

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## AGRICULTURE COMMITTEE

Tuesday and Wednesday, January 24-25, 2012  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Robert Erbele, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Robert Erbele, Bill Bowman, Oley Larsen, Curtis Olafson, Donald Schaible, Gerald Uglem; Representatives Michael D. Brandenburg, Tom Conklin, Dennis Johnson, Joyce Kingsbury, Wayne Trottier, John D. Wall

**Members absent:** Senators Tim Flakoll, Larry Luick, Philip M. Murphy; Representative Phillip Mueller

**Others present:** See attached [appendix](#)

At the request of Chairman Erbele, committee counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

### BACKGROUND - PROVISIONS OF THE NORTH DAKOTA CENTURY CODE WHICH RELATE TO AGRICULTURE

At the request of Chairman Erbele, committee counsel presented a background memorandum entitled [Provisions of the North Dakota Century Code Which Relate to Agriculture](#). Committee counsel said the Century Code contains more than 90 chapters that pertain to agriculture, and many of the sections within those chapters contain material that is irrelevant, duplicative, inconsistent, illogically arranged, or otherwise unclear in its intent and direction. She said when this is the case, neither the agencies charged with administering the laws nor the members of the public to whom the laws apply have due notice of the requirements and expectations placed upon them. She said in 2007 the Legislative Assembly called for a detailed examination of the state's agriculture laws, with the ultimate goal being to clean up, clarify, and consolidate the multitude of statutory directives within that topic area.

Committee counsel said when the 2007-08 interim Agriculture Committee began its work, the committee determined that the nature and extent of the rewrite made amending current sections of the Century Code virtually impossible. She said the committee therefore proposed that the rewrite create a new title that could accommodate the vast array of agricultural subjects and concepts in an organized and comprehensible fashion. She said this is now known as Title 4.1.

Committee counsel said the 2007-08 interim Agriculture Committee focused its efforts on the state's noxious weed laws and the laws pertaining to

the 12 agricultural commodity boards and commissions. She said the 2009-10 interim Agriculture Committee continued with a rewrite of five chapters pertaining to the state's seed laws. She said this interim committee will have the opportunity to study and rewrite chapters pertaining to certified seed potatoes, seed potato control areas, livestock dealers, and brand inspection, and two chapters pertaining to estrays.

Chairman Erbele said to the greatest extent possible, at this stage of the study committee members should refrain from making formal motions. He said this committee's value lies in its ability to discuss the issues, react to the suggestions in the notes, provide feedback to those administering the various chapters, and provide direction to committee counsel. He said it is important that the committee remain a bit fluid so that the committee counsel can take the committee's suggestions, work with the agency staff to fine-tune the suggestions, and craft them in a way that meets the study directives without having to be locked in by the words of a formal motion. He said the interim committee will have several opportunities to see the rewrite bill drafts and ultimately to vote on the final product that is to be recommended to the Legislative Management.

Chairman Erbele said if within the scope of the rewrite issues that require significant policy changes arise, those should be addressed in separate bills and introduced during the legislative session.

### BRANDING [[13.0014.01000](#)]

#### Section 1 - New

Chairman Erbele said the Century Code does not contain a definition of a brand. He said it is suggested that a brand be defined as an identifying imprint that is placed on livestock by use of a hot branding iron or a freeze branding technique.

In response to a question from committee counsel, Mr. Stan Misek, Chief Brand Inspector, North Dakota Stockmen's Association, said freeze branding is permitted on horses because they have thinner hides and the freeze brand shows up better. He said cattle tend to "hair-over," and when you clip the hair, you cannot see the freeze brand. He said freeze branding on cattle is not preferred.

Ms. Julie Ellingson, Executive Director, North Dakota Stockmen's Association, said perhaps a clarification could be added to provide that hot iron

branding is permissible for recorded brands placed on cattle and that either hot iron branding or freeze branding is permissible for recorded brands placed on horses or mules.

Senator Olafson said freeze branding is not consistent on cattle. He said the North Dakota Stockmen's Association has a supportable position.

In response to a question from Chairman Erbele, Ms. Ellingson said the North Dakota Stockmen's Association records brands for a variety of animals and does not address appropriate application methods if the brands are used for identification. However, she said, brand inspection services are limited to cattle, horses, and mules. She said the current law addresses brand recording and brand inspections within the same chapter.

Mr. Misek said not too many people freeze brand cattle anymore. He said if cattle bearing a freeze brand show up at the auction market, the brand inspectors do show it as brand out of courtesy.

Ms. Ellingson said people do use freeze brands for in-herd identification. However, she said, for the purpose of recording to show ownership, only the hot iron brand would be recognized.

In response to a question from committee counsel, Ms. Ellingson said a freeze brand would not be recognized for ownership unless the brand is on a horse or a mule.

### **Section 2 - Amendment of Section 36-09-01**

Chairman Erbele said this section clarifies that the Chief Brand Inspector is an employee of the North Dakota Stockmen's Association. He said in this section, as well as in the entire chapter, the references to "marks" are removed because they are not recorded.

### **Section 3 - Amendment of Section 36-09-02**

Chairman Erbele said under current law an application to acquire ownership of a brand requires a description of the brand. He said because words may mean different things to different people, North Dakota Stockmen's Association personnel suggested it would be preferable to require that the applicant "draw or depict" the proposed brand.

Senator Olafson said he wonders why a digital image of the brand is not required.

Ms. Ellingson said although the applications are available online, applications are submitted in paper form because an original signature is required. She said once the application is received, it is digitized.

### **Section 4 - New**

Chairman Erbele said the language of this section is underlined because it has been moved from Section 36-09-92, not because it is new. He said current law provides that "the hips of any cattle may not be used for registered numerical brands. Nonregistered numerical brands may be located upon the hips of cattle for individual identification. Registered brands other than numerical brands may also be located on

the hips of cattle." He said because the proposed language prohibits only the placement of "recorded" brands that consist entirely of "upright numerical numbers," it was not necessary to include a litany of other recorded or nonrecorded brands or placements that are in fact permissible. He said Section 36-09-02 also defines a "numerical brand" as "a brand consisting entirely of upright number or numbers, and does not include brands consisting of lazy numbers, or combinations of letters, or characters and numbers." He said because the proposed language references only recorded brands that consist entirely of upright numbers, it is not statutorily necessary to include a litany of other permissible brands.

### **Section 5 - New**

Chairman Erbele said current law provides that the "provisions of this chapter do not apply to any numerical brand recorded prior to July 1, 1957." He said this language is much broader than it should be. He said it means that the owners of the grandfathered brands are not subject to rerecording requirements, recordkeeping requirements, requirements for bills of sale, etc. He said the proposed language more accurately reflects the intent to grandfather the use of single numerical brands.

In response to a question from Chairman Erbele, committee counsel said one is grandfathered in with respect to the design and placement of the numerical brand. She said current law provides that the entire chapter does not apply. She said it was determined that in all likelihood, even if a brand were recorded prior to 1957, there are other statutory obligations that apply. She said North Dakota Stockmen's Association personnel indicated the proposed wording reflects their understanding of the section's intent.

In response to a question from Senator Larsen, Ms. Ellingson said many people use numbers for in-herd identification. She said if numerical brands for ownership purposes were allowed in the same placements, there would likely be confusion.

### **Section 6 - Amendment of Section 36-09-02.1**

Chairman Erbele said this section sets forth the configurations that are not acceptable for recording.

Chairman Erbele said to ensure that there is no misunderstanding about the current requirement that a brand not contain any "letter not in the gothic style," the rewrite proposes a reference to the "modern English alphabet."

Committee counsel said current law provides that a brand may not contain a "non-Arabic numeral." She said she did not know to what that was referring. She said a Roman numeral would be considered "non-Arabic," but it is indistinguishable from the letters I, V, X, etc.

In response to a question from committee counsel, Ms. Ellingson said if a brand application were to contain what appeared to be Roman numerals, the brand recorder would view them as letters.

Chairman Erbele said it is the consensus of the committee that the reference to non-Arabic numerals be removed.

In response to a question from committee counsel, Ms. Ellingson said a triangle has three sides and a half-diamond has two sides. However, she said, one does not refer to a half-diamond. She said one would call that a "V" or an "open A."

In response to a question from Chairman Erbele, Mr. Misek said it is not necessary to maintain the reference to a half-diamond.

Chairman Erbele said it is the consensus of the committee that the reference to a half-diamond be removed.

In response to a question from Senator Olafson, Mr. Misek said he has brandbooks from South Dakota and Montana, and with computer technology, it is very easy to check brands that are recorded in other states.

Senator Olafson said current law requires that the brand inspector check to ensure that the brand is not recorded in "another" state. He said this means that the Chief Brand Inspector would have to check all states having brand recording, not just South Dakota and Montana.

In response to a question from Senator Olafson, Ms. Ellingson said there are probably about 15 states that require brand recording. She said most are in the western United States. She said if a person moved here from Arizona, that might be the impetus to check brands recorded in Arizona. She said there is no single method that is used in all cases.

Chairman Erbele said the requirement to ensure that a brand has not been recorded in another state is in current law. He said this is not a new requirement.

Ms. Ellingson said she would be amenable to altering the language that requires the checking of brands recorded in all other states.

Ms. Angela Wolford, Brand Recorder, North Dakota Stockmen's Association, said if a person has a brand recorded in another state, that is not considered a ground for denying the brand. However, she said, if a person has the brand recorded for the same position, then it is denied. She said if an application for brand recording comes in and the applicant has an out-of-state address, then she will contact the other state to see if the brand was previously recorded.

Committee counsel said it is important to ensure that the words match with the way business is being conducted. She said the statute could be amended to require checks only with respect to bordering states if the committee determines that that is appropriate.

In response to a question from Senator Uglem, Ms. Ellingson said a person cannot record the same brand on the same position in multiple states.

In response to a question from Senator Bowman, Ms. Ellingson said inspections are required in order to move cattle across the North Dakota-Montana border.

In response to a question from Representative Kingsbury, Mr. Misek said if cattle are moved across

multiple states, the only time an inspection is required is if they are off-loaded.

### **Section 7 - New**

Chairman Erbele said this section sets forth the permissible locations of brands on various kinds of livestock. He said the section is not new but merely relocated from Section 36-09-02(2).

### **Section 8 - New**

Chairman Erbele said this section is new language.

With the permission of Chairman Erbele, committee counsel said current law does not indicate whether a decision by the Chief Brand Inspector regarding the acceptability of a brand for recording or the permissibility of its location or placement is final or appealable to another individual or entity. She said this makes it clear that a decision by the Chief Brand Inspector regarding these matters is final.

### **Section 9 - Amendment of Section 36-09-04**

Chairman Erbele said North Dakota Stockmen's Association personnel suggested that a requirement for inclusion of the brand's description in the application process should be eliminated because of inherent inaccuracies in descriptions. The requirement for a description is being kept in the official record. He said the official record currently requires a "facsimile" of each brand, and this section references a depiction of the brand.

Chairman Erbele said North Dakota Stockmen's Association personnel suggested that the statute include a requirement for a reference to the type of livestock on which the brand is to be used, as well as the brand's permitted location or placement. He said this has been added to the section.

Committee counsel said current law provides that the "record of all brands is open to inspection by any person." She said in light of the fact that the brandbooks are available online, the committee should consider whether it is necessary to maintain the quoted language.

Ms. Ellingson said the brandbook is available online, on CD-ROM, and in printed form.

Chairman Erbele said it is the consensus of the committee that the quoted language be removed.

### **Section 10 - Amendment of Section 36-09-06**

Chairman Erbele said this section provides for the cancellation of a brand in only one of two circumstances. He said the committee needs to consider whether there might be any other circumstance that could possibly require the cancellation of a brand, e.g., if a brand containing an impermissible letter is inadvertently recorded, or if the brand is found not to be legible when placed on livestock.

Ms. Ellingson said in rare instances it has come to light that a false signature was provided to add or remove a name. She said if there is illegality involved,

the North Dakota Stockmen's Association would like to have the ability to cancel a brand.

In response to a question from Chairman Erbele, committee counsel said such a change would be an appropriate part of the rewrite.

Senator Olafson said the North Dakota Stockmen's Association should have the ability to cancel a brand in the event of fraud.

Chairman Erbele said it is the consensus of the committee that the section allow cancellation in the case of fraud.

Senator Larsen said current law provides that 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. He said he is confused by how this provision might work.

Ms. Ellingson said if a North Dakota producer has a duly recorded brand and if a producer in South Dakota has that same brand and then moves to North Dakota, the South Dakota producer has to record his brand in North Dakota. She said a check would determine that there is a conflict with an existing North Dakota brand. She said the North Dakota Stockmen's Association would work with the South Dakota producer to see if the brand could be recorded on another position. She said the association would not cancel the North Dakota brand in such a case.

Senator Larsen said what Ms. Ellingson said makes sense. He said the law does not reflect that explanation.

Ms. Ellingson said if a person living close to the border has a brand in North Dakota and it is discovered that the person has that same brand in South Dakota, the North Dakota Stockmen's Association will ask that the person choose whether the brand should be recorded in one state or the other, and then work with the other state to ensure that the proper action has been taken. If not, the association would cancel the North Dakota brand.

### **Section 11 - Amendment of Section 36-09-08**

Chairman Erbele said this section provides that an official brandbook published by the Chief Brand Inspector must be received in all courts of this state as presumptive evidence of the recording and ownership of livestock brands. He said this concept has not been changed from current law.

Senator Larsen said he is concerned that a producer comes into this state with a Wyoming brand, the North Dakota brand could be canceled.

Mr. Misek said if he lived in Wyoming and wanted to move to North Dakota, he would be required to have a brand inspection. He said it would be against the law for him to use his Wyoming brand and brand cattle in North Dakota. He said that is unlawful branding. He said whenever someone moves into North Dakota they either need to have a North Dakota brand or get a North Dakota brand.

Senator Larsen said he understands that a producer moving to North Dakota cannot continue to use his Wyoming brand in this state. However, he

said, the current law authorizes the Chief Brand Inspector to cancel a legally recorded North Dakota brand if that brand has been recorded in another state.

In response to a question from Senator Olafson, Mr. Misek said the intent of this section is to prevent a person with a brand that is duly recorded in one state from recording that same brand in every other state. He said if a person has a brand recorded in South Dakota, we do not want him recording that same brand in North Dakota. He said the intent is not to revoke a brand that is recorded under someone else's name but rather to prohibit multiple state ownership of the same brand.

Chairman Erbele said it is the consensus of the committee that the provision be rewritten to reflect its intent.

In response to a question from Senator Bowman, Mr. Misek said whenever cattle are moved from one state to the next, they have to be brand inspected. He said a North Dakota brand is legal in Wyoming as long as it is retained. When you are ready to move the cattle back to North Dakota, he said, the Wyoming brand inspectors will issue you a Wyoming inspection authorizing the movement of the cattle back to North Dakota. He said just because you move cattle to another state does not mean that you have to rebrand them. He said every state honors each other's brand inspection.

### **Section 12 - Amendment of Section 36-09-09.1**

Chairman Erbele said this section addresses rerecording. He said this concept has not been changed from current law.

### **Section 13 - Amendment of Section 36-09-10**

Chairman Erbele said this section addresses what happens if a person fails to rerecord a brand by the required date. He said this concept has not been changed from current law.

### **Section 14 - Amendment of Section 36-09-11**

Chairman Erbele said under current law the Chief Brand Inspector is to notify brand owners of their brand's expiration date and their right to rerecord the brand using first-class mail. He said the section has been updated to authorize electronic notification as well.

In response to a question from Chairman Erbele, Ms. Ellingson said if a brand is not renewed by the statutorily required date, a one-year grace period is provided.

### **Section 15 - Amendment of Section 36-09-12**

Chairman Erbele said current law requires the Chief Brand Inspector to publish notice of rerecording at least three successive times in the official newspaper of each county.

Committee counsel said if the official newspaper was a weekly newspaper, this would mean that notice

of rerecording would be published once a week for three consecutive weeks. However, she said, if the official newspaper was a daily newspaper, the publication would take place on three consecutive days.

Committee counsel said the issue is the time period over which the notices are published.

Representative Brandenburg said the section should provide that the notice be given three times over a three-week period. He said that gives enough time for friends and relations to see the notice and mention it to the affected parties.

Chairman Erbele said it is the consensus of the committee that the statute require publication three times within a three-week period.

Chairman Erbele said current law requires the Chief Brand Inspector to request each newspaper publishing the notice of rerecording to "call attention to the provisions of this chapter in a news item in the regular columns of the newspaper. . . ." He said the newspaper is not allowed to charge for this. He said the committee might want to consider either requiring that the story be done without charge or eliminating the provision.

With the permission of Chairman Erbele, committee counsel said current law does not indicate what happens if a paper refuses to print the notice without charge.

In response to a question from Chairman Erbele, Ms. Ellingson said the North Dakota Stockmen's Association sends out press releases. She said she does not track whether newspapers publish the stories.

Senator Olafson said the current law directs the Chief Brand Inspector to "request" that each newspaper call attention to the provisions of this chapter in a news item. He said that could be done as a matter of policy. He said this probably does not need to be in the Century Code.

Chairman Erbele said if a provision is to be in the Century Code, it should have some substance.

Ms. Ellingson said she would be amenable to striking the provision.

Chairman Erbele said it is the consensus of the committee that the provision requiring the Chief Brand Inspector to request that a story be done free of charge be removed from the Century Code.

### **Section 16 - Amendment of Section 36-09-13**

At the request of Chairman Erbele, Ms. Ellingson said there is a form to complete in order to apply for a brand. She said several months before the time for renewal, notice is sent to each brand owner.

Chairman Erbele said under current law each application for recording or rerecording a brand must be accompanied by a fee in an amount established by the State Board of Animal Health with the advice and consent of the North Dakota Stockmen's Association. He said the fee may not exceed \$25. He said private entities are frequently asked for "advice" regarding governmental action. He said this, however,

effectively gives the association veto power over fee-setting decisions of the board.

Ms. Ellingson said the North Dakota Stockmen's Association has a working relationship with the State Board of Animal Health. She said the association initiates a discussion with the board when a fee adjustment is needed. She said the association is comfortable with the current procedure.

Committee counsel said the process Ms. Ellingson referenced would involve the North Dakota Stockmen's Association providing advice to the State Board of Animal Health. She said that is conceptually different from requiring consent. She said it is important that the words accurately reflect the intent. She said this is current law. However, she said, the issue is the appropriateness of having a private entity in effect overrule a state board. She said that is the effect of the word "consent."

In response to a question from Chairman Erbele, committee counsel said the committee might wish to consider a change to reflect how Ms. Ellingson described the manner of operation, i.e., that the fee is set by the State Board of Animal Health with the advice of the North Dakota Stockmen's Association. She said, that way, the governmental body makes the ultimate decision with the input of the private association.

Ms. Ellingson said that would be reflective of how the North Dakota Stockmen's Association currently conducts business.

Senator Bowman said he is supportive of the change.

Chairman Erbele said there is another issue with this provision. He said if the amount being charged is \$25 and the fee is statutorily capped at \$25, there appears to be no reason to include the language about the process for setting the fee.

Senator Uglem said if the fee were to be raised to perhaps \$35, it would be appropriate to maintain the provision requiring advice.

Committee counsel said it makes sense to retain the provision regarding advice if the legislative cap is higher than what is actually being charged. She said there is no room for advice if the fee is at its statutory cap. She said the decision hinges on whether the Legislative Assembly wishes to set the fee or set a fee range.

In response to a question from Senator Olafson, Dr. Susan Keller, State Veterinarian, said the state board provides public sector oversight with respect to fees.

Mr. Wayne Carlson, Livestock Development Division Director, Department of Agriculture, said the rulemaking process goes through the State Board of Animal Health. He said the North Dakota Stockmen's Association does not have its own rulemaking authority.

In response to a question from Chairman Erbele, Ms. Ellingson said the \$25 rate has been in effect for approximately 10 years.

Chairman Erbele said the current fee is \$25. He said this is statutorily capped. He said the only way this will be raised is if a bill to do so is enacted by the Legislative Assembly.

Senator Olafson said there are two entities looking at the fees. He said he does not believe that the fees would become excessive. He said the cap is not necessary and should be removed.

Senator Bowman said there are a lot of entities that charge fees. He said they simply come to the Legislative Assembly and make their case.

Committee counsel said if the committee elects not to recommend removal of the cap, it should recommend removal of the fee-setting language. She said if the fee is \$25 and the cap is at \$25, there is no need to maintain the language detailing how the fee is set. She said removing the cap would be a substantive change.

Ms. Ellingson said the brand inspection fee goes through the rulemaking process.

In response to a question from Representative Conklin, Ms. Ellingson said the renewal period used to be 10 years. She said that was determined to be a long time during which deaths, divorces, partnership changes, etc., impacted the availability of brands. Therefore, she said, several years ago, the shorter timeframe was selected for renewal. She said the fee increase happened at the same time.

Chairman Erbele said it is the consensus of the committee that the \$25 cap remain in place but that the fee-setting language be removed.

### **Section 17 - New**

Chairman Erbele said this section provides that the Chief Brand Inspector shall rerecord any brand that the owner previously recorded and a single character brand, provided it is to be placed only on goats or sheep. He said this language is not new, just relocated.

### **Section 18 - Amendment of Section 36-09-13.1**

Chairman Erbele said this section provides that 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. He said this is a strict liability crime.

Dr. Keller said she is very concerned that this is a strict liability crime. She said it always is preferable if the person is allowed an opportunity to explain his or her circumstances and not be subject only to a yes or no conclusion.

Representative Brandenburg said sometimes things happen, and perhaps we need to think about the implications of continuing the strict liability crime.

Ms. Ellingson said it is not the intent of the North Dakota Stockmen's Association to impose a Class B misdemeanor in all circumstances. She said the association would prefer that this be changed.

In response to a question from Chairman Erbele, committee counsel said changing from a strict liability crime to one that requires intent would be a

substantive change that should be subject to broader input. She said it is noted for the purposes of bringing the current language to the committee's attention.

Mr. Fred Frederikson, Fieldman, North Dakota Stockmen's Association, said mishaps do happen. He said it is not appropriate to impose a criminal sanction for an unintentional event.

Chairman Erbele said if someone wants to bring this issue up as a separate bill draft, the person should do so.

### **Section 19 - Amendment of Section 36-09-14**

Chairman Erbele said this section requires the Chief Brand Inspector to compile and issue a brandbook. He said current law requires that the brandbook be provided to each brand inspector and to other law enforcement officers "of the state." He said the statute needs to be clear with respect to whether the brandbooks must be provided to each law enforcement officer in this state or of this state.

Committee counsel said a law enforcement officer of the state might be a highway patrolman, and a law enforcement officer in this state might be a county sheriff.

Ms. Ellingson said the North Dakota Stockmen's Association also makes the brandbooks available on CD-ROMs and on its website.

Chairman Erbele said the section should provide that brandbooks must be made available to each brand inspector and, upon request, to any law enforcement officer located in this state. He said the brandbooks can be made available in hard copy or in an electronic format.

### **Section 20 - Amendment of Section 36-09-15**

Chairman Erbele said current law requires butchers to keep a specified record regarding their slaughtering activities, and to make the information available to a representative of the North Dakota Stockmen's Association. He said personnel from the association indicated that it is common practice for the butchers to file quarterly slaughter reports. He said if this is the case, the committee needs to determine whether it is still necessary to maintain an option for the butchers to retain the information themselves for a stated period, as proposed in subsection 2(b)(1).

Ms. Ellingson said the North Dakota Stockmen's Association receives quarterly reports from the various slaughter facilities. She said the association's preference would be to provide that the slaughter facilities must keep their records until they are submitted to the association. She said once submitted, there is no need for the facilities to continue keeping the records. She said that would reflect current practice.

Chairman Erbele said it is the consensus of the committee that the current practice be reflected in the bill draft.

Chairman Erbele said since the North Dakota Stockmen's Association is a private organization and not a governmental entity, an issue arises with respect

to whether or not these records are considered to be public records and open to all.

Ms. Ellingson said no one has ever asked to see the records. She said the North Dakota Stockmen's Association would prefer to have that clarified in the Century Code.

Chairman Erbele said this matter should be discussed further at an upcoming meeting.

### **Section 21 - Amendment of Section 36-09-17**

Chairman Erbele said this section provides that a person is guilty of a Class A misdemeanor for a first offense and a Class C felony for a second or subsequent offense if the person alters or defaces a brand or brands an animal other than his own for the purpose of deceiving others. He said this concept has not been changed from current law.

### **Section 22 - Amendment of Section 36-09-18**

Chairman Erbele said this section requires the North Dakota Stockmen's Association to forward all money received under the chapter to the State Treasurer for deposit in the North Dakota Stockmen's Association fund. He said the rewrite adds a sentence providing that all money in the North Dakota Stockmen's Association fund is appropriated on a continuing basis to the association to carry out statutory directives. He said this language is found in Chapter 36-22, which pertains to estray inspection. He said the proposed change would add this piece of information to the current chapter.

### **Section 23 - New**

Chairman Erbele said this section prohibits discrimination on the part of the North Dakota Stockmen's Association. He said it is not new but merely relocated language.

### **Section 24 - Amendment of Section 36-09-19**

Chairman Erbele said this section provides that a recorded brand is prima facie evidence that the animal bearing the brand is the property of the brand's owner. He said this concept has not been changed from current law.

### **Section 25 - Amendment of Section 36-09-20**

Chairman Erbele said this section addresses the content of the bill of sale. He said that whereas current law requires that the bill of sale include a description of each animal as to sex and kind, North Dakota Stockmen's Association personnel suggested that requiring a notation regarding an animal's color is more likely to be accurate than requiring its "kind."

Dr. Keller said she would like to suggest that the section not limit the information that may be included on a bill of sale. She said in certain circumstances additional facts are appropriate.

In response to a question from Senator Uglem, committee counsel said under current law these are the pieces of information that must be included on a

bill of sale. She said current law, like the rewrite, allows for additional information to be included.

Ms. Ellingson said current law requires the bill of sale to include the "kind." She said that is not always known or accurately stated. She said the color is generally accurate. She said people often refer to a black white-faced steer rather than identifying the breed.

Chairman Erbele said it is the consensus of the committee that the bill of sale include a reference to the animal's color, rather than its kind.

Chairman Erbele said the requirement in current law that there be a description of each registered brand has been changed to a depiction.

Ms. Ellingson said a depiction would be a lot more accurate than a description.

Chairman Erbele said it is the consensus of the committee that the bill of sale include a depiction of the brands.

Chairman Erbele said current law requires that the bill of sale be retained by the buyer for two years and for as long thereafter as the buyer owns any of the animals. He said North Dakota Stockmen's Association personnel suggested that the bill of sale would change hands with the animals. He said, therefore, it is not appropriate to keep the bill of sale for two years.

In response to a question from Chairman Erbele, Mr. Misesk said one cannot issue a bill of sale for cattle bearing a brand that the person does not own. He said the proper procedure in that case is to either have a brand inspection done or, with a witness, endorse the bill of sale indicating to whom the cattle are sold. He said if some of the animals are sold at the auction, the brand inspectors have a form that will show how many animals are left on the original bill of sale.

Mr. Misesk said the language about retaining the bill of sale needs to be removed. He said if a person is going to sell cattle two weeks down the road, the bill of sale needs to follow the cattle.

Chairman Erbele said current law provides that a bill of sale is not required relative to sales of livestock covered by a legal livestock brand inspection. He said rather than referencing a "legal livestock brand inspection," the rewrite reference a certificate of ownership issued by a brand inspector. He said this certificate could be a "market clearance" issued by a brand inspector at a livestock auction market or a "local inspection" provided at any point other than at an auction market.

### **Section 26 - Amendment of Section 36-09-20.1**

Chairman Erbele said this section provides that a person is guilty of a Class B misdemeanor for providing false proof of ownership in conjunction with the sale of livestock. He said this concept has not been changed from current law.

**Section 27 - Amendment of Section 36-09-20.2**

Chairman Erbele said this section provides that a person is guilty of a Class B felony if the person, with intent to deceive or harm another, knowingly and falsely makes, completes, or alters any writing evidencing proof of livestock ownership. He said this concept has not been changed from current law.

**Section 28 - Amendment of Section 36-09-22**

Committee counsel said in a chapter that pertains to livestock, this section references animals and activities that could apply to pets, as well as to livestock used in food production. She said the suggestion is to change this section so that it applies strictly to livestock for use in food production and that the language be paralleled and relocated so that any provisions that might apply to domesticated animals is retained.

Committee counsel said if one changes a seven to a nine on a production record, that act is not only a misrepresentation but also a falsification of the record. She said it is recommended that the section be tightened up to include a reference to "falsification."

Chairman Erbele said it is the consensus of the committee that falsification be included.

Committee counsel said the current law prohibits a person from misrepresenting the sire to which an animal has been bred. She said she wondered if there was a need to address misrepresentation of other generations.

Ms. Ellingson said there is the possibility of falsifying the maternal side of a pedigree as well as the paternal side.

Senator Olafson said innocent errors or recordkeeping errors are unfortunately common in the registered cattle world. He said the requirement here is that the error must be willful. He said he believes that the willful falsification of a pedigree is covered with the reference to the certification of breeding.

Senator Olafson said this section, even though it is current law, would make it a crime to willfully misrepresent any production record. He said this would include expected progeny differences (EPDs), birth weights, etc. He said he would like an opportunity to think more about how this section should be addressed within the rewrite.

Mr. Steve Brooks, board member, North Dakota Stockmen's Association, and Past President, American Angus Association, said he thinks the section should be removed. He said it is up to each breed association to protect its gene pool and database. He said if someone would falsify a registration certificate, it is up to the breed association to deal with it. He said this is not an issue for the state. He said if there is an issue, the matter generally comes before the executive committee. He said that committee determines if there was an infraction, and then the full board makes a determination. He said the individual's membership could be taken away, and the registration certificates

on the individual's entire herd could be pulled. He said this has nothing to do with the brand.

Senator Olafson said the breed associations do an excellent job of policing their own members. He said he had not considered the possibility of removing the entire section. He said this issue pertains to registered livestock, not to commercial livestock. He said he would like to address this issue with some of the state breed associations and revisit the section at a future meeting.

Committee counsel said the committee also should think about the applicability of this section to domestic animals. She said if the committee would elect to remove the section with respect to livestock, the committee will have to determine whether the concept, as it pertains to domestic animals, should be retained.

In response to a question from Chairman Erbele, committee counsel said this section provides that an individual violating the section is subject to a Class A misdemeanor for a first offense and a Class C felony for a second or subsequent offense. She said this level of punishment would not be available if enforcement is left to the individual breed associations.

Committee counsel said the committee also could determine that because this section was in the livestock chapter, it was intended to apply only to livestock, and if the determination is made to remove the language, individuals interested in domestic animals could seek to introduce language that applies strictly to their sector.

Representative Brandenburg said the current animal laws are often not clear with respect to their applicability to domestic animals and animals in production agriculture.

**Section 29 - Amendment of Section 36-09-23**

Chairman Erbele said this section prohibits a person from removing cattle, horses, or mules from this state unless the animals have received a brand inspection.

In response to a question from Chairman Erbele, Mr. Misek said brand inspections are conducted at livestock auction markets, packing plants, and even in ranchers' yards.

Ms. Ellingson said those are places where the North Dakota Stockmen's Association will conduct brand inspections, but they are not places "of regular official brand inspection."

In response to a question from Chairman Erbele, committee counsel said it appears that the intent of the Century Code is to prohibit the removal of livestock from a livestock auction market, buying station, or packing plant, until the livestock have been inspected. She said if that is the intent, it can be clearly stated in the statute.

In response to a question from committee counsel, Mr. Misek said the inspection at a packing plant takes place before slaughter. He said there are very few



times when animals would be taken away from a packing plant.

In response to a question from Senator Bowman, Mr. Misek said the cutback system is used to tally the number of cattle that are sold. He said if you take a load of cattle to Tyson's in Sioux City, Iowa, the cattle will not be slaughtered until a brand inspection is conducted or a certificate produced.

In response to a question from Chairman Erbele, Mr. Misek said brand inspectors conduct inspections wherever they are needed. He said cattle are inspected at the livestock auction market before they are sold. He said it is up to the buyer to get the appropriate paperwork before leaving the market.

Chairman Erbele said committee counsel should work with the North Dakota Stockmen's Association to determine what the section is intended to do and then ensure that the verbiage reflects that intent.

In response to a question from Senator Bowman, Mr. Misek said cattle sold via video auction must also be inspected prior to movement.

### **Section 30 - Amendment of Section 36-09-24**

Chairman Erbele said current law provides that the Chief Brand Inspector and all fieldmen have the power of law enforcement officers for the purpose of enforcing the brand laws.

Ms. Ellingson said the rewrite refers not to fieldmen, but to all individuals employed by the North Dakota Stockmen's Association to provide brand inspection services. She said the association employs numerous individuals for the purpose of providing brand inspection services, but only the Chief Brand Inspector and his two fieldmen are deputized officers.

In response to a question from committee counsel, Ms. Ellingson said the fieldmen are like assistant brand inspectors who work under the Chief Brand Inspector.

Chairman Erbele said the next bill draft will reflect the recommendation.

In response to a question from Chairman Erbele, Mr. Misek said there are 25 full-time brand inspectors who work at the livestock auction markets and at the weigh stations, 200 local inspectors who go into the field when requested, and 10 part-time individuals who assist with work at the livestock auction markets. He said only he and the two deputized fieldmen have the authority to stop trucks and check their paperwork.

### **Section 31 - Amendment of Section 36-09-25**

Ms. Ellingson said this section directs the North Dakota Stockmen's Association to serve as the state's administrator and allocator for that portion of any federally sponsored animal identification program which pertains to cattle, horses, and mules. She said the animal identification program has been abandoned. However, she said, she would like to retain the current language so that the association could serve in a similar administrative capacity for

other programs, such as those pertaining to animal disease traceability.

Committee counsel said the language of this section gives the North Dakota Stockmen's Association a specific duty with respect to the animal identification program. She said that program does not exist anymore and retaining the language does not mean that it can be applied to future federal programs. She said this language could be eliminated, and if the federal government develops another program, the North Dakota Legislative Assembly would have to authorize participation by the association.

Ms. Ellingson said the current language was put into the Century Code in anticipation of an animal identification program.

Committee counsel said the language could be crafted more broadly to accommodate a variety of potential federal programs. However, she said, as long as the language is focusing specifically on animal identification, there is no authority to participate in programs having other purposes.

Senator Olafson said he believes the section should be made more flexible. He said whatever transpires at the federal level, the North Dakota Stockmen's Association in all likelihood will be given administrative authority.

In response to a question from Chairman Erbele, committee counsel said as part of the rewrite, we are removing a reference to a nonexistent program and ensuring our ability to work within federal programmatic changes.

Chairman Erbele said it is the wishes of the committee that the North Dakota Stockmen's Association authority be retained and that the language be broadened to accommodate other federal programs that focus on livestock and animal health.

Senator Uglem said the section should focus on livestock. He said the term "animals" can be very broad.

### **Section 32 - Amendment of Section 36-09-26**

Chairman Erbele said this section authorizes an out-of-state livestock facility to request brand inspection services. He said the first issue is to determine what precisely is meant by a "facility."

Committee counsel said this statute authorizes the provision of a governmental service. She said one should know with certainty who or what is eligible to receive this service.

In response to a question from Chairman Erbele, Mr. Misek said we currently offer inspection services at two livestock auction markets in Aberdeen, South Dakota, and at markets in Mobridge, McLaughlin, Britton, Sisseton, Herreid, and Lemmon, South Dakota, and Glendive and Sidney, Montana.

In response to a question from committee counsel, Mr. Misek said there are no brand inspectors at buying stations in other states.

Ms. Ellingson said although the services are currently provided only at livestock auction markets, a processing facility is slated to open in Aberdeen. She said if that facility would request inspection services, the North Dakota Stockmen's Association would like to have the flexibility to consider the request.

In response to a question from Chairman Erbele, Ms. Ellingson said it would be appropriate to include livestock auction markets, buying stations, and packing plants.

In response to a question from Senator Larsen, Mr. Misk said federal inspectors are at the border to deal with Canadian cattle entering this country. He said most such cattle are just passing through. However, he said, if they get unloaded for any reason, they require a brand inspection before continuing on their trip.

Senator Olafson said cattle that enter from Canada are subject to a health inspection.

Chairman Erbele said it is the wishes of the committee that the statute specifically reference livestock auction markets, buying stations, and packing plants.

Committee counsel said under current law an out-of-state facility, such as a livestock auction market, that wishes to obtain brand inspection services from this state is to file a written request with the North Dakota Stockmen's Association. She said the association is in turn to petition the State Board of Animal Health for permission to provide the services. She asked if there was a reason that the facility could not simply petition the board and provide a copy of the petition to the association. She said under current law if the association is not supportive of a facility's request, it is being put in the position of petitioning for the service and then asking that the petition be denied.

Ms. Ellingson said the North Dakota Stockmen's Association would like to retain input in the decisionmaking process.

Chairman Erbele said committee counsel will clarify the procedure in the next bill draft.

### **Section 33 - Amendment of Section 36-09-27**

Chairman Erbele said this section provides for a reinspection of brands if an error was made and cattle were shipped erroneously. He said the committee should determine whether the erroneous shipping of cattle is the only event that could or should trigger a reinspection.

In response to a question from Chairman Erbele, Mr. Misk said in the real world "shipping erroneously" does not happen.

Senator Olafson said he would like to see the legislative history of this section so that the committee can determine its intent.

Mr. Brooks said about 15 years ago, a brand inspector had done a local inspection, and a couple of weeks later, a neighbor indicated that he was missing two calves. He said the brand inspector missed the brand on the two calves, and they ended up in a

feedlot in Nebraska. He said sometimes when cattle are off-loaded, they find that the number of cattle does not match the paperwork.

### **Section 34 - Amendment of Section 36-09-28**

Chairman Erbele said this section provides an open records exemption for information regarding premises or animal identification. He said the committee needs to determine whether the directive that all information is confidential is too broad or appropriate.

Ms. Ellingson said the section is not too broad. She said there are very strong feelings regarding confidentiality. She said the entities that might need access to the information are covered by the current language. She said when the section was added, there was concern that various antiagriculture groups could gain information regarding the location of various operations.

Committee counsel said, like a previous section, this one references confidential information regarding premises or animal identification. She said this section was enacted in light of a potential federal program. She said that program does not exist. Therefore, she said, the section either needs to be broadened, as was suggested earlier, or it needs to be removed.

In response to a question from committee counsel, Chairman Erbele said it is the consensus of the committee that the section be reconfigured so that it applies to a variety of federal livestock programs and does not specifically mention premises or animal identification.

### **Section 35 - New**

Chairman Erbele said this section was discussed in connection with the rewrite of Section 36-09-22. He said because current law references "animals" rather than just livestock, the section would appear to have some applicability to domestic animals as well as those in production agriculture.

## **ESTRAYS [13.0022.01000]**

### **Section 1 - New**

Chairman Erbele said because the current law does not define an "estrays," the proposed language was added for the committee's consideration. He said the definition provides that an "estrays" means cattle, horses, or mules, whether branded or unbranded, whose ownership has not been determined.

In response to a question from Senator Uglem, Ms. Ellingson said the Century Code requires brand inspections for only cattle, horses, and mules. Therefore, she said, only those animals are addressed under the estray chapter.

### **Section 2 - Amendment of Section 36-13-01**

Chairman Erbele said this section attempts to outline what needs to happen when a person

discovers an estray on property that the person owns or controls.

Senator Olafson said the section as written requires a person to take possession of an estray and to make a good-faith effort to determine its ownership. He said he would prefer the section required a person to make a good-faith effort to take possession of an estray.

Chairman Erbele said it might be difficult to take control of the animal and place it in one's corral.

Committee counsel said if one is unable to take control of the estray, none of the other statutory requirements apply.

Senator Olafson said if a person is unable to take control of the estray, the person should, at the very least, be required to call the sheriff.

Chairman Erbele said by virtue of the fact that the estray is on a person's property, that person has possession of the estray, whether or not it is confined.

Senator Olafson said having cattle on one's property is not the same as having cattle in one's possession.

Committee counsel said this chapter is particularly difficult. The current law does not provide clear guidance with respect to one's rights, duties, and obligations. She said the committee needs to determine what those are, and then the appropriate language can be crafted.

In response to a question from Senator Bowman, Mr. Misek said if cattle are not branded, an attempt is made to track down the owner using other means. He said a lot of times if the cattle are replacement heifers, the animals have bangs vaccination tags.

Senator Olafson said if he finds estray cattle, the first thing to do is to get them into a safe situation so that they are not on the road or likely to go there and so they are not a threat to property. He said having them wandering freely is a dangerous situation.

Committee counsel said the suggestion appears to be that the individual has a legal duty to attempt to get the animal into his possession or under his control and if successful, to move on to the next step, which is to determine its rightful owner and facilitate its return.

Senator Olafson said in the real world if he is unable to get possession or control of an estray, he will call the county sheriff. He said the sheriff then has the responsibility to try and determine the owner and get the situation under control.

Senator Brandenburg said the law places an onus on the person who discovers an estray to get it under control and try to find the owner. He said he wonders why there is no responsibility placed on the actual owner to take possession of the owner's cattle in a timely manner.

Ms. Ellingson said there are provisions for reimbursement later in the chapter.

In response to a question from Chairman Erbele, Mr. Misek said when the brand inspector receives a call regarding an estray, he tries to get to the animal as quickly as possible in order to determine the

owner. He said those who find estrays are encouraged to take them to the nearest livestock auction market and sell them.

In response to a question from Chairman Erbele, Senator Olafson said if we are going to require that the person finding an estray take control of it, that needs to be done immediately. He said finding the owner after it is in one's control is a separate time requirement.

In response to a question from Chairman Erbele, Mr. Misek said if the brand is readable, a return to the animal's owner can be made very quickly. He said if other avenues need to be used to determine ownership, it could take weeks or months. He said he suggests that the person finding an estray haul it to the livestock auction market at the person's convenience and consign it to the North Dakota Stockmen's Association.

Committee counsel said there is less of a concern about time once the Chief Brand Inspector is notified of the estray. She said the question regarding time is more pertinent with respect to a person's duty to act upon discovering an estray. She said several calves could result during the timelag.

Senator Bowman said in most cases a person does not want to feed someone else's cattle, so they generally call their neighbors to see who might own it. He said most people know where their cattle are.

Chairman Erbele said in one situation, two months went by before the Chief Brand Inspector was notified that a person had several estray bulls in his possession. He said he allegedly called the neighbors and waited for their response.

Ms. Ellingson said the current law does not allow for cost reimbursements prior to the time that the Chief Brand Inspector or the county sheriff is notified of the estray.

Senator Olafson said if he cannot determine the ownership of an estray within three days, he will call the sheriff. He said he does not want to spend more time than that. He said others, however, might want to wait.

Chairman Erbele said perhaps the committee should ponder that section some more.

### **Section 3 - New**

Chairman Erbele said this section requires a county sheriff or the Chief Brand Inspector to record the date and time that either receives notification of an estray. He said the person taking possession of the estray is not entitled to reimbursement for expenses incurred before the recorded date and time. He said this language is not new. He said because it has been moved, it needed to be underscored.

### **Section 4 - Amendment of Section 36-13-02**

Chairman Erbele said this section requires a county sheriff who is informed of an estray to contact the Chief Brand Inspector. He said the amendments cleaned up the language.

**Section 5 - Amendment of Section 36-13-03.1**

Chairman Erbele said because the content of this section is proposed for inclusion in Section 36-13-01(2), this section is no longer necessary.

**Section 6 - Amendment of Section 36-13-04**

Chairman Erbele said under current law the person possessing an estray must turn it over to the rightful owner, provided the owner presents an affidavit that includes the owner's name, place of residence, a declaration of ownership, and a description of the estray, and the owner pays all lawful charges. He said North Dakota Stockmen's Association personnel indicated that this section is not reflective of the manner in which business is conducted. He said the following alternate language was included for the committee's consideration:

If at any time before the estray is sold, the chief brand inspector determines the owner of the estray, the chief brand inspector shall authorize the estray's return to its owner, provided the owner first reimburses the person who took possession of the estray for all expenses to which the person is entitled in accordance with section 36-13-05, or for any lesser amount agreed to by the two persons.

Ms. Ellingson said if the estray is taken to a livestock auction market and sold, the person who took control of the estray receives reimbursement from the sale proceeds. She said it is more difficult when the owner is identified prior to the estray being sold, because there are no funds to access for any reimbursement. She said that discussion is a private matter and not one that involves the North Dakota Stockmen's Association. She said the association might provide recommendations regarding the fees, but that is the extent of what it can do. She said the proposed language would give the association authority to be involved in the discussions and transactions.

Committee counsel said the new language would provide authority to the brand inspector. She said whether or not this is something that he wants is the point of discussion. She said another option would be to remove this section, and if the neighbors cannot agree on an outcome, they could resort to the legal process.

Chairman Erbele said he does not see how the Chief Brand Inspector could make one neighbor pay another.

Committee counsel said that is the problem even under current law. She said it too requires the release of the animal to its owner upon payment of all lawful charges.

In response to a question from Representative Wall, Mr. Misek said if there is a claim submitted for providing care to an estray, the funds from its sale are held until the brand board meets. He said that occurs three times a year.

Senator Bowman said the question is how to provide fairness.

Mr. Brooks said the North Dakota Stockmen's Association has a fee schedule. He said if the neighbors do not agree on the amount of reimbursement due, the person having control of the estray could still haul it to the auction market, have it sold, and have the reimbursement paid to its owner in accordance with the fee schedule.

Chairman Erbele said it is the wishes of the committee that Mr. Brooks' suggestion be drafted for the committee's review.

**Section 7 - Amendment of Section 36-13-05**

Chairman Erbele said according to North Dakota Stockmen's Association personnel, the method currently described in statute for determining the amount payable to one who takes possession of an estray is not used. He said in its place is a schedule of allowable reimbursements that have been developed by the association.

In response to a question from Chairman Erbele, Ms. Ellingson said damage to property is not reimbursed by the North Dakota Stockmen's Association from the estray fund. She said association personnel have no way of knowing what condition property was in before the alleged damage and how much damage was done unless it was witnessed.

In response to a question from Senator Olafson, committee counsel said a landowner could sue the owner of an animal for damage done by the animal.

Mr. Carlson said there is a chapter regarding trespassing animals. He said that chapter is in dire need of a rewrite.

In response to a question from Chairman Erbele, Ms. Ellingson said the North Dakota Stockmen's Association has one fund but accounts separately for fees that come from brand recording, brand inspections, and the sale of estrays.

Chairman Erbele said the statute does not address what should happen if the expense of caring for an estray exceeds its sale price.

In response to a question from Chairman Erbele, Ms. Ellingson said although it is not often that the cost of caring for an estray exceeds its sale price, this has happened. She said the horse market has been very depressed recently.

Senator Olafson said Chapter 36-11, which deals with trespassing livestock, should be reviewed and potentially rewritten at this time.

**Section 8 - New**

Chairman Erbele said this section proposes to maintain publication of the estray list in the official newspaper of each county. He said it proposes to eliminate the posting of a copy in the courthouse by the county auditor and the keeping of a copy by the county auditor in favor of an updated list on the North Dakota Stockmen's Association website.

In response to a question from Chairman Erbele, Ms. Ellingson said it has always been the goal of the North Dakota Stockmen's Association to return estray

funds to a rightful owner. She said only current year estrays are published.

Committee counsel said current law provides that the owner of an estray may receive its sale proceeds if the ownership is proven within one year of the notice's publication, and a person may maintain an action against the North Dakota Stockmen's Association for the recovery of estray funds if the action is commenced within six years after the date the sale proceeds are deposited. She said it did not make sense to require a lawsuit if the only criteria placed on an owner is the proof of ownership within the stated timeframe.

#### **Section 9 - Amendment of Section 36-13-06**

Chairman Erbele said the content of this section has been incorporated in proposed Section 2(3) of this bill draft. Therefore, he said, it is recommended that this section be removed.

#### **Section 10 - Amendment of Section 36-13-07**

Chairman Erbele said the intent of this section is nebulous. He said the committee needs to determine whether it is the intent of the current language to provide that the person taking possession of an estray is not liable to the rightful owner, be that a rancher or the North Dakota Stockmen's Association, for any economic loss if the estray dies, escapes, or is stolen, or whether it is the intent of the language to provide that the person taking possession of the estray is not liable if the estray escapes and causes damage or injury to another.

Senator Olafson said the person who takes possession should not be liable to either the owner or to anyone else who suffers injury or damage as a result of the animal's escape.

#### **Section 11 - Amendment of Section 36-13-08**

Chairman Erbele said this section provides that it is a Class B misdemeanor if a person takes possession of an estray and willfully fails to comply with the chapter. He said this is in current law.

#### **Section 12 - Amendment of Section 36-22-01**

Chairman Erbele said this section should be removed, provided the committee is satisfied with the definition of an estray, as proposed in Section 1 of this bill draft.

#### **Section 13 - Amendment of Section 36-22-02**

Chairman Erbele said this section sets forth the authority of the North Dakota Stockmen's Association to inspect all cattle, horses, and mules which are shipped or consigned to any livestock auction market, buying station, or packing plant for the purpose of determining or verifying ownership. He said this authority extends to cattle, horses, and mules which are shipped or consigned to a livestock auction market located outside this state if the market receives brand inspection services in accordance with

Section 36-09-26. He said it is important to ensure that the words fully and accurately reflect the intended statutory charge.

#### **Section 14 - Amendment of Section 36-22-03**

Chairman Erbele said this section pertains to fees charged and collected by brand inspectors for inspecting all shipments and consignments of cattle, horses, and mules at livestock auction markets, buying stations, and packing plants. He said a reference to "horses and mules" has been added, as has a reference to "buying stations and packing plants."

Chairman Erbele asked for a clarification regarding the circumstances under which brand inspection fees are to be set by the United States Department of Agriculture and when they are to be set by the State Board of Animal Health.

Ms. Ellingson said when there is a brand fee change, the North Dakota Stockmen's Association is required to file a notice with the Grain Inspection, Packers and Stockyards Administration (GIPSA). She said all facilities are required to post the fees so everyone has notice of the amount being charged.

In response to a question from Chairman Erbele, Ms. Ellingson said the fees are established by the State Board of Animal Health. She said she is not aware of any fees established by GIPSA.

In response to a question from Chairman Erbele, Ms. Ellingson said when local brand inspections are performed, the inspectors will receive fees on the spot. She said auction markets generally tally the fees at the end of each month and submit that amount to the North Dakota Stockmen's Association.

In response to a question from Chairman Erbele, Ms. Ellingson said brand inspection fees are currently \$1 per head.

#### **Section 15 - Amendment of Section 36-22-04**

Chairman Erbele said this section authorizes a brand inspector to receive and receipt for all funds from the sale of estray cattle and requires the brand inspector to remit the funds to the State Treasurer for deposit in the North Dakota Stockmen's Association fund.

In response to a question from Chairman Erbele, Mr. Misek said the fees collected by the livestock auction markets are mailed to the North Dakota Stockmen's Association.

Ms. Ellingson said she is not concerned with who actually delivers the check to the North Dakota Stockmen's Association, but she does want to ensure that there is language clarifying the requirements for submitting the money to the State Treasurer's office and its eventual deposit in the North Dakota Stockmen's Association fund.

Committee counsel said this section is duplicative of language already found in Section 7 of the bill draft. She said it does not need to be reiterated.

**Section 16 - Amendment of Section 36-22-06**

Chairman Erbele said the content of this section has been included in Section 8 of the rewrite, and therefore, the section should be removed.

**Section 17 - Amendment of Section 36-22-07**

Chairman Erbele said the content of this section has been included in Section 8 of the rewrite, and therefore, the section should be removed.

**Section 18 - Amendment of Section 36-22-08**

Chairman Erbele said the content of this section has been included in Section 8 of the rewrite, and therefore, the section should be removed.

**Section 19 - Amendment of Section 36-22-08.1**

Chairman Erbele said the content of this section requires the North Dakota Stockmen's Association to forward all money received under this chapter to the State Treasurer for deposit in the North Dakota Stockmen's Association fund. He said under current law all money in the fund, together with all interest income, is appropriated to the association on a continuing basis. He said this section clarifies that this is intended to mean all income earned by the money in the fund and not just interest income.

Committee counsel said personnel from the Legislative Council fiscal staff indicated that the statutory reference to "interest" income is understood to include both interest and investment income. She said the proposed change makes that understanding statutorily clear.

**Section 20 - Amendment of Section 36-22-09**

Chairman Erbele said this section requires that there be an audit of the North Dakota Stockmen's Association at least once every two years, and that two copies of each audit report be submitted to the Legislative Council. He said the section provides that one electronic copy of the report would be sufficient.

**LIVESTOCK DEALERS [[13.0025.01000](#)]****Section 1 - Amendment of Section 36-04-01**

Chairman Erbele said this section attempts to clearly define a livestock dealer by providing that a dealer is a person that buys horses, mules, cattle, hogs, goats, or sheep from a producer, or a livestock auction market on the person's own account, more than once per year for the purpose of resale within 30 days on commission or for slaughter. Because wool is not "livestock," he said, it is suggested that the concept of a wool dealer's license be placed in a separate chapter.

**Section 2 - Amendment of Section 36-04-02**

Chairman Erbele said this section, which is current law, excludes certain entities from this chapter. However, he said, the section contains both duplicative and irrelevant material.

Mr. Wayne Carlson, Livestock Development Division Director, Department of Agriculture, said current law excludes from the chapter livestock "purchased by local butchers for slaughter or processing in their business for local home consumption." He said the rewrite provides the exclusion for "slaughter establishments that purchase fewer than thirty cattle, goats, hogs, horses, mules, or sheep per week." He said he would prefer that the quantity be replaced by reference to a dollar amount. He said a small establishment is one that has less than \$500,000 in animal purchases. He said there is no definition of a slaughter facility in law. He said in effect, we are talking about small packers.

Chairman Erbele said it is the consensus of the committee that the suggested change be made.

**Section 3 - Amendment of Section 36-04-03**

Chairman Erbele said subdivision c is quite specific with respect to steps that a dealer must take in order to create the agency relationship. He said the committee is asked to consider whether, given this level of specificity, subdivision b is necessary. He said the committee is also asked to consider whether the level of specificity is greater than it needs to be.

Committee counsel said under current law in order for a dealer to designate an agent, the dealer must authorize the agent to act for or on behalf of the dealer, notify the Agriculture Commissioner of the authorization, request that the Agriculture Commissioner issue an agent's license to the dealer's agent, and provide a signed statement to the Agriculture Commissioner which complies substantially with the suggested language in the Century Code. She said with the committee's permission, there is an opportunity to consolidate the verbiage.

Mr. Carlson said on a dealer's application, there is a space for designating agents. He said every time a dealer is relicensed, the dealer designates his or her agents. He said the dealer must sign a statement accepting responsibility for all acts of the agent, whether approved or not. He said there is another form for designating agents at some point during the license year.

Mr. Carlson said it would be appropriate to simplify and condense this language.

Chairman Erbele said under current law the Agriculture Commissioner is not permitted to issue an agent's license to any individual who has been denied a dealer's license or an agent's license. He said he is not certain that the Agriculture Commissioner would even know if another state had denied an application for license.

Committee counsel said current law provides that the Agriculture Commissioner may not issue an agent's license to any individual who has been denied a dealer's license or an agent's license. She said there is no date reference and no mention of a reason for the denial. She said an individual might have had a license denied 20 or more years ago for a seemingly

minor reason, or a license might have been denied because not all of the required paperwork had been submitted. She said the committee needs to consider whether it was actually the intent to forever preclude the individual from having a license.

Committee counsel said this section also provides that an individual may not be granted a license if the individual has had a dealer's license or an agent's license revoked. She said it does not indicate whether this applies just to licenses issued in this state or to licenses issued by any state.

In response to a question from Chairman Erbele, Mr. Carlson said there is no way to track license revocations other than looking on the Internet or calling a state. He said many of the dealers work in multiple states. He said they may be duly licensed in one state and have had a license revoked in another state.

Mr. Carlson said federal licenses are listed on the Internet, and anyone who has been denied a federal license will not be granted a state license. He said he might have to deny an individual a license one year because their financial status does not meet the requirements. If in the following year the individual meets the financial requirements, he or she cannot be issued a license under the current law.

Mr. Carlson said the law also provides that the Agriculture Commissioner may not issue an agent's license to any individual who has acted in a manner which would be in violation of this chapter, except upon a determination by the commissioner that the individual is sufficiently rehabilitated to serve the public as a dealer's agent and that the person does not owe any debt to any livestock seller or auction market. He said he believes this gives him flexibility in determining whether to issue a license.

Committee counsel said the committee will want to carefully review the language of this section. She said it does not require that there be a criminal violation of the chapter. She said all it requires is that someone, and not necessarily in a judicial or an administrative setting, determine that there has been a violation of the chapter.

In response to a question from Chairman Erbele, committee counsel said if the statute is going to allow the denial of a license application, the grounds for the denial need to be very clear. She said Department of Agriculture staff need to know precisely why they cannot issue a license, and the applicants also need to know precisely why they cannot be issued a license. She said she would continue to work with Mr. Carlson on this language.

In response to a question from Senator Larsen, Mr. Carlson said a financial background check is done but not a criminal background check. He said the world of livestock dealers and agents is a small one.

#### **Section 4 - Amendment of Section 36-04-04**

Chairman Erbele said this section deals with livestock dealer licenses.

In response to a question from Chairman Erbele, Mr. Carlson said a livestock dealer is licensed in the same name as that on the dealer's bond. He said that may be an individual's name or a corporate name.

Chairman Erbele said the current law requires a license applicant to list his or her full name.

Mr. Carlson said they want to have an applicant's proper name, regardless of whether the applicant is an individual or a corporation.

Chairman Erbele said the legal entity being contemplated by use of the word "firm" is not clear. He said Section 1-01-49 defines a "person" as "an individual, organization, government, political subdivision, or government agency or instrumentality."

Committee counsel said with the committee's permission, she would suggest not using the word "firm" because it is without legal definition.

Chairman Erbele said the rewrite proposes a clearer way of articulating the intent. He said the proposal is that the application must include:

- The name of each partner if the applicant is a partnership;
- The name of each corporate officer and the state of incorporation if the applicant is a corporation; and
- The name of each manager and the state of organization if the applicant is a limited liability company.

Mr. Carlson said he is in support of the proposed verbiage.

In response to a question from Chairman Erbele, committee counsel said current law provides that if the applicant is a foreign corporation, the applicant must show that it has complied with the laws of this state relating to foreign corporations. She said she is quite certain that Mr. Carlson is in no position to verify this requirement. In fact, she said, she is not certain that it even could be verified.

Mr. Carlson said that information is almost impossible to determine.

In response to a question from committee counsel, Mr. Carlson said licenses are due July 1. He said the notice of renewal is sent out six weeks before the deadline. He said some do not engage in dealing until later in the fall and do not understand why they need to be licensed on July 1.

In response to a question from committee counsel, Mr. Carlson said if individuals do not submit their applications for renewal by July 1, they are subject to a \$5 penalty. He said the \$5 penalty does not cover the time and labor it takes to send out the notice.

Committee counsel said it had been discussed that rather than having a renewal date and imposing a \$5 penalty, even if the licensee is not going to engage in business for several months, it might be more practical to parallel fishing licenses. She said a fishing license expires on March 31. She said if she is not going to go fishing until July, she is not dealing with the renewal of an old license but rather the acquisition of a new license, so that when she goes fishing, she is duly licensed.

Mr. Carlson said many of the dealers take the summer off. He said in September or October when they are ready to begin dealing, they come in and apply for a license at that time. He said he does not charge them the \$5 late fee because they have not been dealing in livestock. He said he believes it should be something like the fishing license.

Representative Johnson said another option might be to change the renewal date to September 1.

Mr. Carlson said it would be preferable to have most of the licenses in before the September activity level takes effect.

In response to a question from Chairman Erbele, committee counsel said if the committee were to agree to a concept such as that used for fishing licenses, that change would be acceptable within the scope of the rewrite. She said current law does not reflect the manner in which business is conducted.

In response to a question from Senator Larsen, Mr. Carlson said the majority of applications are submitted in July. He said some of the dealers do not know whether they will be engaging in business until many months past the statutory renewal date.

Senator Bowman said if the fee is \$50 regardless of when the license is issued, then the date of issuance does not make any difference.

Mr. Carlson said the critical point for a dealer is ensuring that he is duly licensed before he begins to deal. He said if you are fishing without a license, you are in violation, and if you are dealing without a license, you are in violation.

In response to a question from Chairman Erbele, Mr. Carlson said most dealers carry their licenses. He said there are only 144 licensed dealers. He said when he and his staff do auction market checks, they know 95 percent of the dealers. He said the list of licensed dealers is posted on the Internet so any auction market can check on an individual's license immediately.

#### **Section 5 - Amendment of Section 36-04-05**

Chairman Erbele said this section provides that the dealer's bond must be conditioned for the faithful performance by the dealer and the dealer's designated agent of the duties as such, the compliance by the dealer and the dealer's designated agent with all of the provisions of this code relating to the purchase of livestock, the full and complete payment to the seller for all livestock purchased by the dealer or the dealer's designated agent, and the full protection of any person who deals with the dealer or the dealer's designated agent.

Committee counsel said the language is redundant. She said it appears the intent is to provide that the bond "must be conditioned for the payment of any financial obligation owed by a livestock dealer to another person in conjunction with the sale of livestock."

In response to a question from Chairman Erbele, Mr. Carlson said the bond represents approximately two days' business. He said if one does \$1.3 million

worth of business in a year, one is required to have a \$10,000 bond. He said if one does \$100 million worth of business in a year, one is required to have a \$150,000 bond.

Chairman Erbele said it is the wishes of the committee that the redundancy be removed.

Mr. Carlson said there are surety bonds, letters of credit, and cash bonds.

#### **Section 6 - Amendment of Section 36-04-05.1**

Chairman Erbele said the language of this section has been altered to reflect the entities generally entitled to confidential information.

#### **Section 7 - Amendment of Section 36-04-07**

Chairman Erbele said it appears that there is no requirement to notify the Agriculture Commissioner if there has been a material change in the information provided on the application or regarding the status of the licenseholder.

Mr. Carlson said this would be an appropriate addition.

#### **Section 8 - Amendment of Section 36-04-07.1**

Chairman Erbele said this section provides that if a dealer receives a check for the sale of horses, mules, cattle, hogs, goats, or sheep and if the check is returned unpaid because of nonsufficient funds, the dealer must notify the Agriculture Commissioner within 48 hours after receipt of the check. He said according to Section 36-04-10, the commissioner shall refuse to grant a license, or shall revoke a license which it has granted, when it is satisfied that the applicant has failed to notify the commissioner of the receipt of an insufficient funds check as required by Section 36-04-07.1. In addition, he said, Section 36-04-21 provides that a violation of this section is a Class A misdemeanor and subjects the violator to a civil penalty in an amount up to \$5,000. He said the section does not indicate whether the notification must take place orally, in writing, or in electronic form.

Mr. Carlson said this section is irrelevant. He said the protection of this chapter is not for the dealer but for the person who receives a check from the dealer. He said while it would be nice to know if a feedlot issues a bad check, for purposes of this chapter, it should be deleted.

Chairman Erbele said this is a nonfunctioning section and should be deleted.

#### **Section 9 - Amendment of Section 36-04-09**

Committee counsel said Article X, Section 12, of the Constitution of North Dakota, provides that all public money, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the State Treasurer, and deposited by him to the credit of the state. Therefore, she said, it is unnecessary to statutorily reiterate the provision.



**Section 10 - Amendment of Section 36-04-09.1**

Committee counsel said under current law if a cease and desist order is issued, the Agriculture Commissioner must conduct a hearing within 30 days of issuing the order. She said within 45 days of issuing the order, the commissioner must either revoke the order or make it permanent. She said she contacted the Office of Administrative Hearings regarding the appropriateness of the statutory timeframe. She said she was told that 30 days is the standard amount of time within which a hearing of this sort is held. However, she said, 45 days is considered to be an insufficient amount of time within which to give notice of the hearing, hold the hearing, require the hearing officer to issue a recommendation, and require the commissioner to issue a final decision. She said it was suggested that the timeframe for the final order be extended to at least 60 days.

Mr. Carlson said the statutory timeframe is very short. He said he would agree with the recommendation from the Office of Administrative Hearings.

**Section 11 - Amendment of Section 36-04-09.2**

Committee counsel said the authority to conduct an investigation regarding the transactions of a livestock dealer is clear. She said the authority to conduct an investigation regarding the "conditions" under which the dealer's business is conducted is nebulous.

Mr. Carlson said that provision could be removed. He said he would prefer that the conditions that can trigger an investigation be very simple and straightforward.

Committee counsel said the section provides that the Agriculture Commissioner may conduct a hearing to determine whether the license of any dealer should be revoked. She said that is fine. She said the section then provides that the commissioner may conduct a hearing to determine whether an application for an original or a renewal license should be denied. She said that is not standard procedure. She said the question for the committee is whether there are additional circumstances under which a hearing must be conducted.

In response to a question from Chairman Erbele, committee counsel said if a dealer submits a license application and that application is denied, the question is whether the statute should require that there be a hearing.

Mr. Carlson said the commissioner frequently rejects license applications because of financial considerations. He said there is no need to have a hearing before denying a license that falls short of the statutory requirements. He said he does not mind holding a hearing if someone wants one, but he does not believe that he should be required to hold a hearing.

Committee counsel said in the case of a revocation, the option for a hearing is generally available. She said the issue here is whether an

option for a hearing should be available in the case of a license denial.

Mr. Carlson said in the case of a revocation, one should clearly have the right to have a hearing. In the case of an initial application, he said, one should not automatically receive a hearing, but one should have the right to request a hearing.

In response to a question from Representative Brandenburg, Mr. Carlson said before a license application is approved, the bond must be in place.

Chairman Erbele said the language of subsection 2 suggests that the Agriculture Commissioner is required to conduct an investigation when GIPSA issues a formal complaint alleging specific violations of the Packers and Stockyards Act, and the commissioner determines that the alleged violations are also violations of this chapter. He said it is not clear whether the commissioner is also required to conduct an investigation when GIPSA is in the investigatory stage.

Committee counsel said under current law it appears that when the GIPSA investigation is complete, the Agriculture Commissioner is to go forth and conduct his own investigation of this same violation.

Mr. Carlson said if there is an alleged violation, GIPSA will investigate. Generally, he said, GIPSA will conduct the investigation and inform the Agriculture Commissioner about the investigation. He said he is not informed if a dealer is being investigated by another state.

In response to a question from committee counsel, Mr. Carlson said if GIPSA is conducting an investigation, he will not parallel the effort. He said GIPSA has the trained personnel. In fact, he said, if there is a problem, he will ask GIPSA to conduct the investigation.

Mr. Carlson would like the statute to authorize an investigation if there is an alleged violation of the chapter. He said with limited resources, he will not duplicate federal efforts.

Chairman Erbele said committee counsel will work to clarify this section based on the committee's comments and those of Mr. Carlson.

**Section 12 - Amendment of Section 36-04-10**

Chairman Erbele said the current language has been divided into two subsections. He said the first subsection pertains to the license application process. He said the second subsection pertains to the license revocation process.

Committee counsel said current law provides that the Agriculture Commissioner shall refuse to grant a license or shall revoke a license if the applicant has violated any of the laws of this state. She said this includes both statutes and rules. She said it is different from merely referencing a violation of this chapter. She said this is current law. However, she said, she is not certain whether the initial intent was to be all-encompassing. She said this is being pointed out for the committee's consideration.

Senator Larsen said this could include speeding, driving under the influence, etc.

Mr. Carlson said because he does not do criminal background checks as part of the licensure process, he would have no way of knowing whether an applicant has violated any laws of this state.

Senator Olafson said perhaps the law should give the commissioner discretion in denying a license.

Mr. Carlson said there is a lot of duplication in this chapter. He said he would support simplicity and discretion.

Committee counsel said the statute governing the dismissal of school district superintendents provides that the school board may dismiss a superintendent for violating any one of seven stated grounds. She said perhaps this type of clarification might be in order in this chapter too.

Mr. Carlson said in this area there are often not clear demarcations. He said minor actions do arise, and he should not be required to revoke a license.

In response to a question from Chairman Erbele, committee counsel said generally license revocation occurs if there is "fraud or misrepresentation" on the part of an applicant, not a "false entry or statement of fact" in any application.

In response to a question from Chairman Erbele, committee counsel said this subsection needs to be reworked. She said anyone can apply for a license. She said the obligation to keep and maintain suitable records begins with licensure and not before licensure. She said the ensuing subsections feature similar issues and will be cleaned up in the next bill draft.

Chairman Erbele said current law provides that the commissioner shall revoke a license if the licensee has failed to pay brand inspection fees or veterinary inspection fees. He said there is a need to clarify the point at which the named fees are deemed "unpaid." He said the bill draft suggests "thirty days."

Mr. Carlson said 30 days is probably too short a timeframe. He said 60 days is more realistic.

Chairman Erbele said current law requires a license revocation if the applicant has failed to pay for livestock purchased.

In response to a question from Chairman Erbele, Mr. Carlson said bison have been excluded from this chapter at the request of the bison producers. He said outstanding bills are considered carefully during the application review process.

Committee counsel said current law provides that the commissioner must revoke a license if the applicant has failed to pay for livestock purchased. She said again, the failure to pay must be placed within a temporal context.

Mr. Carlson said livestock dealers are required to pay for the livestock they purchase within one business day. He said there are exceptions for certain purebred purchases where paperwork is required.

Committee counsel said subsection 1 applies to applicants, and subsection 2 applies to licensed

dealers. She said the committee's directives regarding the first subsection should be paralleled.

### **Section 13 - Amendment of Section 36-04-10.1**

Committee counsel said the entire chapter deals with things that must be done and that may not be done. She said there is no need to have a separate summary section. Therefore, she said, it is recommended that this section be removed.

Mr. Carlson said he is fine with removing the duplication.

### **Section 14 - Amendment of Section 36-04-11**

Chairman Erbele said Section 1-02-36 provides that wherever "the term 'registered mail' appears in the laws of the state of North Dakota it means 'registered or certified mail'."

### **Section 15 - Amendment of Section 36-04-11.1**

Chairman Erbele said because the authority to adopt rules exists within Chapter 28-32, it is not necessary to include this verbiage.

### **Section 16 - Amendment of Section 36-04-12**

Chairman Erbele said this section contains only nonsubstantive changes.

### **Section 17 - Amendment of Section 36-04-13**

Chairman Erbele said this section contains only nonsubstantive changes.

### **Section 18 - Amendment of Section 36-04-14**

Committee counsel said last interim the committee addressed seed dealer bonds. She said after the committee completed its work, the Attorney General's staff suggested policy changes that were incorporated in a separate bill. She said she anticipates that the same will be done this time.

Mr. Carlson said current law provides that upon appointment as trustee, the commissioner shall take possession of all the books. He said he has neither the inclination nor the space to take all of the records. He said he would prefer some limitation, such as a reference to "pertinent" records.

### **Section 19 - Amendment of Section 36-04-15**

Chairman Erbele said the committee counsel's comments under Section 18 are applicable to this section as well.

### **Section 20 - Amendment of Section 36-04-16**

Chairman Erbele said this section contains only nonsubstantive changes.

### **Section 21 - Amendment of Section 36-04-17**

Chairman Erbele said this section contains only nonsubstantive changes.

**Section 22 - Amendment of Section 36-04-18**

Chairman Erbele said this section contains only nonsubstantive changes.

**Section 23 - Amendment of Section 36-04-19**

Chairman Erbele said this section contains only nonsubstantive changes.

**Section 24 - Amendment of Section 36-04-20**

In response to a question from Chairman Erbele, committee counsel said Section 54-12-01 provides that the Attorney General shall "[i]nstitute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer." She said that concept does not need to be reiterated in this chapter.

**Section 25 - Amendment of Section 36-04-21**

In response to a question from Chairman Erbele, committee counsel said Section 54-12-01 governs this section as well as the previous section.

**WOOL DEALERS**

Chairman Erbele said after the recommendations of the interim Agriculture Committee are addressed, a separate chapter pertaining to wool dealers will be drafted to parallel the language regarding livestock dealers.

In response to a question from Chairman Erbele, Mr. Carlson said there are two wool dealers, and one individual licensed as a wool dealer and a livestock dealer. He said at a fee of \$10, it is more costly to administer the program. He said other wool dealers function as a cooperative.

No further business appearing, Chairman Erbele adjourned the meeting at 12:00 noon.

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L. Anita Thomas  
Committee Counsel

ATTACH:1