

Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003

SENATE BILL NO. 2209
(Senators Erbele, Bowman, Taylor)
(Representatives DeKrey, Froelich, Nicholas)

AN ACT to create and enact five new sections to chapter 36-09 of the North Dakota Century Code, relating to brand ownership, recording, and inspection; to amend and reenact sections 36-09-02.1, 36-09-04, 36-09-06, 36-09-09, 36-09-10, 36-09-13, 36-09-20, 36-09-23, 36-13-01, 36-13-02, 36-13-03.1, 36-13-04, 36-13-05, 36-13-06, 36-13-07, 36-13-08, 36-22-01, and 36-22-06 of the North Dakota Century Code, relating to brand recording, cancellation, and inspection, bills of sale, and estrays; to repeal sections 36-09-03 and 36-13-03 of the North Dakota Century Code, relating to brands or marks on poultry and the sale of estrays; to provide a penalty; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

36-09-02.1. Standards for recording brands or marks.

1. The chief brand inspector shall record the brand or mark described in the application except that the chief brand inspector shall refuse to record any brand or mark that:
 4. ~~a. That has~~ Has been ~~previously~~ recorded in favor of another person ~~or one that is~~.
 - b. Has been recorded in another state.
 - c. Is ~~deceptively similar to any previously recorded livestock brand or mark. The same or similar livestock brand or mark which is to be placed on a different part of the animal from that described in the previous record may be recorded.~~
2. ~~d. That contains~~ Contains less than two characters, ~~except that a single character brand may be recorded for sheep and goats, or one that contains any of the following characters:~~
 - a. ~~e. The letters~~ Contains:
 - (1) The letter "g" or;
 - (2) The letter "q" or letters that are;
 - (3) Any letter not in the gothic style-;
 - (4) A dot;
 - b. (5) ~~The Arabic numerals~~ numeral "0" or "1" ~~or any;~~
 - (6) Any non-Arabic numerals- numeral;
 - c. (7) ~~Any symbols symbol other than permissible symbols. Permissible symbols are limited to the following: a diamond, a half-diamond, an arrow, a mill iron, a cross, a heart, a box, a triangle, a quarter circle, a bar, or a star-~~
3. ~~That involves any letters, numerals, or symbols; and~~

- (8) Any letter, number, or symbol within another letter, ~~numeral~~ number, or symbol.
4. f. ~~That is illegible~~ Is not legible when placed on the livestock.
5. g. ~~That indicates placement~~ Would be placed upon ~~each kind of the~~ a location other than a permissible location.
2. ~~Permissible~~ For purposes of this section, permissible locations for cattle are the left and right shoulder, the left and right rib, and the left and right hip. Permissible locations for horses and mules are the left and right jaw, the left and right shoulder, and the left and right hip. Permissible locations for buffalo are the left and right rib; and the left and right hip. The chief brand inspector may determine permissible locations for other types of livestock must be established by the chief brand inspector as necessary. The determination of permissible locations under this section ~~may not be considered as a rule~~ is not subject to rulemaking under chapter 28-32.
3. Notwithstanding any ~~provisions~~ other provision of this section ~~to the contrary~~, the chief brand inspector shall accept for rerecording under section 36-09-09 ~~any~~ or under section 5 of this Act:
- a. Any previously recorded livestock brand or mark.
- b. A single character brand provided the animals on which the brand is to be placed are goats or sheep.

SECTION 2. AMENDMENT. Section 36-09-04 of the North Dakota Century Code is amended and reenacted as follows:

36-09-04. Record of brands kept - Inspection of record - Certificate of brand ownership of brand. The chief brand inspector shall keep a record of all marks and brands showing the names and residences of the persons owning the marks and brands, a description and facsimile of each mark or brand, and in the case of livestock, the range occupied by the livestock, as nearly as may be determined. The record is open to ~~the inspection of by~~ any person interested therein. The chief brand inspector shall deliver to the owner of each mark or brand a certificate ~~thereof, and of the mark or brand.~~ The certificate is evidence of ownership of the mark or brand described therein in the certificate.

SECTION 3. AMENDMENT. Section 36-09-06 of the North Dakota Century Code is amended and reenacted as follows:

36-09-06. Cancellation of brand.

1. The chief brand inspector shall cancel a legally recorded brand ~~only when the:~~
- a. The chief brand inspector receives for filing a bill of sale of such the brand properly executed by the record owner as shown by the records in the chief brand inspector's office; or in instances where
- b. When it is found that a brand has been issued inadvertently in duplication of a previously recorded brand.
2. The chief brand inspector may cancel a legally recorded brand if the chief brand inspector determines that the brand has been recorded in another state.

SECTION 4. AMENDMENT. Section 36-09-09 of the North Dakota Century Code is amended and reenacted as follows:

36-09-09. Cancellation of brands - Rerecording - Limitation on brands. On the first day of January 1966, each ~~and every~~ livestock brand or mark must be canceled and no person, ~~copartnership, company, firm, or corporation~~ may use or have any right, title, or interest in or to any

livestock brand or mark previously recorded in this state. If a person, ~~copartnership, company, firm, or corporation~~ should desire to continue ownership ~~thereof~~ of a brand or mark, the brand or mark must be rerecorded on or before January first, and each ten years thereafter. Rerecording is not required from an owner who has registered for a new brand within six months prior to the date provided for the rerecording of brands ~~thereafter~~.

SECTION 5. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Cancellation of brands - Rerecording - Limitation on brands. On the first day of January 2006, each livestock brand or mark must be canceled and no person may use or have any right, title, or interest in or to any livestock brand or mark previously recorded in this state. If a person should desire to continue ownership of a brand or mark, the brand or mark must be rerecorded on or before January first, and every five years thereafter. Rerecording is not required from an owner who has registered for a new brand within six months before the date provided for the rerecording of brands.

SECTION 6. AMENDMENT. Section 36-09-10 of the North Dakota Century Code is amended and reenacted as follows:

36-09-10. Brands to be rerecorded every ten years Failure to rerecord brand - Abandonment. Failure to rerecord any previously recorded livestock brand or mark on or before the time specified; in ~~accordance with this chapter, section 36-09-09 or section 5 of this Act~~ is deemed an ~~absolute~~ abandonment of the previously recorded livestock brand or mark. For one year from the date of cancellation, the chief brand inspector may not reassign a canceled brand or mark to any person other than the registered owner at the time of cancellation. By written notice to the chief brand inspector, the registered owner at the time of cancellation may authorize reassignment of the brand or mark within the one-year period. Thereafter the chief brand inspector shall accept any regular application for the issuance to anyone of the abandoned livestock brand or mark, provided the abandoned livestock brand or mark complies with the standards of section 36-09-02.1. The chief brand inspector shall issue a certificate for the use of the abandoned brand or mark within this state, ~~except that the brand or mark may not be issued if it consists of a single figure or single letter~~ provided the abandoned livestock brand or mark complies with the standards of section 36-09-02.1.

SECTION 7. AMENDMENT. Section 36-09-13 of the North Dakota Century Code is amended and reenacted as follows:

36-09-13. Recording and rerecording of brands - Fee. The rerecording of abandoned livestock brands or marks, and the recording of new brands and marks, must conform ~~in all respects~~ to this chapter. Each application for recording and rerecording must be accompanied by a fee for each place or position upon each type of livestock where the brand or mark is to be placed. The ~~fee must be set by the board of animal health, upon the recommendation~~ shall establish the fee, with the advice and ~~consent~~ of the North Dakota stockmen's association, ~~and~~. The fee may not exceed ~~fifteen~~ twenty-five dollars.

SECTION 8. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Use of unrecorded brand - Penalty. A person is guilty of a class B misdemeanor if the person places upon an animal a brand that has not been recorded in accordance with this chapter.

SECTION 9. AMENDMENT. Section 36-09-20 of the North Dakota Century Code is amended and reenacted as follows:

36-09-20. Bill of sale to be given and kept - Copy with shipment - Effect - Penalty.

1. ~~No~~ A person may not sell cattle, horses, mules, or any other livestock carrying a registered brand unless:

4. a. The seller is the owner of the registered brand and delivers a bill of sale for the cattle, horses, mules, or other livestock to the purchaser; or
2. b. The seller delivers to the purchaser a bill of sale executed by the owner of the registered brand and endorsed by the seller evidencing the later transaction.
2. The bill of sale must ~~contain the~~ include:
 - a. ~~The date, signature, and residence;~~
 - b. ~~The name, address, and signature of the seller and;~~
 - c. The name, address, and signature of an individual who is at least eighteen years of age and who can verify the name and signature of the seller;
 - d. ~~The name and address of the buyer, and showing the;~~
 - e. ~~The total number of animals sold, describing;~~
 - f. A description of each animal sold as to sex and kind; and ~~describing~~
 - g. A description of the registered brands.
3. The bill of sale must be kept by the buyer for two years and as long thereafter as ~~he~~ the buyer owns any of the animals described ~~therein~~ in the bill of sale.
4. A copy of the bill of sale must be given to each hauler of ~~such~~ the livestock, other than railroads, and must go with the shipment of ~~such stock~~ the livestock while in transit.
5. ~~Such~~ The bill of sale or a copy of the bill of sale must be shown by the possessor on demand to any peace officer or brand inspector.
6. ~~Such~~ The bill of sale is prima facie evidence of the sale of the livestock therein described; provided, that no such in the bill of sale.
7. A bill of sale is not required relative to sales of livestock covered by a legal livestock brand inspection.
8. Any ~~violation of~~ person who violates this section is guilty of an infraction.

SECTION 10. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

False proof of ownership - Sale of livestock - Penalty. A person that knowingly provides false proof of ownership in conjunction with the sale of livestock is guilty of a class B misdemeanor.

SECTION 11. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Proof of ownership - Alteration or falsification - Penalty. A person that, with intent to deceive or harm another, knowingly and falsely makes, completes, or alters any writing evidencing proof of livestock ownership is guilty of a class B felony.

SECTION 12. AMENDMENT. Section 36-09-23 of the North Dakota Century Code is amended and reenacted as follows:

36-09-23. Removal of livestock from state - Brand inspection - Penalty.

1. No person may remove cattle, horses, or mules from this state or to within a mile [1.61 kilometers] of any boundary of the state for the purpose of removal unless the livestock

has been inspected for marks and brands by an official brand inspector of the North Dakota stockmen's association and a certificate of inspection must accompany the livestock to destination. ~~In lieu of the inspection, the owner or possessor may make and sign an invoice or waybill covering the stock showing marks and brands, number, sex and kind of the stock, and the consignee and market destination where official brand inspection is provided by or for the stockmen's association and mail a copy of the invoice or waybill to the association before the stock leaves the state.~~

2. It is unlawful for the owner or possessor to remove any livestock from any place of regular official brand inspection unless and until official brand inspection has been made and the brand inspection certificate issued.
3. A person who violates this section is guilty of a class B misdemeanor. A person who violates this section a second time within fifteen years or violates this section three or more times is guilty of a class C felony.

SECTION 13. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Brand inspection services - Out-of-state facilities. An out-of-state livestock facility that seeks to obtain brand inspection services from this state may file a written request with the North Dakota stockmen's association. Upon receiving a request for brand inspection services, the North Dakota stockmen's association shall petition the board of animal health for permission to provide the services. The board of animal health shall adopt rules setting forth the criteria that must be met before out-of-state brand inspections are approved.

SECTION 14. AMENDMENT. Section 36-13-01 of the North Dakota Century Code is amended and reenacted as follows:

36-13-01. Estrays - Possession. ~~Any A person may take possession of an animal as an estray when it is on property which he that the person owns or controls, and when he provided the person does not know who is the owner of owns the animal estray. As soon as practicable he shall make careful examination of the said animal the person shall examine the estray to determine the presence and identity of any brand upon it, the location thereof of the brand, and any other marks or scars which that may identify the same and he estray. The person shall notify the sheriff of the county wherein in which the estray was found of such action, who or the chief brand inspector. Once notified, the sheriff or the chief brand inspector shall record the date and time of the notification and all information obtained by him as to brands or other marks and location from the person which may be helpful in determining ownership thereof of the estray. The chief brand inspector shall direct a brand inspector to examine the estray for marks and brands.~~

SECTION 15. AMENDMENT. Section 36-13-02 of the North Dakota Century Code is amended and reenacted as follows:

36-13-02. ~~Estray notice by sheriff~~ Estrays - Notification of chief brand inspector. ~~Upon notification When notified of an estray possession, the notified a sheriff shall forthwith publish a notice in the official county newspaper once weekly for two weeks unless the animal is earlier claimed or sold, whichever is earlier. Two or more animals which are taken up by the same person at the same time may be described in one notice.~~

~~The published notice must be on a form prescribed by the chief brand inspector, and at the time of first publication of any notice must be forwarded to him for his files and the chief brand inspector shall send an official brand inspector to examine the animal for marks and brands and report his findings to the chief brand inspector and the sheriff. The notice must briefly describe the estray by color, sex, probable age and weight, and any distinctive brand or marks, and must show the date and place of taking up as well as the name and address of possessor contact the chief brand inspector and provide to the chief brand inspector any identifying or descriptive information regarding the estray.~~

SECTION 16. AMENDMENT. Section 36-13-03.1 of the North Dakota Century Code is amended and reenacted as follows:

36-13-03.1. Alternate disposition of estray. ~~In lieu of disposition of an animal as an estray as directed in the preceding section of this chapter, any A person finding that finds an estray upon his premises the ownership of which is unknown to him on property that the person owns or controls may dispose of the same estray by delivering such animal it to a public livestock market licensed under the laws of by this state as soon as practical after discovery of such animal upon his premises, provided he the person first makes a reasonable effort to determine the ownership thereof. At the time of delivery of an estray as provided in this section, the person so delivering of the estray. The person shall inform the brand inspector that the animal is being delivered as is an estray. Such animal, The estray and the proceeds of the its sale thereof, must thereupon be disposed of as provided in chapter 36-22.~~

SECTION 17. AMENDMENT. Section 36-13-04 of the North Dakota Century Code is amended and reenacted as follows:

36-13-04. Claiming estrays. ~~When If before the sale of an estray the owner of an the estray, prior to the sale thereof, presents to the person in possession of the animal his possessing the estray an affidavit stating his that includes the owner's name, place of residence and that he is the actual owner of the estray, describing it, then, a declaration of ownership, and a description of the estray, the person in possession of the animal possessing the estray shall release it to the claimant owner on payment of the all lawful charges. The person formerly in possession shall then promptly send the affidavit to the sheriff, who shall file and keep the same as record of the disposition of the estray. After there has been a sale of an estray under the provisions of this chapter, the former owner of an estray has no rights in the animal.~~

~~If the former owner of an estray files his verified claim with the board of county commissioners within one year after the date of the estray sale, and proves his former ownership to the satisfaction of the board, it shall order paid to the former owner and any lienors, as their interests may appear, the balance from the sale which is in the county treasury.~~

SECTION 18. AMENDMENT. Section 36-13-05 of the North Dakota Century Code is amended and reenacted as follows:

36-13-05. Lawful charges.

1. ~~Any A person lawfully taking that takes possession of an estray in accordance with this chapter may charge for any actual damage done to his the person's crops or premises property by the animal, his actual costs of estray.~~
2. ~~A person that takes possession of an estray in accordance with this chapter may charge for any costs incurred after the person has notified either the sheriff or the chief brand inspector, provided the costs were incurred for the care and feeding and caring for it, and any expenses incurred of the estray or were incurred in complying with this chapter, provided that no costs, charges, or expenses may be allowed which were incurred prior to notifying the sheriff that the animal was taken up except damage to crops or premises.~~
3. ~~If the interested parties person who takes possession of the estray and the owner of the estray cannot agree as to the amount of charges that are payable, each shall choose one person and the two so chosen shall choose a third person and then the. The three persons so chosen shall arbitrate and determine the amount of the charges. The A determination of these arbitrators under this subsection is final if no sale of the animal has been had. In the event of a sheriff's sale the sheriff shall determine the amount of the charges to be received by the person taking possession of the estray.~~

SECTION 19. AMENDMENT. Section 36-13-06 of the North Dakota Century Code is amended and reenacted as follows:

36-13-06. Liability for failure to give proper notice.

1. Any person ~~who~~ that takes up possession of an estray ~~and is liable to the owner of the estray for treble damages if the person fails to:~~
- 1- ~~Fails to make reasonable examination of the animal~~
 - a. ~~Examine the estray to determine the presence of brands or marks or scars to identify the same as herein required and identity of any brand, mark, or scar; and~~
- 2- ~~Fails to notify~~
 - b. ~~Notify either the sheriff or the chief brand inspector as provided in this chapter, is liable to the owner thereof for triple all damages caused thereby, and.~~
2. A person liable for damages under subsection 1 may not make any claim or charge, or seek damages in connection with the animal estray.

SECTION 20. AMENDMENT. Section 36-13-07 of the North Dakota Century Code is amended and reenacted as follows:

36-13-07. Liability for death, theft, or escape of estray. If the person ~~who~~ that takes up possession of an estray notifies either the sheriff or the chief brand inspector, as provided in this chapter, ~~he the person is not responsible liable if, without his fault, such on the part of the person, the estray thereafter dies, is stolen, or escapes and wanders away.~~

SECTION 21. AMENDMENT. Section 36-13-08 of the North Dakota Century Code is amended and reenacted as follows:

36-13-08. Taking up estray - Compliance with chapter - Penalty. Any person ~~taking up that takes possession of an estray who and~~ willfully fails to comply with ~~the provisions of~~ this chapter is guilty of a class B misdemeanor.

SECTION 22. AMENDMENT. Section 36-22-01 of the North Dakota Century Code is amended and reenacted as follows:

36-22-01. Estray defined. Any marked or branded cattle, ~~horse, or mule~~ found at any livestock market, to which a shipper cannot produce title or satisfactory evidence of ownership, is considered ~~as to be~~ an estray.

SECTION 23. AMENDMENT. Section 36-22-06 of the North Dakota Century Code is amended and reenacted as follows:

36-22-06. Payment to owners of estrays. The secretary of ~~said the~~ North Dakota stockmen's association, upon satisfactory proof of ownership of any estray for which the association has received the money, shall, with the approval of the board of directors of ~~said the~~ association, pay ~~such the~~ owner of the estray the amount received from the sale of ~~such the~~ estray; provided, ~~however,~~ that ~~such the~~ ownership of the estray must be proven within one year after the publication of the notice provided for in section 36-22-07. Any interest earned on the money reverts to the North Dakota stockmen's association fund.

SECTION 24. REPEAL. Sections 36-09-03 and 36-13-03 of the North Dakota Century Code are repealed.

SECTION 25. EFFECTIVE DATE. Section 5 of this Act becomes effective on July 1, 2006.

SECTION 26. EXPIRATION DATE. Section 4 of this Act is effective through June 30, 2006, and after that date is ineffective.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2209.

Senate Vote: Yeas 42 Nays 4 Absent 1

House Vote: Yeas 91 Nays 2 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State