

**A STUDY OF THE
PROBLEMS RELATING TO THE USE
OF CHECKS AND DRAFTS
IN THE
PURCHASE OF LIVESTOCK AND
AGRICULTURAL PRODUCTS**

BULLETIN NO. 56



NEVADA LEGISLATIVE COUNSEL BUREAU

DECEMBER 1962

Carson City, Nevada

A STUDY OF THE PROBLEMS RELATING TO THE USE OF CHECKS
AND DRAFTS IN THE PURCHASE OF LIVESTOCK AND AGRICULTURAL
PRODUCTS
BULLETIN NO. 56



NEVADA LEGISLATIVE COUNSEL BUREAU

DECEMBER 1962

Carson City, Nevada

NEVADA LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE COMMISSION

B. MAHLON BROWN	Senate Member
CHARLES D. GALLAGHER	Senate Member
FLOYD R. LAMB	Senate Member
WALTER WHITACRE	Senate Member
JAMES C. BAILEY	Assembly Member
F. C. BUCKINGHAM	Assembly Member
GLENN JONES	Assembly Member
ARCHIE POZZI, JR.	Assembly Member

A. N. JACOBSON	Legislative Auditor
J. E. SPRINGMEYER	Legislative Counsel

FOREWORD

The Nevada Legislative Counsel Bureau is a fact-finding organization designed to assist legislators, state officers, and citizens in obtaining the facts concerning the government of the State, proposed legislation, and matters vital to the welfare of the people. The staff will always be non-partisan and non-political; it will not deal in propaganda, take part in any political campaign, nor endorse or oppose any candidates for public office.

The primary purpose of the Counsel Bureau is to assist citizens and officials in obtaining effective state government at a reasonable cost. The plan is to search out facts about government and to render unbiased interpretation of them. Its aim is to cooperate with public officials and to be helpful rather than critical. Your suggestions, comments, and criticisms will greatly aid in accomplishing the object for which we are all working--the promotion of the welfare of the State of Nevada.

PREFACE

At the 1961 Session of the Nevada Legislature, the Senate adopted Senate Resolution No. 9, which memorialized the Legislative Counsel Bureau to study legal problems relative to the defrauding of producers and vendors of livestock and farm products through their acceptance of checks or drafts drawn against insufficient or non-existent funds.

After extensive legal research and much conference and correspondence with officers of the Departments of Agriculture in this and other states, as well as discussions with dealers in livestock and farm produce, the findings noted herein were made; the final page of this report sets forth our recommendations as based on those findings.

Copies of this study may be obtained without cost from the Nevada Legislative Counsel Bureau, Carson City, Nevada.

J. E. SPRINGMEYER
Legislative Counsel

A STUDY OF THE PROBLEMS RELATING TO THE USE OF CHECKS
AND DRAFTS IN THE PURCHASE OF LIVESTOCK AND AGRICULTURAL
PRODUCTS

This study was requested by Senate Resolution No. 9, adopted at the 1961 Session of the Nevada Legislature. That resolution read as follows:

SENATE RESOLUTION--Memorializing the legislative counsel bureau to study legal problems relating to the use of checks and drafts in the purchase of livestock and agricultural products.

WHEREAS, The producers and vendors of livestock and farm products in Nevada have been imposed upon and defrauded by buyers who issued checks in payment therefor without sufficient or any funds on deposit for the payment thereof; and

WHEREAS, Such buyers of such products have also defrauded the producers and vendors thereof by drawing, or causing to be drawn by agents, sight and time drafts in payment for such purchases, and have failed and refused to honor such drafts when presented; and

WHEREAS, The use of such drafts and checks is necessary and advisable in the business of buying and selling livestock and farm products to avoid the necessity of buyers carrying great amounts of cash; and

WHEREAS, A sincere attempt has been made in the present session to correct the evils and danger of loss by the use of drafts by the introduction of Assembly Bill No. 280, which is authored by Messrs. Buckingham, Howard, Berrum, Humphrey, Romeo, Baker, Glaser, Young and Knisley; and

WHEREAS, The bill presents difficult legal questions in connection with law relating to the Uniform Sales Act and the Uniform Negotiable Instruments Act, which problems require thorough and expert legal research in order to avoid conflicts in the law; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, That the legislative counsel bureau is hereby memorialized to study all legal problems concerned with the use of checks and drafts in the purchase of livestock and farms products; and be it further

RESOLVED, That the laws and procedures of other states

states which deal with the subjects of such study be studied; and be it further

RESOLVED, That the nature and extent of losses suffered by livestock raisers and farm products producers be studied and determined so far as may be; and be it further

RESOLVED, That a report relative thereto, proposed acts designed to correct the evils above mentioned, be drafted and presented to the 1963 session of the Nevada legislature for study and consideration.

It is to be noted that, after a five paragraph preamble, the resolution requests the Legislative Counsel Bureau to:

1. Study all legal problems concerned with the use of checks and drafts in the purchase of livestock and farm products.
2. Study the laws and procedures of other states which deal with the subjects of this study as set forth in the Senate resolution.
3. To determine the nature and extent of losses suffered by livestock raisers and farm products producers.
4. To report the results of the study and propose acts designed to correct the evils mentioned in the resolution.

The senate resolution was motivated by the introduction during the 1961 Session of the Legislature of three Assembly bills dealing with the use of drafts and checks in the purchase of livestock and farm products. These bills were Assembly Bills Nos. 108, 184 and 280. (See Exhibits A, B and C attached hereto.)

Assembly Bill No. 185 prohibited any agent or representative of another person, firm or corporation for the purpose of buying livestock, with or without intent to defraud, from signing "as maker or drawer a check, sight draft or other written instrument for the payment of money directed to or drawn upon such other person, firm or corporation or the bank of such other person, firm or corporation."

The bill also provided that any violation thereof was a felony.

This certainly would have unnecessarily interfered with the right of buyers and sellers to contract with each other, and would have prevented great numbers of persons from having experienced buyers acting as agents for them except by the use of cash.

In this connection, it is interesting to note that in Nevada the value of livestock and farm products sold annually aggregates 42 million dollars. About 80 percent of this amount represents the value of livestock sold. From a check of various sources of information, it was learned that about 70 percent of the livestock business was done with drafts.

This type or method of operation has long been accepted by the great

majority of buyers and sellers of livestock. To prohibit the sale to agents on any basis other than cash would seriously interfere with and impede the sale of approximately 25 million dollars worth of livestock each year.

A.B. 280 provided that if any person who has authorized an agent to draw a "sight draft" fails to honor such draft or cause it to be honored within 5 banking days after it is presented for payment is guilty of a felony.

The bill further provided that title to any livestock purchased by means of any sight draft "shall not pass to the buyer until the 'sight draft' has been paid in full." By the use of the term "sight draft," time drafts were most probably excluded from the bill.

As to the first provision, that failure to pay in 5 days would constitute a felony, it ignores the right of the buyer to refuse to pay the draft for a valid reason.

Let us suppose the buyer's agent had given a draft to the seller for the purchase of selected ewe lambs, and that the seller through error ships the buyer old ewes or even wethers; if A.B. 280 had been enacted into law, the drawee-buyer would be guilty of a felony if he refused to honor the draft, even though he did not receive what his agent purchased.

However, there is strong reason to make the dishonor a felony in certain cases, and this, perhaps, is one of the few beneficial steps that can be taken. Those cases are where the buyer or his agent sells the cattle or product or converts the same to his own use or benefit after drawing the draft or check and thereafter refuses to pay the draft or check.

In such a case, both buyer and seller, if they act in concert or as conspirators should be prosecuted as felons. Of course, the agent could be an innocent person, ignorant of his principal's intent to defraud; in such a case, the principal's act in dishonoring the draft, should not be evidence of criminal intent on the part of the agent.

However, I believe the bill should provide that where the livestock or farm products are obtained by the use of drafts, and are later sold or converted to the buyer's use, such as replacement cattle, or to augment his herd, and the buyer thereafter dishonors the draft, that fact should be admissible against the principal as evidence of his intent to defraud.

As to the other provision in A.B. 280, to the effect that title shall not pass to the buyer until the draft was paid in full, it has real merit. As a fact, that provision is always used where the cattle are mortgaged. In such a case, the bill of sale attached to the draft describes the livestock or farm product and states that the cattle (or what has been sold) has been mortgaged, and the bank or financing company is named and the amount of the mortgage stated. The drawee bank, if the drawee-buyer has money on deposit or has arranged credit, when the draft with the bill of sale attached is presented for payment deducts from the amount due the seller, the sum due the mortgagee and forwards that sum to the person or firm who holds the mortgage, then sends the bill of sale, with the draft marked "Paid," to the buyer and remits the net amount due to the seller.

If the draft is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. Of course, if the principal debtor has neither credit nor cash on deposit in the drawee bank, the bank will not pay the draft, any more than they would honor a check under similar circumstances.

This is the only safe way for a seller to make certain that he will receive the money due him. Even with such precautions, a crooked buyer could, if he were given possession of the cattle, transport them to another state, and it would be extremely difficult for the seller to recover his cattle. Of course, the only certain safe way would be to retain possession until the draft is paid. However, this is not feasible in the normal course of everyday business, and many thoroughly honest buyers or their representatives would not agree to such a proposal. Of a certainty, the dishonest person will not enter such a deal, as he knows the draft will not be honored.

Everyone will agree that a seller will lose less money or run less risk if he deals always with buyers he has dealt with and found to be thoroughly honest and reliable. However, this would virtually bar new buyers and restrict competition. If there is always ample competition, the seller will be more likely to receive a better price for his product. However, when dealing with a stranger, the seller should be cautious and ask for references and check with the persons or firms to which he is referred by the buyer.

In this latter connection, an assurance by persons or firms known to the seller of the buyer's honesty and integrity is far more reliable than the buyer stating and proving that he has substantial deposits to his credit in the drawee bank. For, during the course of this study, several cases were discovered in which an authorized inquiry showed the buyer to have far more money to his credit in the drawee bank than the amount of the draft. However, after obtaining possession of the livestock, the buyer immediately returned to the drawee bank and withdrew all his deposits before the draft ever was presented for payment.

It is therefore strongly recommended that whenever a buyer is a stranger to the seller, that the seller either not deliver the bill of sale to the buyer or that, if delivered, the bill of sale provide that possession of the cattle or product was obtained by the use of a draft, and that title is retained by the seller until the draft is paid in full.

It should be borne in mind that until title passes, unless otherwise agreed, the risk of loss is borne by the seller. The question of when property or title is transferred to the buyer depends upon what the parties intend. To assist in ascertaining the intention of the parties, regard is had to the terms of the agreement to sell, the conduct of the parties, usage of the trade and the circumstances of each case. (NRS 96.270).

The Statutes of Nevada also provide that even though whatever is sold is delivered to the buyer, the right to possession or repossession may be reserved by the seller until certain conditions are met. (NRS 96.390) One of such conditions could be the payment of the draft or check given by the buyer to the seller.

It is suggested that this condition be clearly spelled out in Nevada Revised Statutes by providing in substance:

Title to any livestock or any other goods, wares or merchandise purchased by means of a draft or check shall remain in the seller until the draft or check is paid in full.

Whenever possession of any livestock or other commodity is obtained by means of a draft and a bill of sale is given to the buyer or his representative, such bill of sale

should contain the warning that the livestock or other commodity has been purchased by means of a draft and that title is retained by the seller until the draft is paid in full.

Such a provision would not only be a protection to the seller, but also to a person who might otherwise become an innocent purchaser were it not for the warning and the statute providing that title is retained by the buyer until the draft is paid in full.

If such a statute were enacted, and no similar warning contained in the draft, many innocent persons could be victimized and sustain loss. This would be so, because the well known rule that "ignorance of the law is no excuse," applies to civil as well as criminal statutes.

Soon after this study was begun, it was believed that the best protection could be afforded by requiring all buyers desiring to use drafts to apply to the Department of Agriculture for a permit so to do. It was proposed to authorize the Department to investigate the credit status of the applicant and his reputation for honesty and integrity and to issue the permit if the applicant proved worthy. It was proposed that the successful applicant would be given a distinctive number which would be evidence that the buyer had been investigated and had received a clearance.

However, upon further consideration and investigation of such a proposal, it was found to be fraught with too many hazards and burdens.

For example: If the Department rejected an applicant by mistake or erroneously such rejection would virtually destroy the applicant's credit and the Department would be subjected to severe criticism. On the other hand, if the Department approved an applicant who subsequently turned dishonest and dishonored drafts, the Department would be even more severely censured, and often without cause. For, an applicant may have had a long record of honest dealing, and thereafter, for a variety of reasons, turn dishonest. The plan would cast too great a burden on the Department of Agriculture without compensating benefits.

If a buyer issue a check in payment of any purchase without sufficient funds to his credit, he can be charged and convicted of a felony. The same rule should apply if the buyer or his agent or representative who draws and issues a draft instead of a check, having no funds or insufficient funds to his credit, and who does not deposit sufficient funds or arrange for credit to pay the draft upon its presentment for payment, or for let us say 5 days thereafter. In this connection, it is to be noted that by the provisions of NRS 92.143 and 92.144, if a drawee fails to "accept" a draft or return it to the holder within 24 hours after presentment, he will be deemed to have accepted the same.

Such a provision would have no bearing upon the proposed criminal statute, and it would seem only fair and reasonable to allow a drawee 5 days to pay or arrange funds therefor.

There perhaps should be one further provision that is not a part of some fraudulent check statutes. That is, that in addition to drawing and issuing a draft or causing or authorizing it to be done, without credit or a deposit sufficient to pay, but which deposit is withdrawn between the date the draft was drawn and the date it is presented for payment, this, too, should authorize a felony charge.

Conclusion

It is respectfully submitted that, with the exception of the foregoing suggestions and recommendations, there is little or no other protection that can be afforded by statutes. Whenever any merchant or other seller entrusts possession of goods, commodities or livestock to a purchaser in exchange for anything other than cash, he undertakes a risk. In such a case, it is the seller who should "beware." The risk increases when the sale is made and the property is entrusted to strangers in exchange for a draft. Even though the seller retains title or has a right to repossess that which is sold, the repossession may prove a very costly process.

Two factors may or may not prove to be danger signals. One is where a stranger offers a price in excess of the going market price for that which he wishes to purchase, and where he tries to transact or effect a sale by any means other than cash at a time when the banks are closed. It would be wise in such cases to postpone considering such proposals to subsequent banking hours.

The resolution authorizing this study requested that the nature and extent of the losses be ascertained and reported. This has proved to be impossible without asking every farmer, rancher, livestock dealer and commission man in Nevada.

The Director of the Division of Market Enforcement in the California Department of Agriculture reports that they have had no complaints during the last two or three years, and that for several years last past, there have been very few complaints. As a result, they have no corrective statutes.

Research and correspondence with most of the Western states has produced the following information:

Arizona reports that losses through the use of dishonored drafts have not amounted to much. That state also includes "drafts" in the penal statute with fraudulent checks. If the draft is for a sum greater than \$100 and is issued without funds or credit, it is a felony punishable by a one to 14 year sentence. If less than \$100, it is a misdemeanor.

Montana could not state whether their losses were great or small, as the department kept no records of losses. Their penal statutes also provided penalties for dishonored drafts.

The New Mexico Director of Agriculture states that their growers have sustained substantial losses because of dishonored drafts in the last several years. He also stated that they have no corrective statutes.

Colorado also reports substantial losses and some corrective legislation, and they recommend licensing and bonding as in their Produce Dealers Act. However, in livestock activity, the amount of the bond principal sum would have to be so gigantic that the resulting premium would bar most operators, thus reducing competition.

Utah also reports substantial losses, but no corrective legislation except a licensing and bonding act. The Chairman of the Utah State Board of Agriculture

verifies the bond problem in the last sentence of his letter, as follows:

"The problem here is how high can you make the bond to be safe in case of default and with a strong need for all the buyers we can get for agricultural products. We are confronted with the problem of requiring too high a bond which may take some buyers out of the picture."

We have, as yet, received no other replies.

Recommendations

1. That a statute be enacted making it a felony for a person to draw a draft or cause it to be drawn without money on deposit, or who has no credit with the drawee bank sufficient to pay the draft, or who has sufficient money on deposit when the draft is drawn, but who withdraws the deposit before the draft is presented for payment.

2. That another statute be enacted providing that it is a felony to purchase livestock or any commodity by means of a draft and to sell that which is purchased, or convert the same to the purchaser's use or benefit and thereafter dishonor the draft.

3. That a statute be enacted specifically providing that whenever livestock or any goods, wares or merchandise are purchased by means of a draft, title shall remain in the seller until the draft is paid in full, unless the buyer and seller agree otherwise in writing.

4. That whenever a purchase is effected by means of a draft, a bill of sale shall be executed and delivered to the buyer, in which it shall be stated that the livestock or products enumerated in the bill of sale have been purchased by means of a draft or a check, and that title will be retained by the seller until the draft or check has been paid in full.

A. B. 108

=====

ASSEMBLY BILL NO. 108 - MESSRS, YOUNG AND SWANSON

February 1, 1961

-----o-----

Referred to Committee on Livestock

SUMMARY - Provides for recording of the authority of livestock buyers to sign sight drafts. (BDR 50-509)

Explanation - Matter underlined is new; matter in brackets [] is material to be omitted.

=====

AN ACT to amend chapter 576 of NRS, relating to livestock and farm products dealers; brokers and commission merchants, by adding a new section providing for recording of the authority of livestock buyers to sign sight drafts; and prohibiting certain practices by such buyers and their agents; to amend NRS section 576.140, relating to exemptions from the provisions of such chapter, by changing an internal reference to accommodate such new section; providing penalties; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter 576 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. As used in section 3 of this act:

1. "Authority" means a writing, signed by a person appointing another his agent to buy and pay for livestock with sight drafts, stating:

(a) The county or counties in which such agent may buy.

(b) The dates on which such agent may buy.

(c) That the person signing the writing has the ability to and will pay sight drafts drawn by such agent.

2. "Sight draft" means an order to pay money drawn by a livestock buyer's agent on the buyer or the buyer's bank.

Sec. 3. 1. No agent may buy and pay for livestock with a sight draft unless he first records his authority with the county recorder of the county in which he buys.

2. Upon receipt of notice from a person signing an authority that such authority is to be revoked, the county recorder shall write across the face of the authority that it is revoked, and the date and time of such writing. From such time the revocation is prospectively effective in that county.

3. The board may have blank forms of authority printed for distribution at cost to the public. Such forms shall recite that a false statement thereon is a violation of NRS 205.375, for which the maker is liable to pay a fine of not more than \$1,000 or to imprisonment for not more than 6 months or to both fine and imprisonment.

4. No livestock buyer may refuse or order his bank to refuse to pay any sight draft drawn by an agent to whom he has given an authority unless such authority has been revoked in accordance with the provisions of this section.

5. Any violation of the provisions of this section is a misdemeanor.

Sec. 4 NRS 576.140 is hereby amended to read as follows:

576.140 /This chapter/ NRS 576.020 to 576.130, inclusive, shall not apply to:

1. The Nevada Fair of Mineral Industries, 4-H clubs, the Nevada junior livestock show, the Nevada state livestock show, the Nevada Hereford Association, or any other organization or association which is entirely nonprofit in character.

2. Any railroad transporting livestock either interstate or intrastate.

3. Any farmer or rancher purchasing or receiving livestock for grazing, pasturing or feeding on his premises and not for immediate resale.

4. Operators of public livestock auctions as defined in NRS 573.010, and all buyers of livestock at such auctions at which the public livestock auction license does not control title or ownership to the livestock being sold or purchased at such auctions, and any person subject to and operating under a bond required by the United States pursuant to the provisions of the Packers and Stockyards Act (7 U.S.C. § 204) and the regulations promulgated thereunder. All persons exempted by the provisions of this subsection shall register annually with the board, giving the location of their place of business, the number of their license and bond and the expiration date thereof. The board may charge a fee sufficient to defray the expense incident to such registration.

5. Any farmer or rancher whose farm or ranch is located in the State of Nevada, who buys or receives farm products or livestock from another farmer or rancher not for immediate resale.

6. Any retail merchant having a fixed and established place of business in this state and who conducts a retail business exclusively.

A. B. 184

=====

ASSEMBLY BILL NO. 184 - MESSRS. BUCKINGHAM, BAKER, BERRUM, HOWARD, HUMPHREY,
ROMEO, MURPHY AND GLASER

February 9, 1961

— o —

Referred to Committee on Livestock

SUMMARY - Prohibits agents from making livestock purchases with
sight drafts. (BDR 16-642)

Explanation - Matter underlined is new; matter in brackets [] is
material to be omitted.

=====

AN ACT to amend chapter 205 of NRS, relating to crimes against property, by adding a new section prohibiting agents from making livestock purchases with drafts upon their principals or principals' bank; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do
enact as follows:

Section 1. Chapter 205 of NRS is hereby amended by adding thereto a new section which shall read as follows:

No person acting as the agent or representative of another person, firm or corporation for the purpose of buying livestock as defined in NRS 576.010, whether with or without intent to defraud, may sign as maker or drawer a check, sight draft or other written instrument for the payment of money, directed to or drawn upon such other person, firm or corporation or the bank of such other person, firm or corporation. Any violation of the provisions of this section is a felony.

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

A. B. 280

=====

ASSEMBLY BILL NO. 280 - MESSRS. BUCKINGHAM, HOWARD, BERRUM, HUMPHREY, ROMEO,
BAKER, GLASER, YOUNG AND KNISLEY

February 20, 1961

_____o_____

Referred to Committee on Livestock

SUMMARY - Provides that failure to honor a sight draft is a felony.
(BDR 16-745)

Explanation - Matter underlined is new; matter in brackets [] is material
to be omitted.

=====

AN ACT to amend chapter 205 of NRS, relating to crimes against property, by
adding a new section providing that failure of a buyer to honor a sight
draft drawn by his agent is a felony; providing that title to livestock
purchased with a sight draft shall not pass to the buyer until the draft
is paid; and by providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly do
enact as follows:

Section 1. Chapter 205 of NRS is hereby amended by adding thereto a new
section which shall read as follows:

1. As used in this section "sight draft" means an order to pay money
drawn by a buyer's agent on the buyer or the buyer's bank.

2. Any person who has authorized an agent to draw a sight draft and fails
to honor such draft or cause it to be honored within 5 banking days after it
is presented for payment is guilty of a felony, and title to any livestock
purchased by means of any sight draft shall not pass to the buyer until the
sight draft has been paid in full.