or
 17 livestock dealer without a license. A person who wishes to
 18 operate as a livestock broker or livestock dealer shall file
 19 with the department an application for a license to transact
 20 such business on a form prescribed by the department stating
 21 the type of license sought and the following information:

22 (a) the names of the persons applying for the
 23 certificate together with their permanent addresses and, if
 24 the applicant is a firm, association, partnership, or
 25 corporation, the names of its directors, officers, and

1 members, if applicable;

2 (b) the post-office address and principal place of
3 business of the applicant;

4 (c) if the applicant is a foreign corporation, its
5 principal place of business outside the state, the name of
6 the state in which it is incorporated, and a statement
7 showing that it has complied with the laws of this state
8 relating to foreign corporations and its right to do
9 business in this state;

10 (d) a detailed financial statement setting forth all
11 assets and liabilities of the applicant pertinent to the
12 business for which the license is sought;

13 (e) if the applicant is a livestock dealer, a
14 description of the facilities at which he proposes to
15 operate.

16 (2) An application fee of \$50 must be submitted with
17 each application for a livestock broker's or livestock
18 dealer's license. The fee shall be the first annual fee if
19 the license is granted.

20 (3) Livestock brokers and livestock dealers shall pay
21 an annual fee of \$50 and supply a current financial
22 statement. The fee is payable on May 1 to the state
23 treasurer to the credit of the department.

24 (4) When an applicant has paid the fee and met the
25 requirements of this section, the department shall issue to

1 the applicant a license which entitles the licensee to
2 engage in the business specified in his application for a
3 period of 1 year unless the license is suspended or revoked
4 under [this act].

5 Section 26. Refusal of livestock broker's or livestock
6 dealer's license. The department shall refuse to issue or
7 renew a license if the applicant:

8 (1) has failed to maintain a financial condition of
9 total assets in excess of total liabilities, including total
10 current assets; in excess of total current liabilities;

11 (2) is in violation of any of the provisions of [this
12 act];

13 (3) has knowingly made false or misleading statements
14 as to the health or physical condition of livestock or
15 practiced fraud or misrepresentation in connection with the
16 buying or receiving of livestock or the selling, exchanging,
17 soliciting, or negotiating of the sale of livestock or the
18 weighing of the same;

19 (4) has failed to keep records of all purchases and
20 sales or refused to grant inspection of such records by
21 authorized agents of the department;

22 (5) is in violation of the rules adopted by the
23 department;

24 (6) has failed to comply with a lawful order of the
25 department;

1 (7) has not filed a surety bond in the form and amount
2 required under [section 27];

3 (8) has been found by the department to have failed to
4 pay, without reasonable cause, obligations incurred in
5 connection with livestock transactions;

6 (9) has been suspended by the order of the secretary
7 of agriculture of the United States department of
8 agriculture under provisions of the Packers and Stockyards
9 Act, 1921, as amended, 7 U.S.C. 181, et seq.

10 Section 27. Livestock brokers and livestock dealers --
11 bond required. (1) A livestock broker or livestock dealer
12 applying for a license under [this act] shall maintain a
13 bond in the form and amount set forth in this section, or if
14 he is registered and bonded under the Packers and Stockyards
15 Act, 1921, 7 U.S.C. 181, et seq., he shall file a statement
16 with the department showing he is maintaining a bond or its
17 equivalent under the packers and stockyards act. The
18 department may require evidence of the bond to be filed with
19 it.

20 (2) The amount of the bond shall be set by the
21 department but may not be less than \$5,000. The bond shall
22 contain the following conditions:

23 *This bond is conditioned on the principal paying to
24 the rightful recipient the purchase price of all livestock
25 he purchases for himself or others and on the principal

1 safely keeping and properly disbursing all funds received on
2 behalf of others.*

3 (3) Each bond shall contain provisions that a person
4 damaged by failure of the principal to comply with the
5 condition clause of the bond may bring an action to recover
6 on the bond. At least 30 days' notice in writing shall be
7 given to the department by any party terminating the bond.

8 Section 28. Inspection of records. A livestock broker
9 or livestock dealer shall maintain records that disclose all
10 purchases and sales of livestock. A livestock broker or
11 livestock dealer shall, at all reasonable times, give the
12 department access to and let the department copy any of the
13 records relating to his business.

14 Section 29. Livestock brokers and livestock dealers --
15 suspension and revocation of license -- procedure. Whenever
16 the department finds that any livestock broker or livestock
17 dealer has violated the provisions of [this act], the
18 department may, by order, suspend the license of such person
19 for a period not to exceed 1 year, and if the violation is
20 repeated, the department may, by order, after hearing,
21 permanently revoke the license of such person. Before any
22 license issued under [this act] may be suspended or revoked,
23 the licensee shall be furnished with a copy of the complaint
24 made against him and a hearing shall be had before the
25 department to determine whether the license should be

1 suspended or revoked. The licensee shall be given notice of
 2 the time and the place of such hearing. The notice may be
 3 served by registered or certified mail at the post-office
 4 address listed in the application. The hearing must be held
 5 not less than 10 days or more than 30 days after the mailing
 6 of the notice. At the time and place set for the hearing,
 7 the department shall take and receive evidence, under oath,
 8 with respect to the complaint, and upon such evidence
 9 received, shall promptly dismiss the proceedings or revoke
 10 or suspend the license.

11 Section 30. Termination of livestock broker or
 12 livestock dealer license. A license issued under [this act]
 13 terminates at the close of business on May 1 of each year
 14 following the issuance of the same unless the annual fee has
 15 been paid. Termination of the license will automatically
 16 occur if the bond required by [section 27] is terminated.

17 Section 31. Penalties. A person who violates any
 18 provision of [sections 25 through 28] or rules adopted by
 19 the department under [sections 25 through 28] is guilty of a
 20 misdemeanor and upon conviction shall be fined not less than
 21 \$250 or more than \$1,000 or imprisoned for not more than 6
 22 months, or both.

23 Section 32. Jurisdiction. The justices' courts have
 24 jurisdiction of all actions for violation of the provisions
 25 of [this act].

1 Section 33. Injunctive remedy. The operation of a
 2 livestock market or the buying or selling of livestock by a
 3 person not licensed or certified and bonded as required by
 4 [this act] may be enjoined by the district court on petition
 5 from the department upon a showing that a person is engaged
 6 in the business of a livestock market, livestock broker, or
 7 livestock dealer as defined in [section 3] without the
 8 license or certificate and bond required by [this act]. The
 9 court shall enjoin the person from further activities as a
 10 livestock market operator, livestock broker, or livestock
 11 dealer until the license or certificate and bond have been
 12 properly obtained. It is not necessary to show that any
 13 individual has been injured by the actions complained of in
 14 order to obtain the issuance of the injunction. The
 15 injunctive relief provided by this section is an additional
 16 remedy to the criminal penalties provided in [this act].

17 Section 34. Transition. Licenses and certificates
 18 issued before and still in effect on July 1, 1979, are valid
 19 until May 1, 1980, unless suspended or revoked pursuant to
 20 this act. The actions of persons holding such existing
 21 licenses and certificates are governed by this act.

22 Section 35. Severability. If a part of this act is
 23 invalid, all valid parts that are severable from the invalid
 24 part remain in effect. If a part of this act is invalid in
 25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the
2 invalid applications.

3 Section 36. Codification. This act is intended to be
4 codified as an integral part of Title 81, chapter 8, and the
5 provisions contained in Title 81, chapter 8, apply to this
6 act.

7 Section 37. Repealer. Sections 81-8-101 through
8 81-8-109, 81-8-121 through 81-8-133, and 81-8-201 through
9 81-8-210, MCA, are repealed.

-End-

1 HOUSE BILL NO. 800

2 INTRODUCED BY ELLERD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 LAW REGULATING LIVESTOCK MARKETS, DEALERS, AND BROKERS;
6 REPEALING SECTIONS 81-8-101 THROUGH 81-8-109, 81-8-121
7 THROUGH 81-8-133, AND 81-8-201 THROUGH 81-8-210, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Short title. [This act] may be cited as the
11 "Montana Livestock Marketing Act".

12 Section 2. Purpose. The purpose of [this act] is to:

13 (1) simplify, clarify, and modernize the law governing
14 livestock marketing businesses and livestock marketing
15 transactions;

16 (2) encourage, stimulate, and stabilize the livestock
17 economy of the state; and

18 (3) promote open, free, and competitive factors in the
19 market place in relation to all market conditions involving
20 the sale and purchase of livestock.

21 Section 3. Definitions. As used in [this act], the
22 following definitions apply:

23 (1) "Board" means the board of livestock provided for
24 in 2-15-3102.

25 (2) "Department" means the department of livestock

1 provided for in Title 2, chapter 15, part 31.

2 (3) "Livestock" means cattle, calves, hogs, pigs,
3 horses, mules, sheep, lambs, and goats.

4 (4) "Livestock broker" means a business, not including
5 facilities, conducted for the receiving, handling, and care
6 of livestock and involving livestock purchased by it for its
7 own account for resale, for the account of any principal for
8 delivery to him, or for slaughter. It does not include a
9 farmer or rancher who buys or sells livestock in the
10 ordinary course of his farming or ranching operation.

11 (5) "Livestock dealer" means a business conducted in
12 facilities utilized for the receiving, handling, and care of
13 livestock purchased by it for its own account for resale,
14 for the account of any principal for delivery to him, or for
15 slaughter. It does not include a farmer or rancher who buys
16 or sells livestock in the ordinary course of his farming or
17 ranching operation.

18 (6) "Livestock market" means a place where a person
19 for compensation assembles livestock for sale, except:

20 (a) a place used solely for a dispersal sale of the
21 livestock of a farmer, dairyman, livestock breeder, or
22 feeder who is discontinuing business and at which no other
23 livestock is sold or offered for sale;

24 (b) a farm, ranch, or place where livestock either
25 raised or kept thereon for the grazing season or for

1 fattening is sold and to which no other livestock is brought
2 for sale or to be offered for sale;

3 (c) the premises of a butcher, packer, or processor
4 who receives animals exclusively for immediate slaughter;

5 (d) the premises of a person engaged in the raising of
6 livestock for breeding purposes only, who limits his sale to
7 livestock of his own production;

8 (e) a place where a breeder or an association of
9 breeders of livestock of any class assembles and offers for
10 sale and sells under his or its own management any livestock
11 ~~of--his-or-its-own-breeding-and-raising~~, when the breeder or
12 association of breeders assumes all responsibility for the
13 sale and the title of livestock sold.

14 (7) "Person" means an individual, firm, association,
15 partnership, or corporation.

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

20 Section 4. Regulation of livestock markets, dealers,
21 and brokers. The department shall:

22 (1) supervise and regulate livestock markets,
23 livestock brokers, and livestock dealers in this state;

24 (2) regulate the properties, facilities, operations,
25 services and practices of all livestock markets, livestock

1 brokers, and livestock dealers;

2 (3) supervise and regulate livestock markets in all
3 matters affecting the relationship between the livestock
4 market and owners of livestock and between the livestock
5 market and purchasers of livestock;

6 (4) prescribe by general order or otherwise rules in
7 conformity with [this act] applicable to all livestock
8 markets, livestock brokers, and ~~OR~~ livestock dealers and not
9 in conflict with the laws of the United States or
10 regulations of the United States department of agriculture
11 or other federal agencies;

12 (5) enforce [this act] and adopt rules necessary to
13 carry out [this act].

14 Section 5. Posting of certificate or license. Every
15 person certified or licensed under the provisions of [this
16 act] shall conspicuously post at his place of business for
17 inspection by any other person the certificate or license
18 issued by the department.

19 Section 6. Financial responsibility. (1) Every
20 livestock market, livestock broker, or livestock dealer
21 shall maintain a financial condition of total assets in
22 excess of total liability, including total current assets in
23 excess of total current liabilities.

24 (2) Payment for livestock purchased shall be made upon
25 completion of the sales transaction. Payment in all

1 livestock transactions shall be made by cash, check, or
 2 draft, as defined in 30-3-104; by electronic funds transfer,
 3 as defined in 32-6-103; or by any other bankable instrument.

4 Section 7. Penalties. (1) A person found, after notice
 5 and hearing, to be in violation of [section 6] shall be
 6 assessed a civil penalty by the department of not less than
 7 \$100 or more than \$5,000, have his license or certificate
 8 suspended or revoked, or both.

9 (2) A person found, after notice and hearing, to have
 10 committed a subsequent violation of [section 6] after the
 11 department has assessed a penalty pursuant to subsection (1)
 12 shall be fined not less than \$250 or more than \$5,000 and
 13 have his license or certificate suspended or revoked.

14 (3) The maker of any bankable instrument who knowingly
 15 and without right fails to honor or causes another to
 16 dishonor that instrument once it is issued or delivered in
 17 payment for a livestock purchase is guilty of a felony and
 18 on conviction may be imprisoned for not more than 5 years or
 19 fined not more than \$10,000, or both.

20 Section 8. Title warranty of livestock sold. A
 21 livestock market, livestock broker, or livestock dealer
 22 shall warrant to the purchaser thereof the title of all
 23 livestock sold. A livestock market is liable to the rightful
 24 owner of all livestock sold for the net proceeds for such
 25 livestock whether or not the rightful owner was known to the

1 market at the time of the sale.

2 Section 9. Certificate to operate livestock market
 3 required -- application. (1) A person may not operate a
 4 livestock market unless he first obtains from the department
 5 a certificate declaring that public convenience and
 6 necessity require the operation.

7 (2) The application for a certificate of public
 8 convenience shall be in writing, verified by the applicant,
 9 and filed with the department. It shall specify the
 10 following:

11 (a) the names of the persons applying for a
 12 certificate together with their permanent addresses. If the
 13 applicant is a firm, association, partnership, or
 14 corporation, the names of its directors, officers, and
 15 members, if applicable;

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

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

20 (d) the commissions or charges the applicant proposes
 21 to impose on the consignors' livestock for services rendered
 22 to them by the applicant in the operation of the livestock
 23 market;

24 (e) the location of other livestock markets within a
 25 radius of 200 miles of the proposed livestock market and the

1 names and addresses of the operators thereof;

2 (f) a detailed statement of the facts upon which the
3 applicant relies to show public convenience and necessity
4 for the livestock market, including the trade area to be
5 served, the economic benefits to the livestock industry, the
6 services to be offered, and the anticipated revenue from
7 inspection that may be derived by the state;

8 (g) if the applicant is a foreign corporation, its
9 principal place of business outside the state, the state in
10 which it is incorporated, and a showing that it is in
11 compliance with the laws relating to foreign corporations
12 doing business in this state;

13 (h) a detailed financial statement showing that
14 current assets exceed current liabilities and that long-term
15 assets exceed long-term liabilities;

16 (i) any additional information the department may
17 require.

18 Section 10. Certificate to operate livestock market --
19 hearings -- limitations on issuance. (1) Upon the filing of
20 the application, the department shall fix a time and place
21 for a hearing thereon, which may not be less than 10 days
22 after the filing. The department shall have a copy of the
23 application and notice of hearing served by mail upon:

24 (a) the operators of any other livestock markets that
25 in the opinion of the department might be affected by the

1 granting of any such certificate;

2 (b) the secretaries of the Montana stockgrowers
3 association and the Montana woolgrowers association;

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

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

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

12 (2) If, after the hearing on the application, the
13 department finds from the evidence that public convenience
14 and necessity require the authorization of the proposed
15 livestock market, a certificate must be issued to the
16 applicant. In determining whether public convenience and
17 necessity require the livestock market, the department shall
18 give reasonable consideration to the service rendered by
19 other existing livestock markets in this state and the
20 effect upon them if the proposed livestock market is
21 authorized and shall give due consideration to the
22 likelihood of the proposed service being permanent and
23 continuous throughout 12 months of the year.

24 Section 11. Livestock markets -- transfer of
25 certificates. The department may approve the transfer of

1 ownership of a certificate of public convenience and
 2 necessity issued pursuant to [this act] without a
 3 determination and showing of public convenience and
 4 necessity. Such approval may be granted only after a public
 5 hearing at which the transferee's qualifications to operate
 6 a livestock market have been thoroughly examined and found
 7 sufficient to properly operate a livestock market. A minimum
 8 of 10 days' notice by mail must be given to all persons to
 9 whom notice is sent pursuant to the provisions of [section
 10 10] of a hearing to consider an initial application for a
 11 certificate.

12 Section 12. Livestock markets -- fee. A person
 13 operating a livestock market shall pay annually on May 1 a
 14 fee of \$100 to the department. All fees shall be paid into
 15 the state treasury and credited to the earmarked revenue
 16 fund for the use of the department.

17 Section 13. Livestock markets -- bond required. (1)
 18 Every person operating a livestock market in this state
 19 shall provide a bond in favor of this state, upon a form and
 20 with sureties to be approved by the board, in the minimum
 21 sum of \$10,000 or such greater sum as the board may
 22 determine, conditioned upon:

23 (a) the payment immediately upon the sale of the
 24 livestock of all money received, less reasonable expenses
 25 and commissions, by the livestock market to the rightful

1 owner of livestock so consigned and delivered to it for
 2 sale; and

3 (b) a full compliance with [this act] including all
 4 rules adopted under [this act].

5 (2) When approved, the bond shall be filed with the
 6 board ~~DEPARTMENT~~.

7 (3) A civil action may be brought in the name of the
 8 state upon the bond for the use and benefit of a person who
 9 suffers loss or damage from violations thereof and may be
 10 brought by the person suffering loss or damage in the county
 11 of his residence.

12 Section 14. Livestock markets -- cancellation or
 13 suspension of certificate. (1) The department may cancel or
 14 suspend the certificate of an operator of a livestock market
 15 if it finds that the operator:

16 (a) is guilty of fraud or misrepresentation as to the
 17 titles, charges, number, brands, weights, proceeds of sale,
 18 or ownership of livestock;

19 (b) is in violation of any of the provisions of [this
 20 act];

21 (c) is in violation of any of the rules adopted by the
 22 department; or

23 (d) is in violation of Title 81, chapter 3, part 2.

24 (2) The department on its own initiative or on written
 25 complaint may investigate a livestock market and may file a

1 complaint against the livestock market with the board. The
 2 complaint shall be set for hearing before the board, and the
 3 department shall serve notice of the hearing on the
 4 livestock market at least 10 days before such hearing.

5 (3) An investigation or hearing initiated by the
 6 department under [this act] may be held before an examiner
 7 designated by the board. Any finding or order made by an
 8 examiner, if confirmed by the board, is the order or finding
 9 of the board.

10 Section 15. Appeal by holder of or applicant for
 11 certificate -- bond -- procedure. An appeal of a decision of
 12 the department refusing to grant an application for a
 13 certificate or suspending or revoking a certificate of a
 14 livestock market shall be taken to the district court of the
 15 county in which the proposed livestock market is to be
 16 located or in which the authorized livestock market has its
 17 principal place of business. The appellant shall file a bond
 18 with the clerk of the district court in the sum of \$300, to
 19 be approved by the judge, conditioned to pay all costs that
 20 may be awarded against the appellant in the event of an
 21 adverse decision or the decision of the department being
 22 affirmed. The cost of preparing transcripts shall be paid by
 23 appellant. In a case of suspension or revocation of a
 24 certificate, the filing of the notice and bond stays the
 25 order of the department until the final determination of the

1 appeal. If the appellant fails to perfect the appeal, the
 2 stay shall automatically terminate.

3 Section 16. Regulation of certain nonmarket sales. (1)
 4 A person not a livestock market operator authorized under
 5 [this act] conducting the sale of livestock in a breed sale,
 6 a breed association sale, or at a test station sale, except
 7 when all of the livestock are his and are being sold from
 8 his own place, shall obtain approval from the department
 9 before conducting the sale.

10 (2) The department, as conditions to granting
 11 approval, may require:

12 (a) the names and addresses of those conducting the
 13 sale;

14 (b) the date and time when and the place where the
 15 sale will be conducted;

16 (c) a detailed statement of the assets and liabilities
 17 of the persons conducting the sale;

18 (d) the establishment of a custodial account into
 19 which all money received for the sale of livestock must be
 20 deposited;

21 (e) the posting of a reasonable bond in an amount
 22 determined by the department;

23 (f) the commissions or charges proposed to be imposed
 24 on the owners of livestock for services associated with the
 25 sale;

1 (g) a guarantee to pay all consignors in full within a
2 reasonable time as set by the department;

3 (h) such other information as the department considers
4 necessary.

5 ~~{3}--livestock--sold--through--a--nonmarket--sale--as
6 described--by--this--section--must--be--bred,--raised,--and--owned--by
7 members--of--the--association--sponsoring--the--sale--or--be--bred,
8 raised,--and--owned--by--the--persons--selling--the--livestock--at
9 the--test--station--sale~~

10 Section 17. Occasional off-premises sales authorized.

11 (1) The department may authorize occasional off-premises
12 sales by authorized livestock markets and may establish the
13 conditions under which approval for an off-premises sale may
14 be granted, including any change in bonding requirements the
15 department considers necessary.

16 (2) No livestock market for which a certificate has
17 been issued under [this act] may conduct an off-premises
18 sale without obtaining prior approval of the department.

19 Section 18. Livestock markets -- record keeping --
20 reports. Each livestock market shall keep accounts, records,
21 and memoranda and shall make reports which the board
22 requires, and the board and its authorized agents and
23 employees shall at all times have access to the accounts,
24 records, and memoranda for inspection and examination.

25 Section 19. Dispersal sales. Dispersal sales conducted

1 through a livestock market must meet the requirements of
2 [this act].

3 Section 20. Inspection of public markets. Livestock
4 inspectors, including stock inspectors of a county or
5 district, the sheriff of a county, or a representative of
6 the department of livestock, may enter upon the premises
7 where livestock is being held or sold and shall be accorded
8 every facility by the owners thereof in determining whether
9 a violation of the law is being committed or is likely to be
10 committed. The inspection may not unnecessarily interfere
11 with the conduct of the sales. Livestock sold at the market
12 may not be delivered to the purchaser until he has first
13 received an inspection certificate issued by one of the
14 officers mentioned in this section, showing clearly and
15 explicitly that the person making the inspection is
16 satisfied as to the ownership of the livestock and the
17 health of all livestock so sold.

18 Section 21. Quarantine of diseased animals. If the
19 livestock inspector at a sale finds any livestock afflicted
20 with an infectious or contagious disease, he shall
21 immediately take possession of the livestock and place it in
22 quarantine, to be disposed of as directed by the department.

23 Section 22. Sale of animals of unknown ownership. (1)
24 If there is any question respecting the ownership of
25 livestock sold, the livestock inspector may take possession

1 of the livestock. The livestock inspector shall notify the
 2 person in charge of the market and conducting the sales and
 3 the person who has purchased the livestock at the sale
 4 within a reasonable time.

5 (2) Whenever livestock is sold, the ownership of which
 6 is not known or cannot be determined by the livestock
 7 inspector, it may be sold as strays and the net proceeds
 8 derived from the sale shall be handled as provided in
 9 [section 23].

10 Section 23. Duties when ownership in doubt. An
 11 operator of a livestock market shall, when notified by the
 12 authorized brand inspector that there is a question as to
 13 whether any designated livestock sold through the market is
 14 lawfully owned by the consignor thereof, hold the proceeds
 15 received from the sale of the livestock for a reasonable
 16 time, not to exceed 30 days, to permit the consignor to
 17 establish ownership. If at the expiration of that time the
 18 consignor fails to establish his lawful ownership of the
 19 livestock, the proceeds must be transmitted by the operator
 20 of the livestock market to the department. The department
 21 may dispose of the proceeds in accordance with chapter 4,
 22 part 6, of Title 81, relating to the distribution of stray
 23 money, and the department's receipt therefor shall relieve
 24 the operator of the livestock market from further
 25 responsibility for the proceeds. Proof of ownership and

1 account of all sales of livestock must be transmitted by the
 2 authorized brand inspector to the department.

3 Section 24. Penalties. A person who violates any
 4 provision of [sections 9 through 23] or rules adopted by the
 5 department under [~~sections 9 through 23~~ SECTION 4] is guilty
 6 of a misdemeanor and upon conviction shall be fined not less
 7 than \$100 or more than \$600, imprisoned in the county jail
 8 not less than 30 days or more than 6 months, or both. A
 9 person who has been convicted of a SUBSEQUENT violation of
 10 [sections 9 through 23] and who subsequently is found guilty
 11 of another violation of [~~sections 9 through 23~~] OR RULES
 12 ADOPTED UNDER [SECTION 4] shall be fined not less than \$200
 13 or more than \$1,000, imprisoned in the county jail for not
 14 less than 3 months or more than 6 months, or both, and the
 15 department may cancel his certificate.

16 Section 25. Livestock brokers and livestock dealers --
 17 licenses. (1) No person may operate as a livestock broker or
 18 livestock dealer without a license. A person who wishes to
 19 operate as a livestock broker or livestock dealer shall file
 20 with the department an application for a license to transact
 21 such business on a form prescribed by the department stating
 22 the type of license sought and the following information:

23 (a) the names of the persons applying for the
 24 certificate LICENSE together with their permanent addresses
 25 and, if the applicant is a firm, association, partnership,

1 or corporation, the names of its directors, officers, and
2 members, if applicable;

3 (b) the post-office address and principal place of
4 business of the applicant;

5 (c) if the applicant is a foreign corporation, its
6 principal place of business outside the state, the name of
7 the state in which it is incorporated, and a statement
8 showing that it has complied with the laws of this state
9 relating to foreign corporations and its right to do
10 business in this state;

11 (d) a detailed financial statement setting forth all
12 assets and liabilities of the applicant pertinent to the
13 business for which the license is sought;

14 (e) if the applicant is a livestock dealer, a
15 description of the facilities at which he proposes to
16 operate.

17 (2) An application fee of \$50 must be submitted with
18 each application for a livestock broker's or livestock
19 dealer's license. The fee shall be the first annual fee if
20 the license is granted.

21 (3) Livestock brokers and livestock dealers shall pay
22 an annual fee of \$50 and supply a current financial
23 statement. The fee is payable on May 1 to the state
24 treasurer to the credit of the department.

25 (4) When an applicant has paid the fee and met the

1 requirements of this section, the department shall issue to
2 the applicant a license which entitles the licensee to
3 engage in the business specified in his application for a
4 period of 1 year unless the license is suspended or revoked
5 under [this act].

6 Section 26. Refusal of livestock broker's or livestock
7 dealer's license. The department shall refuse to issue or
8 renew a license if the applicant:

9 (1) has failed to maintain a financial condition of
10 total assets in excess of total liabilities, including total
11 current assets in excess of total current liabilities;

12 (2) is in violation of any of the provisions of [this
13 act];

14 (3) has knowingly made false or misleading statements
15 as to the health or physical condition of livestock or
16 practiced fraud or misrepresentation in connection with the
17 buying or receiving of livestock or the selling, exchanging,
18 soliciting, or negotiating of the sale of livestock or the
19 weighing of the same;

20 (4) has failed to keep records of all purchases and
21 sales or refused to grant inspection of such records by
22 authorized agents of the department;

23 (5) is in violation of the rules adopted by the
24 department;

25 (6) has failed to comply with a lawful order of the

1 department;

2 (7) has not filed a surety bond in the form and amount
3 required under [section 27];

4 (8) has been found by the department to have failed to
5 pay, without reasonable cause, obligations incurred in
6 connection with livestock transactions;

7 (9) has been suspended by the order of the secretary
8 of agriculture of the United States department of
9 agriculture under provisions of the Packers and Stockyards
10 Act, 1921, as amended, 7 U.S.C. 181, et seq.

11 Section 27. Livestock brokers and livestock dealers --
12 bond required. (1) A livestock broker or livestock dealer
13 applying for a license under [this act] shall maintain a
14 bond in the form and amount set forth in this section, or if
15 he is registered and bonded under the Packers and Stockyards
16 Act, 1921, 7 U.S.C. 181, et seq., he shall file a statement
17 with the department showing he is maintaining a bond or its
18 equivalent under the packers and stockyards act. The
19 department may require evidence of the bond to be filed with
20 it.

21 (2) The amount of the bond shall be set by the
22 department but may not be less than \$5,000. The bond shall
23 contain the following conditions:

24 "This bond is conditioned on the principal paying to
25 the rightful recipient the purchase price of all livestock

1 he purchases for himself or others and on the principal
2 safely keeping and properly disbursing all funds received on
3 behalf of others."

4 (3) Each bond shall contain provisions that a person
5 damaged by failure of the principal to comply with the
6 condition clause of the bond may bring an action to recover
7 on the bond. At least 30 days' notice in writing shall be
8 given to the department by any party terminating the bond.

9 Section 28. Inspection of records. A livestock broker
10 or livestock dealer shall maintain records that disclose all
11 purchases and sales of livestock. A livestock broker or
12 livestock dealer shall, at all reasonable times, give the
13 department access to and let the department copy any of the
14 records relating to his business.

15 Section 29. Livestock brokers and livestock dealers --
16 suspension and revocation of license -- procedure. Whenever
17 the department finds that any livestock broker or livestock
18 dealer has violated the provisions of [this act] OR RULES
19 ADOPTED UNDER [THIS ACT], the department may, by order,
20 suspend the license of such person for a period not to
21 exceed 1 year, and if the violation is repeated, the
22 department may, by order, after hearing, permanently revoke
23 the license of such person. Before any license issued under
24 [this act] may be suspended or revoked, the licensee shall
25 be furnished with a copy of the complaint made against him

1 and a hearing shall be had before the department to
 2 determine whether the license should be suspended or
 3 revoked. The licensee shall be given notice of the time and
 4 the place of such hearing. The notice may be served by
 5 registered or certified mail at the post-office address
 6 listed in the application. The hearing must be held not less
 7 than 10 days or more than 30 days after the mailing of the
 8 notice. At the time and place set for the hearing, the
 9 department shall take and receive evidence, under oath, with
 10 respect to the complaint, and upon such evidence received,
 11 shall promptly dismiss the proceedings or revoke or suspend
 12 the license.

13 Section 30. Termination of livestock broker or
 14 livestock dealer license. A license issued under [this act]
 15 terminates at the close of business on May 1 of each year
 16 following the issuance of the same unless the annual fee has
 17 been paid. Termination of the license will automatically
 18 occur if the bond required by [section 27] is terminated.

19 Section 31. Penalties. A person who violates any
 20 provision of [sections 25 through 28] or rules adopted by
 21 the department under [~~sections 25 through 28~~ SECTION 4] is
 22 guilty of a misdemeanor and upon conviction shall be fined
 23 not less than \$250 or more than \$1,000 or imprisoned for not
 24 more than 6 months, or both.

25 Section 32. Jurisdiction. The justices' courts have

1 jurisdiction of all ~~actions-for-violation-of-the-provisions~~
 2 MISDEMEANOR AND CIVIL VIOLATIONS of [this act].

3 Section 33. Injunctive remedy. The operation of a
 4 livestock market or the buying or selling of livestock by a
 5 person not licensed or certified and bonded as required by
 6 [this act] may be enjoined by the district court on petition
 7 from the department upon a showing that a person is engaged
 8 in the business of a livestock market, livestock broker, or
 9 livestock dealer as defined in [section 3] without the
 10 license or certificate and bond required by [this act]. The
 11 court shall enjoin the person from further activities as a
 12 livestock market operator, livestock broker, or livestock
 13 dealer until the license or certificate and bond have been
 14 properly obtained. It is not necessary to show that any
 15 individual has been injured by the actions complained of in
 16 order to obtain the issuance of the injunction. The
 17 injunctive relief provided by this section is an additional
 18 remedy to the criminal penalties provided in [this act].

19 Section 34. Transition. Licenses and certificates
 20 issued before and still in effect on July 1, 1979, are valid
 21 until May 1, 1980, unless suspended or revoked pursuant to
 22 this act. The actions of persons holding such existing
 23 licenses and certificates are governed by this act.

24 Section 35. Severability. If a part of this act is
 25 invalid, all valid parts that are severable from the invalid

1 part remain in effect. If a part of this act is invalid in
2 one or more of its applications, the part remains in effect
3 in all valid applications that are severable from the
4 invalid applications.

5 Section 36. Codification. This act is intended to be
6 codified as an integral part of Title 81, chapter 8, and the
7 provisions contained in Title 81, chapter 8, apply to this
8 act.

9 Section 37. Repealer. Sections 81-8-101 through
10 81-8-109, 81-8-121 through 81-8-133, and 81-8-201 through
11 81-8-210, MCA, are repealed.

-End-

1 STATEMENT OF INTENT RE: HB 800

2
3
4 A statement of intent is required for this bill in that
5 it delegates authority to adopt rules in section 4.

6 The purpose of the "Montana Livestock Marketing Act" as
7 stated in the bill is to simplify, clarify, and modernize
8 the law governing livestock marketing businesses and
9 livestock marketing transactions; to promote open, free, and
10 competitive factors in the market place in relation to all
11 market conditions involving the sale and purchase of
12 livestock; and to encourage, stimulate, and stabilize the
13 livestock economy of the state.

14 The Department of Livestock is given, under section 4,
15 authority to enforce and to adopt rules necessary to carry
16 out the act. It is the legislative intent in delegating this
17 rulemaking authority that the discretion granted the
18 Department of Livestock is for the purpose of supervising
19 and regulating livestock markets, livestock brokers, and
20 livestock dealers in the state; of regulating the
21 properties, facilities, operations, services, and practices
22 of all livestock markets, livestock brokers, and livestock
23 dealers; and of supervising and regulating livestock markets
24 in all matters affecting the relationship between the
25 livestock market and owners of livestock and between the

1 livestock markets and purchasers of livestock.

2 A major concern of the act is to establish stiff
3 penalties for unfair, deceptive, and fraudulent market
4 practices. It is intended that by providing stricter
5 penalties and that by giving the Department of Livestock
6 authority to assess civil penalties for some violations,
7 livestock marketing in Montana will be strengthened.

8 It is the intent of this bill that in the adoption of
9 rules under section 4 and in the general enforcement of this
10 act that the Livestock Department's first function is to
11 protect livestock producers consigning livestock to markets
12 or selling livestock to or through dealers and brokers.
13 Secondly, it is the intent of the legislature that so long
14 as the purpose of protecting livestock producers is met, the
15 enforcement and rules under this act not unduly interfere
16 with the operations of the businesses of livestock markets,
17 livestock dealers, and livestock brokers. ~~It is the~~
18 ~~legislature's further intent that the definitions of~~
19 ~~livestock brokers, dealers, and market contained in section 3~~
20 ~~are not applicable to the kind of marketing of livestock~~
21 ~~presently undertaken by various agricultural organizations~~
22 ~~who group livestock of member producers in order to gain~~
23 ~~better prices.~~

24 First adopted by the HOUSE COMMITTEE ON AGRICULTURE,
25 LIVESTOCK, AND IRRIGATION on February 19, 1979.

1 HOUSE BILL NO. 800
2 INTRODUCED BY ELLERD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 LAW REGULATING LIVESTOCK MARKETS, DEALERS, AND BROKERS;
6 REPEALING SECTIONS 81-8-101 THROUGH 81-8-109, 81-8-121
7 THROUGH 81-8-133, AND 81-8-201 THROUGH 81-8-210, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Short title. [This act] may be cited as the
11 "Montana Livestock Marketing Act".

12 Section 2. Purpose. The purpose of [this act] is to:

13 (1) simplify, clarify, and modernize the law governing
14 livestock marketing businesses and livestock marketing
15 transactions;

16 (2) encourage, stimulate, and stabilize the livestock
17 economy of the state; and

18 (3) promote open, free, and competitive factors in the
19 market place in relation to all market conditions involving
20 the sale and purchase of livestock.

21 Section 3. Definitions. As used in [this act], the
22 following definitions apply:

23 (1) "Board" means the board of livestock provided for
24 in 2-15-3102.

25 (2) "Department" means the department of livestock

1 provided for in Title 2, chapter 15, part 31.

2 (3) "Livestock" means cattle, calves, hogs, pigs,
3 horses, mules, sheep, lambs, and goats.

4 (4) "Livestock broker" means a business, not including
5 facilities, conducted for the receiving, handling, and care
6 of livestock and involving livestock purchased by it for its
7 own account for resale, for the account of any principal for
8 delivery to him, or for slaughter. It does not include a
9 farmer or rancher who buys or sells livestock in the
10 ordinary course of his farming or ranching operation.

11 (5) "Livestock dealer" means a business conducted in
12 facilities utilized for the receiving, handling, and care of
13 livestock purchased by it for its own account for resale,
14 for the account of any principal for delivery to him, or for
15 slaughter. It does not include a farmer or rancher who buys
16 or sells livestock in the ordinary course of his farming or
17 ranching operation.

18 (6) "Livestock market" means a place where a person
19 for compensation assembles livestock for sale, except:

20 (a) a place used solely for a dispersal sale of the
21 livestock of a farmer, dairyman, livestock breeder, or
22 feeder who is discontinuing business and at which no other
23 livestock is sold or offered for sale;

24 (b) a farm, ranch, or place where livestock either
25 raised or kept thereon for the grazing season or for

1 fattening is sold and to which no other livestock is brought
2 for sale or to be offered for sale;

3 (c) the premises of a butcher, packer, or processor
4 who receives animals exclusively for immediate slaughter;

5 (d) the premises of a person engaged in the raising of
6 livestock for breeding purposes only, who limits his sale to
7 livestock of his own production;

8 (e) a place where a breeder or an association of
9 breeders of livestock of any class assembles and offers for
10 sale and sells under his or its own management any livestock
11 ~~of--his-or-its-own-breeding-and-raising~~, when the breeder or
12 association of breeders assumes all responsibility for the
13 sale and the title of livestock sold.

14 (7) "Person" means an individual, firm, association,
15 partnership, or corporation.

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

20 Section 4. Regulation of livestock markets, dealers,
21 and brokers. The department shall:

22 (1) supervise and regulate livestock markets,
23 livestock brokers, and livestock dealers in this state;

24 (2) regulate the properties, facilities, operations,
25 services and practices of all livestock markets, livestock

1 brokers, and livestock dealers;

2 (3) supervise and regulate livestock markets in all
3 matters affecting the relationship between the livestock
4 market and owners of livestock and between the livestock
5 market and purchasers of livestock;

6 (4) prescribe by general order or otherwise rules in
7 conformity with [this act] applicable to all livestock
8 markets, livestock brokers, and ~~OR~~ livestock dealers and not
9 in conflict with the laws of the United States or
10 regulations of the United States department of agriculture
11 or other federal agencies;

12 (5) enforce [this act] and adopt rules necessary to
13 carry out [this act].

14 Section 5. Posting of certificate or license. Every
15 person certified or licensed under the provisions of [this
16 act] shall conspicuously post at his place of business for
17 inspection by any other person the certificate or license
18 issued by the department.

19 Section 6. Financial responsibility. (1) Every
20 livestock market, livestock broker, or livestock dealer
21 shall maintain a financial condition of total assets in
22 excess of total liability, including total current assets in
23 excess of total current liabilities.

24 (2) Payment for livestock purchased shall be made upon
25 completion of the sales transaction. Payment in all

1 livestock transactions shall be made by cash, check, or
 2 draft, as defined in 30-3-104; by electronic funds transfer,
 3 as defined in 32-6-103; or by any other bankable instrument.

4 Section 7. Penalties. (1) A person found, after notice
 5 and hearing, to be in violation of [section 6] shall be
 6 assessed a civil penalty by the department of not less than
 7 \$100 or more than \$5,000, have his license or certificate
 8 suspended or revoked, or both.

9 (2) A person found, after notice and hearing, to have
 10 committed a subsequent violation of [section 6] after the
 11 department has assessed a penalty pursuant to subsection (1)
 12 shall be fined not less than \$250 or more than \$5,000 and
 13 have his license or certificate suspended or revoked.

14 (3) The maker of any bankable instrument who knowingly
 15 and without right fails to honor or causes another to
 16 dishonor that instrument once it is issued or delivered in
 17 payment for a livestock purchase is guilty of a felony and
 18 on conviction may be imprisoned for not more than 5 years or
 19 fined not more than \$10,000, or both.

20 Section 8. Title warranty of livestock sold. A
 21 livestock market, livestock broker, or livestock dealer
 22 shall warrant to the purchaser thereof the title of all
 23 livestock sold. A livestock market is liable to the rightful
 24 owner of all livestock sold for the net proceeds for such
 25 livestock whether or not the rightful owner was known to the

1 market at the time of the sale.

2 Section 9. Certificate to operate livestock market
 3 required -- application. (1) A person may not operate a
 4 livestock market unless he first obtains from the department
 5 a certificate declaring that public convenience and
 6 necessity require the operation.

7 (2) The application for a certificate of public
 8 convenience shall be in writing, verified by the applicant,
 9 and filed with the department. It shall specify the
 10 following:

11 (a) the names of the persons applying for a
 12 certificate together with their permanent addresses. If the
 13 applicant is a firm, association, partnership, or
 14 corporation, the names of its directors, officers, and
 15 members, if applicable;

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

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

20 (d) the commissions or charges the applicant proposes
 21 to impose on the consignors' livestock for services rendered
 22 to them by the applicant in the operation of the livestock
 23 market;

24 (e) the location of other livestock markets within a
 25 radius of 200 miles of the proposed livestock market and the

1 names and addresses of the operators thereof;

2 (f) a detailed statement of the facts upon which the

3 applicant relies to show public convenience and necessity

4 for the livestock market, including the trade area to be

5 served, the economic benefits to the livestock industry, the

6 services to be offered, and the anticipated revenue from

7 inspection that may be derived by the state;

8 (g) if the applicant is a foreign corporation, its

9 principal place of business outside the state, the state in

10 which it is incorporated, and a showing that it is in

11 compliance with the laws relating to foreign corporations

12 doing business in this state;

13 (h) a detailed financial statement showing that

14 current assets exceed current liabilities and that long-term

15 assets exceed long-term liabilities;

16 (i) any additional information the department may

17 require.

18 Section 10. Certificate to operate livestock market --

19 hearings -- limitations on issuance. (1) Upon the filing of

20 the application, the department shall fix a time and place

21 for a hearing thereon, which may not be less than 10 days

22 after the filing. The department shall have a copy of the

23 application and notice of hearing served by mail upon:

24 (a) the operators of any other livestock markets that

25 in the opinion of the department might be affected by the

1 granting of any such certificate;

2 (b) the secretaries of the Montana stockgrowers

3 association and the Montana woolgrowers association;

4 (c) the secretary of the district livestock

5 association, if any;

6 (d) the secretary of the livestock association or

7 associations, if any, within the vicinity of the proposed

8 livestock market, if known to the department; and

9 (e) any railroad company operating into or through the

10 town or city in which the proposed livestock market will be

11 located.

12 (2) If, after the hearing on the application, the

13 department finds from the evidence that public convenience

14 and necessity require the authorization of the proposed

15 livestock market, a certificate must be issued to the

16 applicant. In determining whether public convenience and

17 necessity require the livestock market, the department shall

18 give reasonable consideration to the service rendered by

19 other existing livestock markets in this state and the

20 effect upon them if the proposed livestock market is

21 authorized and shall give due consideration to the

22 likelihood of the proposed service being permanent and

23 continuous throughout 12 months of the year.

24 Section 11. Livestock markets -- transfer of

25 certificates. The department may approve the transfer of

1 ownership of a certificate of public convenience and
 2 necessity issued pursuant to [this act] without a
 3 determination and showing of public convenience and
 4 necessity. Such approval may be granted only after a public
 5 hearing at which the transferee's qualifications to operate
 6 a livestock market have been thoroughly examined and found
 7 sufficient to properly operate a livestock market. A minimum
 8 of 10 days' notice by mail must be given to all persons to
 9 whom notice is sent pursuant to the provisions of [section
 10 10] of a hearing to consider an initial application for a
 11 certificate.

12 Section 12. Livestock markets -- fee. A person
 13 operating a livestock market shall pay annually on May 1 a
 14 fee of \$100 to the department. All fees shall be paid into
 15 the state treasury and credited to the earmarked revenue
 16 fund for the use of the department.

17 Section 13. Livestock markets -- bond required. (1)
 18 Every person operating a livestock market in this state
 19 shall provide a bond in favor of this state, upon a form and
 20 with sureties to be approved by the board, in the minimum
 21 sum of \$10,000 or such greater sum as the board may
 22 determine, conditioned upon:

23 (a) the payment immediately upon the sale of the
 24 livestock of all money received, less reasonable expenses
 25 and commissions, by the livestock market to the rightful

1 owner of livestock so consigned and delivered to it for
 2 sale; and

3 (b) a full compliance with [this act] including all
 4 rules adopted under [this act].

5 (2) When approved, the bond shall be filed with the
 6 board DEPARTMENT.

7 (3) A civil action may be brought in the name of the
 8 state upon the bond for the use and benefit of a person who
 9 suffers loss or damage from violations thereof and may be
 10 brought by the person suffering loss or damage in the county
 11 of his residence.

12 Section 14. Livestock markets -- cancellation or
 13 suspension of certificate. (1) The department may cancel or
 14 suspend the certificate of an operator of a livestock market
 15 if it finds that the operator:

16 (a) is guilty of fraud or misrepresentation as to the
 17 titles, charges, number, brands, weights, proceeds of sale,
 18 or ownership of livestock;

19 (b) is in violation of any of the provisions of [this
 20 act];

21 (c) is in violation of any of the rules adopted by the
 22 department; or

23 (d) is in violation of Title 81, chapter 3, part 2.

24 (2) The department on its own initiative or on written
 25 complaint may investigate a livestock market and may file a

1 complaint against the livestock market with the board. The
2 complaint shall be set for hearing before the board, and the
3 department shall serve notice of the hearing on the
4 livestock market at least 10 days before such hearing.

5 (3) An investigation or hearing initiated by the
6 department under [this act] may be held before an examiner
7 designated by the board. Any finding or order made by an
8 examiner, if confirmed by the board, is the order or finding
9 of the board.

10 Section 15. Appeal by holder of or applicant for
11 certificate -- bond -- procedure. An appeal of a decision of
12 the department refusing to grant an application for a
13 certificate or suspending or revoking a certificate of a
14 livestock market shall be taken to the district court of the
15 county in which the proposed livestock market is to be
16 located or in which the authorized livestock market has its
17 principal place of business. The appellant shall file a bond
18 with the clerk of the district court in the sum of \$300, to
19 be approved by the judge, conditioned to pay all costs that
20 may be awarded against the appellant in the event of an
21 adverse decision or the decision of the department being
22 affirmed. The cost of preparing transcripts shall be paid by
23 appellant. In a case of suspension or revocation of a
24 certificate, the filing of the notice and bond stays the
25 order of the department until the final determination of the

1 appeal. If the appellant fails to perfect the appeal, the
2 stay shall automatically terminate.

3 Section 16. Regulation of certain nonmarket sales. (1)
4 A person not a livestock market operator authorized under
5 [this act] conducting the sale of livestock in a breed sale,
6 a breed association sale, or at a test station sale, except
7 when all of the livestock are his and are being sold from
8 his own place, shall obtain approval from the department
9 before conducting the sale.

10 (2) The department, as conditions to granting
11 approval, may require:

12 (a) the names and addresses of those conducting the
13 sale;

14 (b) the date and time when and the place where the
15 sale will be conducted;

16 (c) a detailed statement of the assets and liabilities
17 of the persons conducting the sale;

18 (d) the establishment of a custodial account into
19 which all money received for the sale of livestock must be
20 deposited;

21 (e) the posting of a reasonable bond in an amount
22 determined by the department;

23 (f) the commissions or charges proposed to be imposed
24 on the owners of livestock for services associated with the
25 sale;

1 (g) a guarantee to pay all consignors in full within a
2 reasonable time as set by the department;

3 (h) such other information as the department considers
4 necessary.

5 ~~{3}--livestock--sold--through--a--nonmarket--sale--as
6 described--by--this--section--must--be--bred,--raised,--and--owned--by
7 members--of--the--association--sponsoring--the--sale--or--be--bred,
8 raised,--and--owned--by--the--persons--setting--the--livestock--at
9 the--test--station--sale.~~

10 Section 17. Occasional off-premises sales authorized.

11 (1) The department may authorize occasional off-premises
12 sales by authorized livestock markets and may establish the
13 conditions under which approval for an off-premises sale may
14 be granted, including any change in bonding requirements the
15 department considers necessary.

16 (2) No livestock market for which a certificate has
17 been issued under [this act] may conduct an off-premises
18 sale without obtaining prior approval of the department.

19 Section 18. Livestock markets -- record keeping --
20 reports. Each livestock market shall keep accounts, records,
21 and memoranda and shall make reports which the board
22 requires, and the board and its authorized agents and
23 employees shall at all times have access to the accounts,
24 records, and memoranda for inspection and examination.

25 Section 19. Dispersal sales. Dispersal sales conducted

1 through a livestock market must meet the requirements of
2 [this act].

3 Section 20. Inspection of public markets. Livestock
4 inspectors, including stock inspectors of a county or
5 district, the sheriff of a county, or a representative of
6 the department of livestock, may enter upon the premises
7 where livestock is being held or sold and shall be accorded
8 every facility by the owners thereof in determining whether
9 a violation of the law is being committed or is likely to be
10 committed. The inspection may not unnecessarily interfere
11 with the conduct of the sales. Livestock sold at the market
12 may not be delivered to the purchaser until he has first
13 received an inspection certificate issued by one of the
14 officers mentioned in this section, showing clearly and
15 explicitly that the person making the inspection is
16 satisfied as to the ownership of the livestock and the
17 health of all livestock so sold.

18 Section 21. Quarantine of diseased animals. If the
19 livestock inspector at a sale finds any livestock afflicted
20 with an infectious or contagious disease, he shall
21 immediately take possession of the livestock and place it in
22 quarantine, to be disposed of as directed by the department.

23 Section 22. Sale of animals of unknown ownership. (1)
24 If there is any question respecting the ownership of
25 livestock sold, the livestock inspector may take possession

1 of the livestock. The livestock inspector shall notify the
2 person in charge of the market and conducting the sales and
3 the person who has purchased the livestock at the sale
4 within a reasonable time.

5 (2) Whenever livestock is sold, the ownership of which
6 is not known or cannot be determined by the livestock
7 inspector, it may be sold as strays and the net proceeds
8 derived from the sale shall be handled as provided in
9 [section 23].

10 Section 23. Duties when ownership in doubt. An
11 operator of a livestock market shall, when notified by the
12 authorized brand inspector that there is a question as to
13 whether any designated livestock sold through the market is
14 lawfully owned by the consignor thereof, hold the proceeds
15 received from the sale of the livestock for a reasonable
16 time, not to exceed 30 days, to permit the consignor to
17 establish ownership. If at the expiration of that time the
18 consignor fails to establish his lawful ownership of the
19 livestock, the proceeds must be transmitted by the operator
20 of the livestock market to the department. The department
21 may dispose of the proceeds in accordance with chapter 4,
22 part 6, of Title 81, relating to the distribution of stray
23 money, and the department's receipt therefor shall relieve
24 the operator of the livestock market from further
25 responsibility for the proceeds. Proof of ownership and

1 account of all sales of livestock must be transmitted by the
2 authorized brand inspector to the department.

3 Section 24. Penalties. A person who violates any
4 provision of [sections 9 through 23] or rules adopted by the
5 department under [~~sections 9 through 23~~ SECTION 4] is guilty
6 of a misdemeanor and upon conviction shall be fined not less
7 than \$100 or more than \$600, imprisoned in the county jail
8 not less than 30 days or more than 6 months, or both. A
9 person who has been convicted of a SUBSEQUENT violation of
10 [sections 9 through 23] and who subsequently is found guilty
11 of another violation of [sections 9 through 23] OR RULES
12 ADOPTED UNDER [SECTION 4] shall be fined not less than \$200
13 or more than \$1,000, imprisoned in the county jail for not
14 less than 3 months or more than 6 months, or both, and the
15 department may cancel his certificate.

16 Section 25. Livestock brokers and livestock dealers --
17 licenses. (1) No person may operate as a livestock broker or
18 livestock dealer without a license. A person who wishes to
19 operate as a livestock broker or livestock dealer shall file
20 with the department an application for a license to transact
21 such business on a form prescribed by the department stating
22 the type of license sought and the following information:

23 (a) the names of the persons applying for the
24 certificate LICENSE together with their permanent addresses
25 and, if the applicant is a firm, association, partnership,

1 or corporation, the names of its directors, officers, and
 2 members, if applicable;

3 (b) the post-office address and principal place of
 4 business of the applicant;

5 (c) if the applicant is a foreign corporation, its
 6 principal place of business outside the state, the name of
 7 the state in which it is incorporated, and a statement
 8 showing that it has complied with the laws of this state
 9 relating to foreign corporations and its right to do
 10 business in this state;

11 (d) a detailed financial statement setting forth all
 12 assets and liabilities of the applicant pertinent to the
 13 business for which the license is sought;

14 (e) if the applicant is a livestock dealer, a
 15 description of the facilities at which he proposes to
 16 operate.

17 (2) An application fee of \$50 must be submitted with
 18 each application for a livestock broker's or livestock
 19 dealer's license. The fee shall be the first annual fee if
 20 the license is granted.

21 (3) Livestock brokers and livestock dealers shall pay
 22 an annual fee of \$50 and supply a current financial
 23 statement. The fee is payable on May 1 to the state
 24 treasurer to the credit of the department.

25 (4) When an applicant has paid the fee and met the

1 requirements of this section, the department shall issue to
 2 the applicant a license which entitles the licensee to
 3 engage in the business specified in his application for a
 4 period of 1 year unless the license is suspended or revoked
 5 under [this act].

6 Section 26. Refusal of livestock broker's or livestock
 7 dealer's license. The department shall refuse to issue or
 8 renew a license if the applicant:

9 (1) has failed to maintain a financial condition of
 10 total assets in excess of total liabilities, including total
 11 current assets, in excess of total current liabilities;

12 (2) is in violation of any of the provisions of [this
 13 act];

14 (3) has knowingly made false or misleading statements
 15 as to the health or physical condition of livestock or
 16 practiced fraud or misrepresentation in connection with the
 17 buying or receiving of livestock or the selling, exchanging,
 18 soliciting, or negotiating of the sale of livestock or the
 19 weighing of the same;

20 (4) has failed to keep records of all purchases and
 21 sales or refused to grant inspection of such records by
 22 authorized agents of the department;

23 (5) is in violation of the rules adopted by the
 24 department;

25 (6) has failed to comply with a lawful order of the

1 department;

2 (7) has not filed a surety bond in the form and amount
3 required under [section 27];

4 (8) has been found by the department to have failed to
5 pay, without reasonable cause, obligations incurred in
6 connection with livestock transactions;

7 (9) has been suspended by the order of the secretary
8 of agriculture of the United States department of
9 agriculture under provisions of the Packers and Stockyards
10 Act, 1921, as amended, 7 U.S.C. 181, et seq.

11 Section 27. Livestock brokers and livestock dealers --
12 bond required. (1) A livestock broker or livestock dealer
13 applying for a license under [this act] shall maintain a
14 bond in the form and amount set forth in this section, or if
15 he is registered and bonded under the Packers and Stockyards
16 Act, 1921, 7 U.S.C. 181, et seq., he shall file a statement
17 with the department showing he is maintaining a bond or its
18 equivalent under the packers and stockyards act. The
19 department may require evidence of the bond to be filed with
20 it.

21 (2) The amount of the bond shall be set by the
22 department but may not be less than \$5,000. The bond shall
23 contain the following conditions:

24 "This bond is conditioned on the principal paying to
25 the rightful recipient the purchase price of all livestock

1 he purchases for himself or others and on the principal
2 safely keeping and properly disbursing all funds received on
3 behalf of others."

4 (3) Each bond shall contain provisions that a person
5 damaged by failure of the principal to comply with the
6 condition clause of the bond may bring an action to recover
7 on the bond. At least 30 days' notice in writing shall be
8 given to the department by any party terminating the bond.

9 Section 28. Inspection of records. A livestock broker
10 or livestock dealer shall maintain records that disclose all
11 purchases and sales of livestock. A livestock broker or
12 livestock dealer shall, at all reasonable times, give the
13 department access to and let the department copy any of the
14 records relating to his business.

15 Section 29. Livestock brokers and livestock dealers --
16 suspension and revocation of license -- procedure. Whenever
17 the department finds that any livestock broker or livestock
18 dealer has violated the provisions of [this act] OR RULES
19 ADOPTED UNDER [THIS ACT], the department may, by order,
20 suspend the license of such person for a period not to
21 exceed 1 year, and if the violation is repeated, the
22 department may, by order, after hearing, permanently revoke
23 the license of such person. Before any license issued under
24 [this act] may be suspended or revoked, the licensee shall
25 be furnished with a copy of the complaint made against him

1 and a hearing shall be had before the department to
 2 determine whether the license should be suspended or
 3 revoked. The licensee shall be given notice of the time and
 4 the place of such hearing. The notice may be served by
 5 registered or certified mail at the post-office address
 6 listed in the application. The hearing must be held not less
 7 than 10 days or more than 30 days after the mailing of the
 8 notice. At the time and place set for the hearing, the
 9 department shall take and receive evidence, under oath, with
 10 respect to the complaint, and upon such evidence received,
 11 shall promptly dismiss the proceedings or revoke or suspend
 12 the license.

13 Section 30. Termination of livestock broker or
 14 livestock dealer license. A license issued under [this act]
 15 terminates at the close of business on May 1 of each year
 16 following the issuance of the same unless the annual fee has
 17 been paid. Termination of the license will automatically
 18 occur if the bond required by [section 27] is terminated.

19 Section 31. Penalties. A person who violates any
 20 provision of [sections 25 through 28] or rules adopted by
 21 the department under [sections-25-through-28 SECTION 31] is
 22 guilty of a misdemeanor and upon conviction shall be fined
 23 not less than \$250 or more than \$1,000 or imprisoned for not
 24 more than 6 months, or both.

25 Section 32. Jurisdiction. The justices' courts have

1 jurisdiction of all ~~actions-for-violation-of-the-provisions~~
 2 MISDEMEANOR AND CIVIL VIOLATIONS of [this act].

3 Section 33. Injunctive remedy. The operation of a
 4 livestock market or the buying or selling of livestock by a
 5 person not licensed or certified and bonded as required by
 6 [this act] may be enjoined by the district court on petition
 7 from the department upon a showing that a person is engaged
 8 in the business of a livestock market, livestock broker, or
 9 livestock dealer as defined in [section 3] without the
 10 license or certificate and bond required by [this act]. The
 11 court shall enjoin the person from further activities as a
 12 livestock market operator, livestock broker, or livestock
 13 dealer until the license or certificate and bond have been
 14 properly obtained. It is not necessary to show that any
 15 individual has been injured by the actions complained of in
 16 order to obtain the issuance of the injunction. The
 17 injunctive relief provided by this section is an additional
 18 remedy to the criminal penalties provided in [this act].

19 Section 34. Transition. Licenses and certificates
 20 issued before and still in effect on July 1, 1979, are valid
 21 until May 1, 1980, unless suspended or revoked pursuant to
 22 this act. The actions of persons holding such existing
 23 licenses and certificates are governed by this act.

24 Section 35. Severability. If a part of this act is
 25 invalid, all valid parts that are severable from the invalid

1 part remain in effect. If a part of this act is invalid in
2 one or more of its applications, the part remains in effect
3 in all valid applications that are severable from the
4 invalid applications.

5 Section 36. Codification. This act is intended to be
6 codified as an integral part of Title 81, chapter 8, and the
7 provisions contained in Title 81, chapter 8, apply to this
8 act.

9 Section 37. Repealer. Sections 81-8-101 through
10 81-8-109, 81-8-121 through 81-8-133, and 81-8-201 through
11 81-8-210, MCA, are repealed.

-End-