



Agricultural Law Update

June 2013

ATTENTION LIVESTOCK DEALERS: UNDERSTAND THE NEW DEALER LAW

-Julie I. Fershtman

On October 1, 2012, a new Michigan law went into effect that has implications for certain people or businesses who engage in selling livestock in Michigan. The law, Public Act 317, was designed to control the spread of infectious diseases of livestock and animals in Michigan. It now requires those engaged in the buying, receiving, selling, transporting, exchanging negotiating or who solicit sale, resale, exchange, or transportation of livestock to be licensed and bonded by the Michigan Department of Agriculture.

THE LICENSE REQUIREMENT

The new law states in Section 2:

"A dealer, broker, agent, or livestock trucker shall not engage in or carry on the business of buying, receiving, selling, exchanging, transporting, negotiating, or soliciting the sale, resale, exchange, transportation, or transfer of any animals within the state unless the person is licensed as provided in this act. A dealer, broker, agent, or livestock trucker is responsible for acts performed or contracts made by any person employed by the dealer, broker, agent, or livestock trucker in buying, receiving, selling, exchanging, transporting, negotiating, or soliciting the sale, resale, exchange, transportation, or transfer of livestock."

Don't seek licensure unnecessarily. Read and understand the law first. A brief summary follows.

WHO IS AFFECTED BY THE LAW?

The law defines "animals" or "livestock" to include "horses, ponies, mules, cattle, and others." It defines a "dealer" or "broker" as "a person that, as a principal or agent, engages in

the business of buying, receiving, selling, exchanging, buying for slaughter, negotiating, or soliciting sale, resale, exchange, transportation, or transfer of animals." It exempts persons who are "permanently discontinuing the business of farming, breeding, or feeding animals." It also exempts "a person that sells livestock that have been raised on the premises of the person." Those who buy or receive animals for breeding, grazing and feeding as well as the sale and disposal after a feeding and grazing period of more than 21 days are also exempt.

WHO IS NOT AFFECTED?

Among the exemptions are occasional consignment sales that are sponsored and conducted by a breed association, 4-H, or FFA group, county fair or youth fair. The law specifically provides that a "buying station" "does not include a livestock auction." It also provides that a "livestock trucker" does not include a person who hauls livestock "on an occasional basis for persons participating in a livestock exhibition, fair, trail ride, youth livestock event, or similar activity." Exemptions also include "hauling livestock on an incidental basis in connection with another business, such as a veterinary practice or a stable operation, which is operated by that person and which does not ordinarily involve the sale of livestock" as well as "[h]auling livestock for another person fewer than 6 times within the preceding 12 months."

HOW DO YOU GET LICENSED?

Contact the Department of Agriculture and Rural Development.

HOW MUCH IS A LICENSE?

Permits can be purchased through the Department of Agriculture and Rural Development. The new law provides

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that annual, non-refundable fees range from \$25 for a "livestock trucker" to \$400 for a "livestock auction operator." Licenses become effective October 1 of each year and expire on September 30.

OTHER REQUIREMENTS IN THE LAW

The law imposes several requirements for livestock "auctions, collection points, or buying stations" such as pen and building construction, flooring, manure storage,

auction rings, docks, pens, and scales. The law also has provisions affecting watering of animals and flooring.

PENALTIES FOR NON-COMPLIANCE

Non-compliance with the law could involve steep penalties. The law provides for a total limit of fines of up to \$25,000.

FOR MORE INFORMATION

To learn more about the new law, visit the Michigan legislature's web page at www.legislature.mi.gov.

NEW AGRICULTURAL GUESTWORKER ACT PROPOSED IN HOUSE

- Ryan E. Lamb

The Agricultural Guestworker Act (AG Act) of 2013 (H. R. 1773), a bill to provide American farmers with a revised temporary guestworker program, was introduced into the House of Representatives in late April.

The sponsor of the AG Act, Rep. Bob Goodlatte, R-VA, believes the plan will help farmers by streamlining access to a reliable workforce, reducing red tape, and protecting growers from lawsuits.

THE KEY PARTS OF THE AG ACT INCLUDE:

- The maximum stay for seasonal or temporary jobs is 18 months, after which workers must return to their native country for three months. Workers in permanent jobs can work for 36 months before leaving the country for three months, after which they will have to leave after each 18-month period of work.
- A grower must petition for an H-2C worker before that worker can be admitted to the US.
- Once a grower is designated as a registered agricultural employer by the USDA, they can hire guestworkers already admitted to the US without filing another petition for an individual worker.
- Workers can switch to another grower who petitions for them, or, once admitted, can seek at-will employment when they complete their original assignment.

- Workers will be paid the state minimum wage or the prevailing wage, whichever is greater.
- Ag employers are not required to provide housing or pay worker's transportation expenses.
- Employers concerned about litigation can require workers to accept mediation and binding arbitration of any grievance as a condition of employment.

The workers under the AG Act are not eligible for federal tax credits such as the Earned Income Credit and the Child Tax Credit, nor can they participate in federal welfare programs or receive legal assistance under the Legal Services Corporation Act. They may only bring their spouses or children if they, too, are registered as guestworkers.

The Department of Agriculture, Homeland Security and State will administer the program.

STATUS OF BILL AS OF TIME OF PUBLICATION:

The bill was assigned to a congressional committee on April 26, 2013, and currently remains in committee. If the bill is reported out of committee, it will then be submitted to the House for its consideration.

TRIAL TEAM WINS \$5.15 MILLION VERDICT

A trial team led by Foster Swift attorney, John Inhulsen, including Andrew Vredenburg and Joshua Richardson, won a \$5.15 million unanimous jury verdict on June 21, 2013, in favor of McCormick International, LLC, a former Ionia County farm equipment dealer. The verdict was against Manitou North America, Inc., a Texas-based distributor of farm equipment manufactured by its parent company, France-based Manitou BF.

The trial involved McCormick's claims against Manitou under the Michigan Farm and Utility Equipment Act, MCL 445.1451, and the Michigan Antitrust Reform Act, MCL 445.771.

The jury found that Manitou had damaged McCormick when it: (1) violated the Michigan Farm and Utility Equipment Act by substantially changing McCormick's competitive circumstances when it violated its exclusive dealer agreement with McCormick by distributing equipment

through multiple retail competitors of McCormick within the exclusive Michigan trade area; and (2) violated Michigan's Antitrust Reform Act when it entered into an agreement with Gehl Company, Inc., a Wisconsin based equipment competitor, which restrained its Manitou dealers, including McCormick, in their ability to trade and conduct commerce in Michigan.

"This case was about Michigan businesses and jobs. Our legislature passed these laws, in part, to protect our agricultural equipment businesses from the potentially negative impact of mergers and acquisitions of multinational corporations, like Manitou and Gehl, at the wholesale and manufacturing levels, due to the industry's continued globalization. The jury sent a strong message to these corporations that if you want to do business in Michigan, you must follow its laws" said lead counsel, John Inhulsen.

FARM BILL

At time of publication, there continues to be high profile haggling over the farm bill.

House Speaker John Boehner, (R-Ohio) has stated that he wants the House Bill passed in order to get the bill to a House-Senate Conference Committee where further negotiations on the bill can occur.

The extension of the 2008 Farm Bill is extended to January 2014.

FOR AN AG PERSPECTIVE ON THE LATEST HAPPENINGS WITH THE FARM BILL, YOU MAY WANT TO VISIT:

- U.S. House of Representatives Agriculture Committee: agriculture.house.gov/farmbill
- U.S. Senate Agriculture Committee: www.agriculture.senate.gov
- Farm Progress web site: farmprogress.com
- Ag Web: www.agweb.com

UPCOMING AG EVENTS

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| July 11, 2013 | Michigan Livestock Expo – MSU Pavillion - www.milivestock.com |
| July 12, 2013 | State Youth Livestock Judging Contest– MSU Pavillion - bit.ly/youth-livestock-judging |
| July 15, 2013 | Michigan Dairy Expo and Youth Dairy Days– MSU Pavillion - bit.ly/dairy-expo |
| July 16-18, 2013 | Michigan Ag Expo – East Lansing - agexpo.msu.edu |



Michigan FFA Foundation 14th Annual FFA MASTERS GOLF OUTING

Thursday, August 15 9 a.m. - 3 p.m. (9:30 Shotgun Start)

The Fields Golf Course

1508 N. State Rd. Ithaca, MI | 989-875-4612



- Register by **August 9** at:
<http://web2.msue.msu.edu/ffagolf/>
 - Registration includes: 18-hole round, cart, light breakfast, appetizers & late lunch
 - \$100/person or \$400/team of four
 - Skins/Mulligans Value Packs available
- All proceeds benefit the 6,281 Michigan FFA members

For more information and sponsorship opportunities, visit www.michiganffa.org/foundation or contact Ramey Lunceford, 517-432-2482

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LANSING

FARMINGTON HILLS

GRAND RAPIDS

DETROIT

MARQUETTE

HOLLAND

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