

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2206

2007 SENATE JUDICIARY

SB 2206

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2206**

Senate **Judiciary Committee**

☐ Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1801

Committee Clerk Signature

*Mona L. Solberg*

**Minutes:** Relating to the violation of bran laws.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

### **Testimony In Support of Bill:**

**Sen. Ryan Taylor**, Dist. #7 (meter :20) Introduced the bill. I agreed to put this forward at the request of the ND Stockman's Assoc. I agreed with them that we needed to review the penalties to see if the need to be updated. Spoke of his personal ranching issues. Reviewed his legislative process in producing the bill.

**Rep. Shirley Meyer**, Dist. #36 (meter 2:45) Co-sponsor of the bill. In agreement to increase the penalty of cattle theft. Concern for the forgetting to get a brand release vs. stealing cattle. Discussed her district of ranchers that live on the borders and how they move cattle. We do not want the accidental forgetting to get a release when moving cattle to become a Class C Felony.

**Wade Mosser**, ND Stockmans Assoc. (meter 6:00) The legislation has come from our investigators several years ago. We have filed reports with the States Attorney's office saying that for a misdemeanor it is not worth their time. It gives our people the elusion that we are not doing anything about it to our people. Spoke of the process with there assoc. in creating

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the bill. It is not our intent to through an accidental incident to through an innocent person into jail.

**Sen. Olafson** spoke of the making of amendments (meter 9:00)

**Darryl Howard**, ND Stockmen's Assoc.(meter 9:44) Field investigator who reviewed what the current process of notifications. Hand out – Att. #1 of what surrounding states do. This legislation would put ND in the middle. He reviewed the bill (meter 12:50) line by line.

**Sen. Olafson** spoke (meter 13:31) of the possibility to amend so not to make a "joke" become a Class C Felony.

**Sen. Lyson** (meter 20:48) asked the credentials of the Field Investigators. We are licensed peace officers under 36.09-25.

**Sen Fiebiger** stated that the language in Section 5 does not allow boarder residents any exemptions. Committee spoke of concerns for ranchers who's land borders two states.

**Sen. Lyson** stated that he had great concerns with the over strictness of this law.

#### **Testimony in Opposition of the Bill:**

**Tim Purdon**, Law firm in Bismarck representing self (meter 27:07 Sited other class B Felonies as being Meth and Mans slaughter this hardly fits in that group. Spoke of a bill in 1991 the Governor vetoed. Discussed the ND law terms "willfully", "intent" and "standard". Stealing cattle already is in the law and punishable. The solution is not raising the penalty it is a review of the law process. The dog would be wagging the tail. Reviewed past convictions in ND for cattle theft, they are prosecuting the law. I am for the bill but against the penalty.

**Willard Schank**, Richardton, ND (meter 31:15) I am not against laws but I have great concerns for this on. Reviewed a personal situation – Att. #2a and Att. #2b. I have concerns about the penalty aspect of the bill.

#### **Testimony Neutral to the Bill:**

**Dwight Keller**, Morton Co. (meter 38:49) Spoke against the "language" in the bill. We need to strengthen theft laws. Do not punish the un-intended person. Went through parts of the bill sighting his concerns.

**Sen. Olafson** spoke how very few people brand in his part of the state.

**Senator David Nething**, Chairman closed the hearing.

Additional Testimony Submitted to the Committee:

**Mr. Ned Hermanson**, Rancher McKenzie Co. – Att. #3

**Mr. Gary L. Jackson**, Attorney in MT. – Att. #4

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2206**

### Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: ~~2880~~ 2881

Committee Clerk Signature *Maria L. Solberg*

**Minutes:** Relating to the violation of bran laws.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

**Sen. Olafson** reviewed the amendment – Att. #1 stating that Sen. Taylor and the Stockman's Assoc. worked on the amendment with him.

**Sen. Lyson** question on page 3 line 14, that he still had a problem with the Class A misdemeanor and the Class C Felony-this is the same as murder.

Discussion of "knowingly": **Sen. Olafson** spoke of a personal case. The dollar amount on mistakes can be very expensive. We have civil remedies to go back for money. The committee had further discussion of the punishment.

**Sen. Olafson** made the motion to Do Pass the amendment – Att. #1 dated 2/5 and to further amend changing the offense and **Sen. Lyson** seconded the motion. All members were in favor and the motion passes.

**Sen. Olafson** made the motion to Do Pass SB 2206 as amended and **Sen. Lyson** seconded the motion. All members were in favor and the motion passes.

Page 2  
Senate Judiciary Committee  
Bill/Resolution No. SB 2206  
Hearing Date: February 5, 2007

Carrier: **Sen. Olafson**

**Sen. Nething**, Chairman closed the hearing.

Alt #1  
2-5-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2206

Page 1, line 9, after "a" insert "class A misdemeanor for a first offense and a" and after "felony" insert "for a second or subsequent offense"

Page 1, line 11, after "another" insert "for the purpose of deceiving others as to the animal's ownership"

Page 1, line 14, after "~~misdemeanor~~" insert "for the purpose of deceiving others as to the animal's ownership"

Page 3, line 1, replace "willfully" with "knowingly"

Page 3, line 23, after the period insert "This subsection does not apply to a person that:

- a. Removes cattle, horses, or mules from this state in order to obtain for the animals medical treatment by a licensed veterinarian; or
- b. Moves cattle, horses, or mules from this state to a bordering state in accordance with a reciprocal grazing agreement between the state brand inspector and an authorized agency of the bordering state.

Renumber accordingly

page 3 line 14 B-offence to C offence  
page 3 line 31 " "  
page 2 line 26 " "



Date: 2-5-07

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2206

Senate \_\_\_\_\_ Judiciary \_\_\_\_\_ Committee \_\_\_\_\_

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass Amend #1 & Charge offences

Motion Made By sen. Olafson Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	/		Sen. Fiebiger	/	
Sen. Lyson			Sen. Marcellais		
Sen. Olafson			Sen. Nelson		

Total Yes 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 2-5-07

Roll Call Vote # 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2206

Senate \_\_\_\_\_ Judiciary \_\_\_\_\_ Committee \_\_\_\_\_

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass As Amended

Motion Made By Sen. Olafson Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Olafson

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2206: Judiciary Committee (Sen. Nethling, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2206 was placed on the Sixth order on the calendar.

Page 1, line 9, after "a" insert "class A misdemeanor for a first offense and a" and after "felony" insert "for a second or subsequent offense"

Page 1, line 11, after "another" insert "for the purpose of deceiving others as to the animal's ownership"

Page 1, line 14, after "~~misdemeanor~~" insert "for the purpose of deceiving others as to the animal's ownership"

Page 2, line 26, overstrike "B" and after "~~misdemeanor~~" insert "C"

Page 3, line 1, replace "willfully" with "knowingly"

Page 3, line 14, replace "B" with "C"

Page 3, line 23, after the period insert "This subsection does not apply to a person that:

- a. Removes cattle, horses, or mules from this state to obtain for the animals medical treatment by a licensed veterinarian; or
- b. Moves cattle, horses, or mules from this state to a bordering state in accordance with a reciprocal grazing agreement between the state brand inspector and an authorized agency of the bordering state.

Page 3, line 31, remove the overstrike over "G" and remove "B"

Renumber accordingly

2007 HOUSE AGRICULTURE

SB 2206

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2206

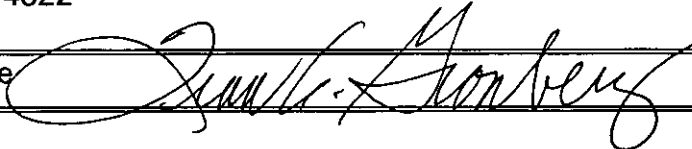
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: 3-9-07

Recorder Job Number: 4822

Committee Clerk Signature



Minutes:

**Chairman Johnson** opened the hearing on SB 2206.

**Sen Ryan Taylor, Dist 7:** I am submitting it on behalf of the ND Stockman's Association.

There is some concern that some of the brand laws are outdated and prosecution is difficult.

We want to punish the guilty and protect the innocent. And this bill still makes allowances to protect the innocent and for those who unknowingly break the law.

**Rep Onstad:** I can understand stealing and theft, but a class C felony for losing a bill of sale?

**Taylor:** No it would not be and that's maybe an amendment that would come before you.

There is a consistent step up from a class A misdemeanor to a class C felony. I'm not an attorney but the "willfully and knowingly" also lends some allowances.

**Rep Shirley Meyer:** (five handouts attached)

Our intent is to make it much tougher when someone steals livestock. (amendments attached)

We hope to get rid of some of the compounding misdemeanors that turn into felonies in this bill. We do not want to make criminals out of honest people.

**Rep Boe:** You talk about a class C felony. Do you know what else is a class C felony - comparably?

**Rep Meyer:** We need penalties to fit the crimes. Examples: kidnapping, sexual offenses, robbery, breaking and entering, prostitution. Those are the kind of crimes that are class C felonies. Under Section 3 we have allowed the certificate of registration to equal a permanent brand registration.

**Rep Mueller:** Is there anything that is good in this bill that you and our chairman sponsored?

**Rep Meyer:** The first section of the bill is what we all want to as stockman's members and that increases the penalty for theft of cattle. And that's what we want. The rest of it we need areas of differentiation and this bill says we are going to give everyone a felony charge. Many states attorneys have been accused of not prosecuting these cases unless they are felonies. I have to say that this is absolutely not true. I have talked to them and they say they prosecute on the merits of the case.

**Darryl Howard, Chief Inspector for the Stockman's Association:** We do have police powers. There are 3 of us with powers and 220 additional brand inspectors. It is not the average or typical rancher, who inadvertently makes a mistake, that we are after. We do run into states attorneys who are unwilling to prosecute misdemeanors mostly because they are unfamiliar with livestock laws. The value of livestock has gone up and so should the penalties. The International Livestock Identification Association wants to maintain parallel laws and parallel penalties with the other brand states. ND laws are middle of the road. (He then went through each part on the bill)

**Rep Boe:** If I wrote a check for the cattle and wrote on there for 200 head of cattle, and I have that cancelled check, is that as good as a bill of sale?

**Howard:** No sir, you need to list the brands that are on the cattle.

**Rep Froelich:** If I sell the cattle to Rep Boe and he gives me a check, and there is a problem later, he can always come back and sue me civilly for damages.

**Howard:** I don't know what his personal situation is, but if he's already strapped, and that's the reason he's going to sell, it's going to cost him a lot up front.

**Rep Froelich:** Under this bill, if penalties are imposed, he would still have to come back to collect financial damages.

**Howard:** There is a very good chance that there would be some restitution involved. In the last few years the amount of restitution that we have helped victims recover has been in the area of \$350,000 to \$400,000. You may need a bill of sale as long as you own the livestock to prove the second brand. And that is why it says several times in the bill that it must be kept by the buyers. It must be given in transit and produced upon demand. It carries a great deal of weight and is more than a technicality to hold someone up.

**Rep Froelich:** Under this bill a person could get a class C felony while dealing with his own cattle over state lines and later wants a teacher's certificate and probably can't get it.

**Rep Boe:** The key to this bill of sale is that it carries a brand. Up in my area not many people brand their cattle. There are herd of 200-330 cows and none of them have a brand on them. Don't they come under this law at all?

**Howard:** They don't. It only covers the cattle with your own brand on them.

**Rep Boe:** So if I am dealing with cattle with no brand, this law does not affect me?

**Howard:** If they have no brand or your brand, a bill of sale does apply.

**Rep Boe:** So you still have to have the bill of sale?

**Howard:** You need to give one at time of sale.

**Rep Boe:** The bill reads "with a registered brand".

**Howard:** If they have no brand, the possessor is the owner.

**Rep Froelich:** Why did you take out lines 14 and 15?

**Howard:** Line 5 says that a person may not knowingly do it.

**Rep Onstad:** Your situation seems more like fraud. Shouldn't it be under a different section of code? Maybe under criminal offences. I'm not sure it's in the right place. I think we have current laws that would deal with fraud and civil penalties.

**Howard:** (submitted amendment) deals with page 3 line 29

**Rep Boe:** You talk about pursuit. Do you have vehicles with lights, etc.?

**Howard:** Yes, three of us have pursuit vehicles.

**Chairman Johnson:** Have you seen the amendments that were offered by Rep. Meyer?

**Howard:** I haven't seen the actual amendment, no. But I would like to address the registration papers as being proof of ownership to leave the state and again that will lead to trouble in the brand states. Registration papers don't carry the clout because brands can be added to registration papers just by requesting it to be done. If we let people travel using registration papers, it may not reflect the current status of the horse.

**Rep Belter:** Going back to Section A where you wanted the word emergency in there. What you're saying then, if it's a non emergency, you can't take any livestock across the state line to take them to a veterinarian?

**Howard:** Not without inspection. All horses, cattle and mules must be inspected before they can leave the state.

**Rep Onstad:** If you see an infraction, do you do the investigation?

**Howard:** Some of them, yes.

**Rep Onstad:** Why not the sheriff?

**Howard:** They are not familiar with livestock laws and how to investigate how the cattle move.

**Rep Onstad:** Would they more likely to listen to the sheriff if you have trouble getting the states attorneys office to back us up.

**Howard:** No, but we use the sheriff's office to back us up.



**Rep Belter:** What does the Minnesota law say? Do they have to be inspected when they come to ND?

**Howard:** No, but they are inspected before they leave. We're bordered by some no brand states, so if our cattle get out of state, they are gone.

**Rep Onstad:** Raising the infraction to a class C felony will get scrutinized heavily in judiciary realizing the offences and the other thing is that person charged with a class A misdemeanor that is one year in prison and \$2000. But the second time could mean 5 years in prison and a \$5000 fine. Don't you think that is extreme.

**Howard:** We can't get a first conviction, so how are we going to get a second?

**Rep Onstad:** If we increase it, how do you expect to get better results?

**Howard:** The states attorneys might not be interested in taking a B misdemeanor to trial, so if we go to an A misdemeanor, we actually have a penalty that will leave a little wiggle room for a plea. If we ever get to a felony, it would probably not happen.

**Rep Onstad:** The point is we could still charge the person with a class A misdemeanor the first time, the second offence will get 6 months in jail and the third offence he will be in jail for a year. The seriousness of the cut and dried second offense whether you want to say it's a warning or not, it is five years in the prison system.

**Howard:** Since I've been with the ND Stockman's office, we've had one that went there. That case is the one that dealt with most of the restitution - \$185,000 and he did do jail time for approximately two and a half years.

**Rep Froelich:** You say these courts don't want to prosecute because they don't always see it as that much of a problem. When it's in the law, there's no leeway.

**Howard:** The biggest problem that I have with cattle leaving the state is when we don't get to inspect the cattle that left the state. So how do we know whose they were?

**Rep Froelich:** We have three tiers of government dealing with horses.

**Howard:** This paper picture does not have a brand on it or proof of ownership. I am not in favor of turning horses loose to travel wherever they want without proof of ownership.

**Rep Boe:** You indicated in your testimony that not all the states attorneys are turning down your cases, that some are doing a good job. Some you aren't satisfied with. Wouldn't that be a subjective statement.

**Howard:** I've talked to many states attorneys and they all have different opinions.

**Chairman Johnson:** With the direction we're going with this, I think I'll put it in a sub committee.

**Rep Froelich:** We haven't discussed reciprocal agreements.

**Howard:** We have those with Montana and South Dakota. It's to include folks with pastures that have the state line running through them.

**Jim Loman, Billings County:** I raise cattle and horses north of Medora. I feel it is important to update the law with this bill and bring it into the 21st century. The bill as I ready it points out the difference between willful and not knowing. I think that is pretty plain. All our law enforcement work hand in hand and do a good job. I think they sometimes feel their hands are tied because of someone hiding behind the I didn't know any better and forgot my bill of sale. That brand is very important. It is proof of ownership. We need to back our law enforcement officer more strongly.

**Ladd Erickson, McLean County States Attorney:** I would be very happy to work with the sub committee. I think there is a problem with Section One. It should have willfully right after person on line 10 and leave willfully on line 14. It's important to look at and fix page 3 line 24. It has been a historical problem. It is important to fix this. I have not seen Rep Meyer's amendments.

NO OPPOSITION

**Chairman Johnson appointed a sub committee:**

**Vice Chair Kingsbury, Chair**

**Rep Heller, Member**

**Rep Onstad, Member**

**Chairman Johnson** closed the hearing.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2206

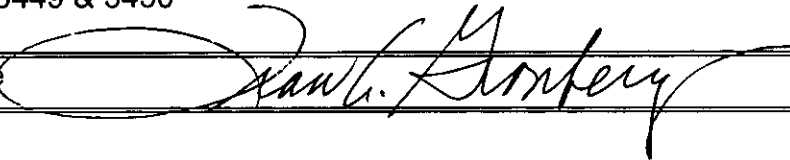
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: 3-22-07

Recorder Job Number: 5449 & 5450

Committee Clerk Signature



Minutes:

**Chairman Johnson** opened the discussion on the results of the subcommittee meeting on SB 2206 and asked **Vice Chair Kingsbury** to give a report on the subcommittee that she chaired.

**Rep Onstad and Rep Heller** also served on the subcommittee.

**Vice Chair Kingsbury:** (two handouts attached: penalty comparison and how it affects the bill and a proposed amendment Title 70310.0405) Rep Kingsbury then went through the bill and amendment by sections and answered questions with regard to the amendment and the penalties. All the penalties on the review sheet from Anita Thomas were reviewed.

**Rep Onstad:** Rep Onstad reminded the committee that the penalties were the maximum that could be received - the penalty could be anything up to that amount.

**Rep Froelich** had a problem with Section 4. He did not feel that the owner should need a brand release on his own cattle. Someone else's yes, but not his own. Anyone can bring cattle into the state, but they must be brand inspected before they leave.

**Rep Onstad:** In subcommittee we voted on the Kingsbury amendment that had a new section as far as ownership goes for brand inspection. It comes down to the bill of sale which is needed. The whole gamut in subcommittee discussions came down to what's accepted and what isn't accepted. If you visit with Dr. Keller, the state veterinarian, they accept ownership

on other documents. The brand inspector still has to stop the person and do the brand inspection and ask for the papers. That really becomes a part of contention. The subcommittee never resolved that issue.

**Vice Chair Kingsbury:** Things seem to get muddier and muddier over this and other issues.

**Rep Belter:** Why do we need any brand inspection on horses? Cattle yes, but its overkill on horses.

**Rep Onstad** passed out a sample of a certificate of registration (attached). He likened it to the title of a car. The Health Department accepts these certificates as proof of ownership.

After much discussion:

**Rep Boe:** The whole thing is full of loopholes! (existing law and proposed amendments)

**Rep Brandenburg:** This takes much more discussion before we can do anything permanent with the bill.

**Rep Mueller:** Maybe we should strike horses from the whole bill. Horses and their usage, etc. are not the same as 50 years ago.

**Rep Froelich:** Maybe we should hog house the bill and put a study on it for brands.

**Rep Onstad:** There was a time when the brand inspector's office was in the AG or Sec of States office. Now it sits under basically a private entity which is the Stockman's Association. It seems strange that we give regulatory enforcement to an agency that's under the thumb of a private entity. Maybe part of the study should look at if that is the right place to be.

**Rep Belter:** I don't have any problems with the way the Stockman's Association has handled the program, but there are some areas like the horse branding that have gone overboard.

**Rep Kingsbury and Rep Onstad** thought if a study was done it should include the study of registration and proof of ownership and branding laws and penalties.

**Rep Froelich moved the amendment to hog house the bill and add a study to include registration and proof of ownership and branding laws and penalties.**

**Rep Brandenburg seconded the Motion**

**The amendment passed unanimously on a voice vote**

**Rep moved a Do Pass on the Bill**

**Rep Brandenburg seconded the Motion**

**(yes) 12 (no) 0 (absent) 1**

**Carrier: Rep Heller**

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2206

House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: 3-28-07

Recorder Job Number: 5584

Committee Clerk Signature

Minutes:

**Chairman Johnson** opened the discussion and asked the committee their wishes on SB 2206.

**Rep Boe** made a motion to reconsider the action on SB 2206

**Rep Onstad** seconded the motion

The motion passed on a voice vote

**Rep Mueller** moved the amendments

**Rep Wall** seconded the motion

The motion passed on a voice vote

**Rep Boe** moved a Do Pass as Amended

**Rep Uglem** seconded the motion

(yes) 10 (no) 2 (absent) 1

Carrier: Rep Heller

**AMENDMENT TO SB 2206**  
**First Engrossment**

**SECTION 5. AMENDMENT.** Section 36-09-23 of the North Dakota Century Code is amended and reenacted as follows:

Line 29 - Add the word 'emergency' after animals.

a. Removes cattle, horses, or mules from this state to obtain for the animal's emergency medical treatment by a licensed veterinarian; or



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2206

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 36-09 of the North Dakota Century Code, relating to certificates of registration for horses; and to amend and reenact sections 36-09-17, 36-09-20.1, and 36-09-23 of the North Dakota Century Code, relating to penalties imposed for violation of brand laws.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 36-09-17 of the North Dakota Century Code is amended and reenacted as follows:

**36-09-17. Defacing brands and unlawfully branding - Penalty.** Any A person who shall:

- ~~1. Alter or deface, or attempt 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:~~
1. Alters, defaces, or attempts to alter or deface; the mark or brand upon on any animal, the property of owned by another for the purpose of deceiving others as to the animal's ownership; or
2. Willfully and unlawfully mark or brand, or cause marks, brands, or causes to be marked or branded; any animal, the property of owned by another;

is guilty of a class A misdemeanor for the purpose of deceiving others as to the animal's ownership.

**SECTION 2. AMENDMENT.** Section 36-09-20.1 of the North Dakota Century Code is amended and reenacted as follows:

**36-09-20.1. False proof of ownership - Sale of livestock - Penalty.** A person that knowingly provides false proof of ownership in conjunction with the sale of livestock is guilty of a class A misdemeanor for a first offense and a class B misdemeanor C felony for a second or subsequent offense.

**SECTION 3.** A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

**Certificate of registration - Permanent inspection permit.** A certificate of registration issued for a horse by a national breed registry may be used in place of a permanent inspection permit issued by the chief brand inspector.

**SECTION 4. AMENDMENT.** Section 36-09-23 of the North Dakota Century Code is amended and reenacted as follows:

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

1. a. No A person may not remove cattle, horses, or mules from this state or to within a mile [1.61 kilometers] of any boundary of the state for the purpose of removal unless the livestock has been inspected for marks and brands by an official brand inspector of the North Dakota

stockmen's association ~~and a.~~ A certificate of inspection must accompany the livestock to its destination.

b. A person may not remove a horse from this state unless the horse has been inspected for marks and brands by an official brand inspector of the North Dakota stockmen's association. A certificate of inspection, a permanent inspection permit, or a certificate of registration issued for the horse by a national breed registry must accompany the horse to its destination.

c. This subsection does not apply to a person that:

(1) Removes cattle, horses, or mules from this state to obtain for the livestock medical treatment by a licensed veterinarian; or

(2) Moves cattle, horses, or mules from this state to a bordering state in accordance with a reciprocal grazing agreement between the state brand inspector and an authorized agency of the bordering state.

2. ~~It is unlawful for the~~ The owner or possessor ~~to remove any~~ of livestock may not remove the livestock from any place of regular official brand inspection ~~unless and until~~ an official brand inspection has been made and the brand inspection certificate issued.
3. A person ~~who~~ that violates this section is guilty of a class B misdemeanor. A person ~~who~~ that violates this section a second time within fifteen years or violates this section three or more times is guilty of a class C felony."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2206

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 36-09-17, 36-09-20.1, 36-09-22, and 36-09-23 of the North Dakota Century Code, relating to penalties imposed for violation of brand laws.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 36-09-17 of the North Dakota Century Code is amended and reenacted as follows:

**36-09-17. Defacing brands and unlawfully branding - Penalty.** Any A person ~~who shall:~~

~~1. Alter or deface, or attempt 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:~~

1. Willfully alters, defaces, or attempts to alter or deface; the mark or brand upon on any animal; the property of owned by another for the purpose of deceiving others as to the animal's ownership; or

2. Willfully and unlawfully mark or brand, or cause marks, brands, or causes to be marked or branded; any animal; the property of owned by another;

is guilty of a class A misdemeanor for the purpose of deceiving others as to the animal's ownership.

**SECTION 2. AMENDMENT.** Section 36-09-20.1 of the North Dakota Century Code is amended and reenacted as follows:

**36-09-20.1. False proof of ownership - Sale of livestock - Penalty.** A person that knowingly provides false proof of ownership in conjunction with the sale of livestock is guilty of a class A misdemeanor for a first offense and a class B misdemeanor C felony for a second or subsequent offense.

**SECTION 3. AMENDMENT.** Section 36-09-22 of the North Dakota Century Code is amended and reenacted as follows:

**36-09-22. Sale of animal under false registration ~~certificates~~ certificate - Changing marking - Auctioneer - Penalty.** ~~No~~

1. A person may not knowingly:

~~1. a.~~ a. Sell any an animal with a certificate of registration or breeding that does not belong to said the animal.

~~2. b.~~ Change in any way the Alter any animal's certificate of registration or breeding of any animal.

~~3. c.~~ Falsely represent Misrepresent any production record specified in any a registration certificate.

4. d. Change the markings of any ~~animals~~ animal with intent to deceive the purchaser or misrepresent the sire to which such animal has been bred.

~~The provisions of this section do not apply to any auctioneer or agent acting in good faith under the direction of the owner.~~

Any

2. A person who that violates ~~any of the provisions of this section~~ is guilty of a class B A misdemeanor.

**SECTION 4. AMENDMENT.** Section 36-09-23 of the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~No~~ A person may not remove or attempt to remove cattle, horses, or mules from this state or to within a mile [1.61 kilometers] of any boundary of the state for the purpose of removal unless the livestock has been inspected for marks and brands by an official brand inspector of the North Dakota stockmen's association and a. A certificate of inspection must accompany the livestock to its destination. This subsection does not apply to a person that:
  - a. Removes cattle, horses, or mules from this state to obtain for the animals medical treatment by a licensed veterinarian; or
  - b. Moves cattle, horses, or mules from this state to a bordering state in accordance with a reciprocal grazing agreement between the state brand inspector and an authorized agency of the bordering state.
2. ~~It is unlawful for the~~ The owner or possessor to remove any of livestock may not remove the livestock from any place of regular official brand inspection unless and until an official brand inspection has been made and the brand inspection certificate has been issued.
3. ~~A person who that~~ willfully violates this section is guilty of a class B misdemeanor. A person who violates this section a second time within fifteen years or violates this section three or more times is guilty of for a first offense, a class A misdemeanor for a second offense, and a class C felony for a third or subsequent offense."

Renumber accordingly

## **Proposed amendments to SB 2206**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of branding.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - BRANDING.** During the 2007-08 interim, the legislative council shall study branding of cattle, horses, and mules. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

**House Amendments to Engrossed SB 2206 (70310.0406) - Agriculture Committee  
03/23/2006**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of branding laws, penalties, registration, and certificates of ownership.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - ANIMAL BRANDING.** During the 2007-08 interim, the legislative council shall study the branding of animals, brand recording, brand law enforcement, and penalties for violation of the branding laws. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 3/22/07  
Roll Call Vote #: 1

**2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO.**

House **Agriculture**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2206

Action Taken To Pass an Amendment

Motion Made By Rep Froelich Seconded By Rep. ~~Brandon~~ Keller

[illegible]

Total (Yes) 13 No 0

Absent

Floor Assignment Rep Heller

If the vote is on an amendment, briefly indicate intent:

hog house bill and put a study on it  
"shell study"

Date: 3/22/07  
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House Agriculture

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number B2206

Action Taken Do Passao Amended

Motion Made By Mueller Seconded By Boe

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	✓		Tracy Boe	✓	
Vice Chair Joyce Kingsbury	✓		Rodney Froelich	✓	
Wesley Belter	absent		Phillip Mueller	✓	
Mike Brandenburg	✓		Kenton Onstad	✓	
Craig Headland	✓		Benjamin Vig	✓	
Brenda Heller	✓				
John D Wall	✓				
Gerry Uglem	✓				

Total (Yes) 12 No 20

Absent 1

Floor Assignment PP Heller

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**SB 2206, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2206 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of branding laws, penalties, registration, and certificates of ownership.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - ANIMAL BRANDING.**

During the 2007-08 interim, the legislative council shall study the branding of animals, brand recording, brand law enforcement, and penalties for violation of the branding laws. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date:  
Roll Call Vote #: /

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House Agriculture Ag Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2206

Action Taken Reconsider the action

Motion Made By Boe Seconded By Onstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Tracy Boe		
Vice Chair Joyce Kingsbury			Rodney Froelich		
Wesley Belter			Phillip Mueller		
Mike Brandenburg			Kenton Onstad		
Craig Headland			Benjamin Vig		
Brenda Heller					
John D Wall					
Gerry Uglem					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Voice Vote  
passed*

**House Amendments to Engrossed SB 2206 (70310.0407) - Agriculture Committee  
03/28/2007**

In lieu of the amendments adopted by the House as printed on page 1129 of the House Journal, Engrossed Senate Bill No. 2206 is amended and reenacted as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of branding laws, penalties, registration, and certificates of ownership.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - ANIMAL BRANDING.** During the 2007-08 interim, the legislative council shall consider studying the branding of animals, brand recording, brand law enforcement, and penalties for violation of the branding laws. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 3/28/07  
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House Agriculture

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

SB 3206

Action Taken

amendment

Motion Made By

Mueller

Seconded By

Wall

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Tracy Boe		
Vice Chair Joyce Kingsbury			Rodney Froelich		
Wesley Belter			Phillip Mueller		
Mike Brandenburg			Kenton Onstad		
Craig Headland			Benjamin Vig		
Brenda Heller					
John D Wall					
Gerry Uglem					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*line 5 "shall consider studying"*  
*Voice Vote*  
*passed*

Date: 3/28/07  
Roll Call Vote #: 3

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House ~~SB 2204~~ Ag Committee \_\_\_\_\_

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2204

Action Taken Do Pass as Amended

Motion Made By Boe Seconded By Uglen

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	✓		Tracy Boe	✓	
Vice Chair Joyce Kingsbury	✓		Rodney Froelich	✓	
Wesley Belter	✓		Phillip Mueller	✓	
Mike Brandenburg		✓	Kenton Onstad	✓	
Craig Headland		✓	Benjamin Vig	✓	
Brenda Heller	✓				
John D Wall	✓				
Gerry Uglen	✓				

Total (Yes) 10 No 2

Absent 1

Floor Assignment Rep Heller

If the vote is on an amendment, briefly indicate intent:

Do Pass as Amended

**REPORT OF STANDING COMMITTEE**

**SB 2206, as engrossed and amended: Agriculture Committee (Rep. D. Johnson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2206, as amended, was placed on the Sixth order on the calendar.**

In lieu of the amendments adopted by the House as printed on page 1129 of the House Journal, Engrossed Senate Bill No. 2206 is amended and reenacted as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of branding laws, penalties, registration, and certificates of ownership.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - ANIMAL BRANDING.**

During the 2007-08 interim, the legislative council shall consider studying the branding of animals, brand recording, brand law enforcement, and penalties for violation of the branding laws. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 TESTIMONY

SB 2206

AH #1

	Defacing brands/unlawful branding	Bill of sale to be given and kept	False proof of ownership	Sale of animal under false reg.	Removal of livestock from state
COLORADO	Any defacing of unlawful branding is considered theft & penalty depending on value of livestock.	1st offense-misdemeanor \$200-1,000 fine 2nd offense-misdemeanor \$500-1,000 fine 3rd offense-Class 6 felony \$2,500-5,000 fine &/or 6-24 months Fine or jail cannot be suspended by court and shall not be granted probation.			1st offense-misdemeanor \$200-1,000 fine 2nd offense-misdemeanor \$500-1,000 fine 3rd offense-Class 6 felony \$2,500-5,000 fine &/or 6-24 months Fine or jail cannot be suspended by court and shall not be granted probation.
MONTANA	Misdemeanor \$50-500 fine &/or 6 months if done unknowingly. Felony \$50,000 fine &/or 10 years if meant to deprive the owner.	\$135 fine	Felony theft \$50,000 fine &/or 10 years	Misdemeanor \$25-500 fine &/or 10 days-6 mos.	Misdemeanor \$50-500 fine Automatic felony if the the load includes a stray or you are not the owner of said livestock. \$2,000 fine &/or 3 years
NEBRASKA	Class III felony	Selling without bill of sale or power of attorney Class IV felony \$25,000 fine &/or 25 years	Class IV felony \$25,000 fine &/or 25 years		Class II misdemeanor \$1,000 fine &/or 6 months
SOUTH DAKOTA	Class V felony \$10,000 fine &/or 5 years			Class V felony \$10,000 fine &/or 5 years	Class I misdemeanor \$1,000 fine &/or 30 days
WYOMING	Unlawful branding-felony \$10,000 fine &/or 10 years	Misdemeanor \$750 fine &/or 6 months Bond \$210 per animal		Felony \$10,000 fine &/or 10 years	Considers removal of livestock without inspection as prima facie evidence of intent to avoiding inspection and to take, steal or carry away animals. Large numbers-felony \$10,000 fine &/or 10 years Small numbers-misdemeanor \$750 fine &/or 6 months



Sold to William Schank <sup>Att. 2a</sup>  
1 Black Bull CA Crescent 319

Page 9

4-09-03

Ralph Lordingley

I changed his name from  
CA Crescent 314 to  
CA Robby 319.

BILL of SALE given TO  
BRAND INSPECTORS Blaine  
Northrup and Darryl Howard. They  
never showed this to Yellowstone ~~County~~  
County.

SCHANK SUN VALLEY  
WILLARD OR TAMMY SCHANK  
501-64-8721 502-74-4171  
5125 - BETH AVE. SW. PM. 874-3700  
RICHMOND, MD 21832-9138

19230

DATE April 14, 04

PAY TO THE ORDER OF Willard Schank

Eighty-nine dollars 84/100 \$ 89.88

BRANCH BANK, NATIONAL ASSOCIATION  
125 NORTH B STREET - (202) 774-1111  
RICHMOND, MD 21802  
24 HOUR PHONE BANK 1-800-988-8484

10000009588

Check 19230 Date 4/16 Amount \$95.88

SCHANK SUN VALLEY  
WILLARD OR TAMMY SCHANK  
501-64-8721 502-74-4171  
5125 - BETH AVE. SW. PM. 874-3700  
RICHMOND, MD 21832-9138

19231

DATE March 31, 04

PAY TO THE ORDER OF DTM Corporation

Four hundred eighty-eight dollars \$ 488.80

BRANCH BANK, NATIONAL ASSOCIATION  
125 NORTH B STREET - (202) 774-1111  
RICHMOND, MD 21802  
24 HOUR PHONE BANK 1-800-988-8484

10000048816

Check 19237 Date 3/31 Amount \$488.38

SCHANK SUN VALLEY  
WILLARD OR TAMMY SCHANK  
501-64-8721 502-74-4171  
5125 - BETH AVE. SW. PM. 874-3700  
RICHMOND, MD 21832-9138

19238

DATE March 30, 04

PAY TO THE ORDER OF Willard Schank

Three hundred five dollars \$ 305.00

BRANCH BANK, NATIONAL ASSOCIATION  
125 NORTH B STREET - (202) 774-1111  
RICHMOND, MD 21802  
24 HOUR PHONE BANK 1-800-988-8484

10000030500

Check 19238 Date 3/30 Amount \$305.00

SCHANK SUN VALLEY  
WILLARD OR TAMMY SCHANK  
501-64-8721 502-74-4171  
5125 - BETH AVE. SW. PM. 874-3700  
RICHMOND, MD 21832-9138

19239

DATE March 30, 04

PAY TO THE ORDER OF Willard Schank

Four hundred twenty dollars \$ 420.00

BRANCH BANK, NATIONAL ASSOCIATION  
125 NORTH B STREET - (202) 774-1111  
RICHMOND, MD 21802  
24 HOUR PHONE BANK 1-800-988-8484

10000042000

Check 19239 Date 3/30 Amount \$420.00

SCHANK SUN VALLEY  
WILLARD OR TAMMY SCHANK  
501-64-8721 502-74-4171  
5125 - BETH AVE. SW. PM. 874-3700  
RICHMOND, MD 21832-9138

19240

DATE March 30, 04

PAY TO THE ORDER OF Willard Schank

Two hundred eighteen dollars 19/100 \$ 218.19

BRANCH BANK, NATIONAL ASSOCIATION  
125 NORTH B STREET - (202) 774-1111  
RICHMOND, MD 21802  
24 HOUR PHONE BANK 1-800-988-8484

10000021819

Check 19240 Date 3/30 Amount \$218.19

SCHANK SUN VALLEY  
WILLARD OR TAMMY SCHANK  
501-64-8721 502-74-4171  
5125 - BETH AVE. SW. PM. 874-3700  
RICHMOND, MD 21832-9138

19241

DATE March 10, 04

PAY TO THE ORDER OF Farmhouse Ranch

Four thousand dollars \$ 4000.00

BRANCH BANK, NATIONAL ASSOCIATION  
125 NORTH B STREET - (202) 774-1111  
RICHMOND, MD 21802  
24 HOUR PHONE BANK 1-800-988-8484

10000040000

Check 19241 Date 4/8 Amount \$4 000.00

SCHANK SUN VALLEY  
WILLARD OR TAMMY SCHANK  
501-64-8721 502-74-4171  
5125 - BETH AVE. SW. PM. 874-3700  
RICHMOND, MD 21832-9138

19242

DATE March 31, 04

PAY TO THE ORDER OF MISK

Two thousand dollars \$ 2000.00

BRANCH BANK, NATIONAL ASSOCIATION  
125 NORTH B STREET - (202) 774-1111  
RICHMOND, MD 21802  
24 HOUR PHONE BANK 1-800-988-8484

10000020000

Check 19242 Date 4/8 Amount \$2,000.00

SCHANK SUN VALLEY  
WILLARD OR TAMMY SCHANK  
501-64-8721 502-74-4171  
5125 - BETH AVE. SW. PM. 874-3700  
RICHMOND, MD 21832-9138

19244

DATE April 16, 04

PAY TO THE ORDER OF Corbally Angus

Three thousand dollars \$ 3000.00

BRANCH BANK, NATIONAL ASSOCIATION  
125 NORTH B STREET - (202) 774-1111  
RICHMOND, MD 21802  
24 HOUR PHONE BANK 1-800-988-8484

10000030000

Check 19244 Date 4/16 Amount \$3,000.00

SCHANK SUN VALLEY  
WILLARD OR TAMMY SCHANK  
501-64-8721 502-74-4171  
5125 - BETH AVE. SW. PM. 874-3700  
RICHMOND, MD 21832-9138

19245

DATE April 15, 04

PAY TO THE ORDER OF Lewisville United Austin

One thousand seven hundred fifty dollars 50/100 \$ 1700.50

BRANCH BANK, NATIONAL ASSOCIATION  
125 NORTH B STREET - (202) 774-1111  
RICHMOND, MD 21802  
24 HOUR PHONE BANK 1-800-988-8484

10000170050

Check 19245 Date 4/15 Amount \$1,700.50

SCHANK SUN VALLEY  
WILLARD OR TAMMY SCHANK  
501-64-8721 502-74-4171  
5125 - BETH AVE. SW. PM. 874-3700  
RICHMOND, MD 21832-9138

19246

DATE April 21, 04

PAY TO THE ORDER OF First National Bank (USA)

Two hundred sixty dollars 87/100 \$ 260.87

BRANCH BANK, NATIONAL ASSOCIATION  
125 NORTH B STREET - (202) 774-1111  
RICHMOND, MD 21802  
24 HOUR PHONE BANK 1-800-988-8484

10000026087

Check 19246 Date 4/21 Amount \$260.88

SCHANK SUN VALLEY  
WILLARD OR TAMMY SCHANK  
501-64-8721 502-74-4171  
5125 - BETH AVE. SW. PM. 874-3700  
RICHMOND, MD 21832-9138

19247

DATE April 16, 04

PAY TO THE ORDER OF Willard Schank

Eighty-six dollars 53/100 \$ 86.53

BRANCH BANK, NATIONAL ASSOCIATION  
125 NORTH B STREET - (202) 774-1111  
RICHMOND, MD 21802  
24 HOUR PHONE BANK 1-800-988-8484

10000008653

Check 19247 Date 4/16 Amount \$86.53

SCHANK SUN VALLEY  
WILLARD OR TAMMY SCHANK  
501-64-8721 502-74-4171  
5125 - BETH AVE. SW. PM. 874-3700  
RICHMOND, MD 21832-9138

19261

DATE April 16, 04

PAY TO THE ORDER OF Willard Schank

Eighty-six dollars 53/100 \$ 86.53

BRANCH BANK, NATIONAL ASSOCIATION  
125 NORTH B STREET - (202) 774-1111  
RICHMOND, MD 21802  
24 HOUR PHONE BANK 1-800-988-8484

10000008653



# THE DICKINSON PRESS & THE ADVERTIZER

Att 26

Something for everyone, everyday

Jan. 22, 2007

At one time, Johnny Berger stated the value of the bull was \$150,000. I spoke with Blaine Northrup, who told me to give Johnny Berger a call concerning the value before the first story was written.

Laurel Eide  
reporter

Guth Newman  
Publisher

# Richardton man pleads not guilty

## Schank charged with theft of Genex Hawkeye bull valued at approximately \$150,000

By Laurel Hilde  
Dickinson Press

A Richardton, ND man pleaded not guilty to two felony charges in Yellowstone County, Montana, during an arraignment hearing June 28.

A complaint against Willard Schank, 54, states Schank took a bull valued at approximately \$150,000 from the Genex Hawkeye Bull Test Station when he did not have authority to do so from the owner(s) of the bull in Billings, MT.

The complaint also says Schank caused livestock to be removed from Montana without the livestock having been inspected for brands by a state stock inspector with a certificate of inspection issued in connection with and for the purpose of transportation.

It further states Schank purposely or knowingly obtained or exercised unauthorized control over property of the other person, concealed or abandoned the property, knowing the concealment or abandonment probably will deprive the owner of the property.

According to the affidavit in support of the complaint, the Department of Livestock Investigation revealed that Deputy Inspector Paul Johnson of the Montana Department of Livestock received information on May 1, 2009, that a bull was missing from the Genex Hawkeye West Bull Test Station. When contacted with John Berger and John Stillestad regarding the bull, they

said they suspected a former partner.

In October 2004, Johnson had received a call from the same parties regarding a dispute over the same bull, called the Robby Bull. Johnson had paperwork showing that the bull's ownership had been transferred to Future Genetics LLC. Berger, Stillestad and Schank all had interests in Future Genetics.

At the time, there was a copy of a bill of sale and a current brand inspection. The paperwork appeared in order, said Johnson. He determined that ownership of the Robby Bull was a civil issue that the various partners needed to address.

On May 1, 2009, Schank wrote his former partners about settling their dispute regarding Future Genetics and asked for a check to be sent back to him as well as his portion of semen from several bulls, including the Robby Bull, to end the dispute.

That same day, a letter was sent from Future Genetics's attorney that included a check plus information regarding the transfers of the semen as requested by Schank. The following day, Schank acknowledged receipt of the letter and indicated his acceptance of the settlement. The check was cashed and submitted by Schank.

Employees at the Genex Hawkeye West Bull Test Station noticed and reported on May 6 that the Robby Bull was gone.

On May 15, Johnson received information from Rhonda Northrup, an investigator for the North Dakota Stockman's Association, that a petition for the Stark County Sheriff's Department 10 days previ-

ously had seen a black bull in the corral at Schank's property.

Northrup and Stark County Sheriff's Detective Terry Oestreich went to the Schank ranch on May 16 and said they were looking for missing livestock from Montana. They found one black bull in the pasture that had been freshly branded.

Northrup contacted Schank, who said he got up one morning and there was a bull standing in his horse trailer. Schank confirmed it was the Robby Bull in his pasture and that he had unloaded him from the trailer and branded him.

On May 18, Northrup returned to the ranch. Schank told Northrup it was the Robby Bull and that if anyone tried to take it, he would shoot the animal. Schank also said he thought one of his enemies had put the bull in the trailer, but added that he knew how the bull got to North Dakota because the bull was tagged at every county line and walked across. When asked how he knew this, Schank said, "Because I

know who done it, but I'm not going to tell you."

He went on to say, "I can't believe how easy it is to go into Genetics Bull Test and take a bull and leave and no one even knows it."

On June 9, Johnson spoke with Origen Bull Test station manager Bobbie Fair. Fair said Schank had been at Origen at the end of April to pick up a bull and there had been another bull in his trailer. Later, Fair spoke with Schank by telephone, and Schank said at that time that it was the Robby Bull in his trailer that was in his trailer at Origen and that he brought the Robby Bull back to North Dakota.

A warrant for Schank's arrest was withdrawn when he made arrangements to appear voluntarily.

Schank bonded out of a Montana jail on July 7 on \$2,500 bond. His next appearance has not yet been scheduled, according to the Yellowstone County district clerk of court.

Theft felony is punishable by a prison term not to exceed 10 years and a fine not to exceed \$50,000, or both. Failure to have inspection of livestock is punishable by a prison term not to exceed three years and a fine not to exceed \$2,000, or both.

(Reprinted by permission of the Dickinson Press.)

H7 22

## Great Selection

AT

# BENTZ EQUIPMENT INC.

MOW!

AH #3

1-24-07

My name is Ned Hermanson. I am a lifelong resident and rancher in McKenzie County. I was also a local brand inspector for 15 years. I resigned last year.

I oppose S.B. 2206 because of the Sec. 5 Amendmant which pertains to N.D.C.C. 36-09-23. This bill will make criminals of a lot of honest folks.

In my opinion the existing Brand Inspection Program has one direction. The direction that has been promoted from the Brand Inspection Program's beginning thru today is "Prevent Livestock Theft."

Everyone one knows a rustler is not going to stop and get a Brand Inspection before crossing a state line. And, because in many cases, livestock theft is almost impossible to prove, N.D.C.C. 36-09-23 gives authorities an "easy to prove" way to get the "Bad Guys." "No Brand Inspection!"—"We got em!"

What about the good guys? What about the honest livestock owner that lives all along our States borders? We do our daily trade across these borders and more often than anyone wants to admit, honestly forget brand inspections on our livestock.

It happens every day. It's happening right now as I speak. It happens because the State's border is an afterthought for us folks. We cross it daily and don't even think about it. Neighboring, retrieving stray cattle, delivering to feedlots, butchering, veterinary services, rodeoing, team roping, livestock shows,—the list goes on and on. It happens 1000's of times a year.

This Spring when I haul a heifer across the border, in the middle of the night with no brand inspection, to my veterinarian, for a C-section, I'll be in trouble with the Law. The next week, when I have to do the same thing, I'll be in BIG trouble with the Law. This bill will force the authorities to "Look the other way" if they want, or throw me in jail.

I would gladly support a bill that increases penalties for intentional livestock theft in the Sec. 5 amendmant of S.B. 2206 if the bill included a differentiation between Livestock Theft penalties and inadvertant failure by livestock owners who move their own livestock across the border for local purposes. This harmless failure should carry no penalty beyond an administrative written warning or a non-criminal fine, like a traffic ticket.

The proposed stiffer penalties in S.B. 2206 Sec. 5 amendmant will criminalize a lot of good guys while trying to deter a few bad guys. This bill asks to much from our citizens compared to what it might gain for them.

Please do not support this bill.

Sincerely,



Ned Hermanson

2834 150th Av. NW.  
Alexander, N.D. 58831  
Phone 701-828-3054

**GARY L. JACKSON****ATTORNEY AT LAW**

111 2ND AVE. SW

P.O. BOX 1368, SIDNEY, MT 59270-1368

TELEPHONE: (406) 433-7163

ADMITTED IN: MONTANA &amp; NORTH DAKOTA

FAX: (406) 433-7165

January 23, 2007

Moir Solberg  
Committee Clerk

Re: SB2206

**VIA FAX ONLY**

(701) 328-2872

Dear Ms. Solberg:

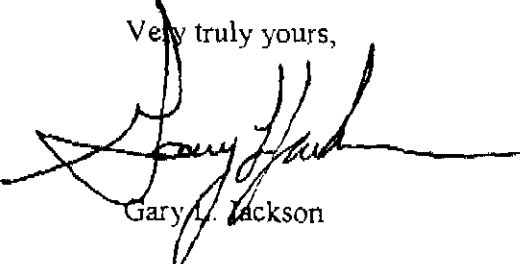
Please deliver the enclosed letter to Mr. Dave Nething, Chairman of the Senate Judiciary Committee.

SB2206 is scheduled for a first hearing before the Senate Judiciary Committee on Wednesday, January 24, 2007, at 10:30 a.m. in the Fort Lincoln Room.

I respectfully request that the enclosed letter be treated as written testimony to be read and entered into the record at the hearing.

Thank you for your assistance with this matter.

Very truly yours,

  
Gary L. JacksonGLJ: dh  
Enclosure

**GARY L. JACKSON**

Att #4

**ATTORNEY AT LAW**

111 2ND AVE. SW

P.O. BOX 1368, SIDNEY, MT 59270-1368

TELEPHONE: (406) 433-7163

ADMITTED IN: MONTANA &amp; NORTH DAKOTA

FAX: (406) 433-7165

January 23, 2007

Mr. Dave Nething, Chairman  
Senate Judiciary Committee

Re: SB2206

Dear Mr. Chairman and Members of the Committee:

My name is Gary L. Jackson. I live in Richland County, Montana. However, I am an attorney licensed to practice in both Montana and North Dakota. I have numerous friends, neighbors and clients involved in the ranching/livestock industry. I vigorously oppose SB2206, particularly the proposed amendments set out in Section 5, lines 28 – 31, pertaining to N.D.C.C. §36-09-23 (3). I urge you to vote against this bill.

The proposed amendment to Subsection (3) of the statute criminalizes non-criminal behavior. It circumvents the purpose and intent of the brand inspection laws.

The purpose of brand inspection is to prevent theft and loss. However, this proposed legislation formalizes into law a policy that does not solve the problem for which it is offered, but instead will encourage disrespect for the brand laws and for local inspectors; result in an increase in criminal behavior; create commercial hardships on the ranching industry; and lend support for politically motivated, selective enforcement of the brand laws by ill-intended officials.

There is no question that instances of theft, or loss of livestock, or deliberate evasion of brand inspection for an improper purpose, should be treated as serious criminal offenses. The law should and does already assign serious criminal penalty to such intentional criminal acts, and for that reason, the penalties under this statute were stiffened in 1991.

Gary L. Jackson  
Attorney at Law

Mr. Dave Nething, Chairman  
Senate Judiciary Committee  
January 23, 2007  
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There is equally no question that there are circumstances where the lack of a brand inspection is not and should not be a crime. Inadvertent mistake, emergency circumstances, taking one's own livestock across the state line for strictly local, personal, or temporary purposes have nothing to do with theft or loss. Inadvertent mistake or emergencies which may lead a rancher to simply forget or even to deliberately fail to get his own livestock inspected before crossing the state line, should *not* be criminalized — but would be under the proposed legislation — and especially should not result in the serious criminal penalties assigned by this legislation to such innocent non-criminal conduct.

My community is a prime example. Ranchers who live in western McKenzie County, North Dakota, trade in Sidney, Montana, the nearest town. The local veterinarian is in Sidney, Montana. The local livestock auction is in Sidney, Montana. The local feedlots and livestock shipping points are in Sidney, Montana. Ranchers who reside in western McKenzie County buy their groceries, feed and ranch supplies, in Sidney, Montana. Many of them have Sidney, Montana addresses even though they physically live in North Dakota, because that is the nearest post office. Why should folks who live on the border have to live in fear of being a felon because they may make an inadvertent mistake and take their own cattle to the local feedlot, or can't find a brand inspector when they take their cow or horse to the vet? Did you know that brand inspections cannot legally be written after dark? This bill would make a rancher a felon and put him in prison if he twice took his own cows needing a C-section at 2 a.m., across the border to the vet. Such a policy places these ranchers in an impossible bind and would either compel criminal activity or destroy not just their businesses and community, but support industries as well—veterinarians, feedlots, and such.



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Jack Chase was the wise and highly respected Chief Brand Inspector for NDSA for many years. This is what he testified to the Senate Committee on Agriculture when this statute was originally proposed and passed in 1991:

"The people we are trying to get to are those that are intentionally trying to get around the law. Our intention is not to get those that are doing this by mistake, if they do it we will have a warning letter sent to them and let them know what they had done, and then that letter is kept on file, so if they do it again, they would be prosecuted. Our main concern is that all the people who sell cattle get paid, and the only way to do this is to keep them from going out of the state before an inspector sees them."

The brand inspection system works as well as it does because it is built on the judgment of local brand inspectors, and the respect the community has for working with them. Melvin Leland, past-President of NDSA was quoted in last month's Bismarck Tribune article as saying stiffer penalties will just encourage people who made a harmless mistake to try to hide it. The law should encourage self-reporting when mistakes are made. This bill does the opposite. The purpose of brand inspection is to prevent theft and loss; it is definitely not to punish honest people who make mistakes.

Inadvertent mistake or harmless failure to get an inspection should be merely an administrative error, not a crime. Failure to get an inspection of one's own livestock moving across a border for local, personal, or temporary purposes should carry no penalty beyond an administrative written warning or a non-criminal fine, like a traffic ticket. The statute does need amendment to prevent misguided application of it to these non-criminal situations.

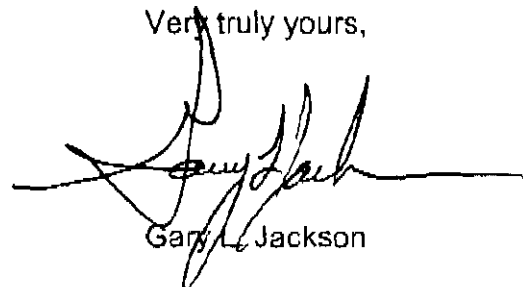
Gary L. Jackson  
Attorney at Law

Mr. Dave Nething, Chairman  
Senate Judiciary Committee  
January 23, 2007  
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If state's attorneys are not prosecuting under the existing statute, the reason is not that the penalties under it don't get their attention. The problem isn't with state's attorneys or with the statute – the penalties under the existing statute are hardly minor, and North Dakota's state's attorneys, by and large, do a commendable job of enforcing North Dakota's laws. State's attorneys who are properly doing their job prosecute those cases that have been properly investigated, and in which credible evidence demonstrates that a crime has occurred, and in which there is sufficient evidence to go forward. If the existing brand inspection law is not being enforced, let's address the real problem by training NDSA fieldmen so that they conduct professional and proper investigations which result in credible evidence. Then state's attorneys will treat NDSA's referrals seriously.

Thank you for your time and consideration.

Very truly yours,



Gary L. Jackson

GLJ:dh

Mr. Chairman, members of the committee:

As ranchers we would like to take this opportunity to express our concerns with several sections of SB 2206. Calving season makes it very difficult for many of us to attend the hearing, so we are jointly sending this letter.

We all support tough penalties for livestock theft. The problem we fear is created is when a person who makes a mistake with his own livestock is penalized the same as someone who steals livestock. This is wrong.

Under Section 2 of the bill, subsection 2 c.; you could be guilty of a felony if you did not list the address of the witness of a bill of sale. A bill of sale from the Stockmen's office is included. As you can see, the form provided by the NDSA does not provide for this information.

Under subsection 3 of Section 2 of the bill, a bill of sale must be kept as long as you have ownership of the animal. That could be five, ten, twenty years. Possibly more. For some livestock producers, the cubbyhole of the pickup truck is their office. Maybe that is not prudent, but it is real. Under current law, losing that bill of sale or brand clearance is an infraction. We are about to make honest ranchers felons for working in an environment that is not always as nice, clean, and sanitary as we would like. As the members of this committee are aware, many times we are working in inclement conditions, trying to complete a job such as weaning, weighing, doctoring, or preparing for a storm. Bad things do happen. A bill of sale, or a brand clearance, is a producer's title to that animal. Just as your car title is your proof of ownership to your car. A person who misplaces, or loses his title, should not be prosecuted the same as someone who steals a car.

As producers we feel that Section two of the current statute, listing these offenses as an infraction is adequate.

Under Section 4 of the bill, our concern is the deletion of lines fourteen and fifteen on page 3. I can see the courts tied up with people claiming the auctioneer knowingly misrepresented the breeding of an animal. If you are selling 1400 head of horses, or 5000 cattle, you may make mistakes. You may misrepresent the production record of an animal. It happens.

Section 5 of the bill deals with the removal of livestock from within the state without a brand inspection. The Senate committee did improve the bill by amending it to allow for medical treatment. But how about a fifteen-year-old kid going to the neighbors to brand? Hauling his own horse. You may say that is fine, it would just be a misdemeanor. A Class A misdemeanor. But twenty years later, that young man gets picked up for hauling a bull to a pasture he now owns across the line. His own bull. That second time is felony.

Many producers own land on both sides of the state line. You may be hurrying hauling bulls to the pasture. You maybe had a neighbor that called up and needed help because his calves broke out during the night. You don't think of calling a brand inspector. You

saddle up, load up, and go to help. This should not be something you have to worry about the same felony charge as someone who stole the horse and crossed the state line. A roper or barrel racer who did not realize they needed a brand inspection should not be faced with this kind of penalties.

Under this bill, we are making honest ranchers, who maybe made a mistake with their paperwork; face a possible sentence of five years in the penitentiary, and a five thousand dollar fine. That is wrong.

The job of the brand inspectors should be to make honest people out of criminals, not criminals out of honest people.

We hope the committee would look favorable upon some amendments to do what we think the bill intended. Make it easier to prosecute criminals for theft. That is what we all want.

Respectfully yours,

Rose Hansen  
Bill Meyer  
Bob Hansen  
Ralph Koskane  
J. D. Owen  
Douglas G. Boyce  
David Bice  
R. L. Ed. Helms  
Laurie Smith  
Allen Greene  
Oscar Meyer  
Jerry Jeff  
John Johnson  
David Johnson  
Edward T. Drake  
David Nelson  
Ted Vockert

U.S. DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
**EQUINE INFECTIOUS ANEMIA LABORATORY TEST**  
(VS Memorandum 555.8)

SERIAL NO.

1. ACCESSION NUMBER

2. DATE BLOOD  
DRAWN**B 1539633****07-294****02-08-07**

Forms Without Adequate Descriptions Of The Horse and Complete Addresses Including Zip Codes, Counties, and Telephone Numbers Will Not Be Processed.

3. REASON FOR TESTING <input type="checkbox"/> Market <input type="checkbox"/> Change of Ownership <input type="checkbox"/> Show <input type="checkbox"/> Retest <input type="checkbox"/> First Test <input type="checkbox"/> Export		7. NAME AND ADDRESS OR STABLE/MARKET (Please print or type) <b>SAME 958</b>	
4. GEOGRAPHIC INFORMATION SYSTEMS (GIS) (ddmmvvv)	5. VETERINARY LICENSE OR ACCREDITATION NO. <b>962</b>	6. TEST TYPE <input type="checkbox"/> AGID <input checked="" type="checkbox"/> ELISA	
8. NAME AND ADDRESS OF OWNER (Please print or type)  Zip Code <b>58341</b> County <b>NOVA</b>		9. NAME AND ADDRESS OF VETERINARIAN (Please print or type) <b>Dr Richard Lagasse</b> <b>107- INDUSTRIAL PARK RD</b> <b>RUQUBY AID</b> Zip Code <b>58368</b> Tel No. <b>701-741-5774</b> County <b>PINE</b>	

## CERTIFICATION OF FEDERALLY ACCREDITED VETERINARIAN

I certify the specimen submitted with this Form was drawn by me from the horse described below on the date indicated above.

10. SIGNATURE OF FEDERALLY ACCREDITED VETERINARIAN <i>Richard Lagasse</i>	11. TYPE OR PRINT SIGNATURE NAME <b>Richard Lagasse</b>	12. SIGNATURE DATE <b>2-8-07</b>
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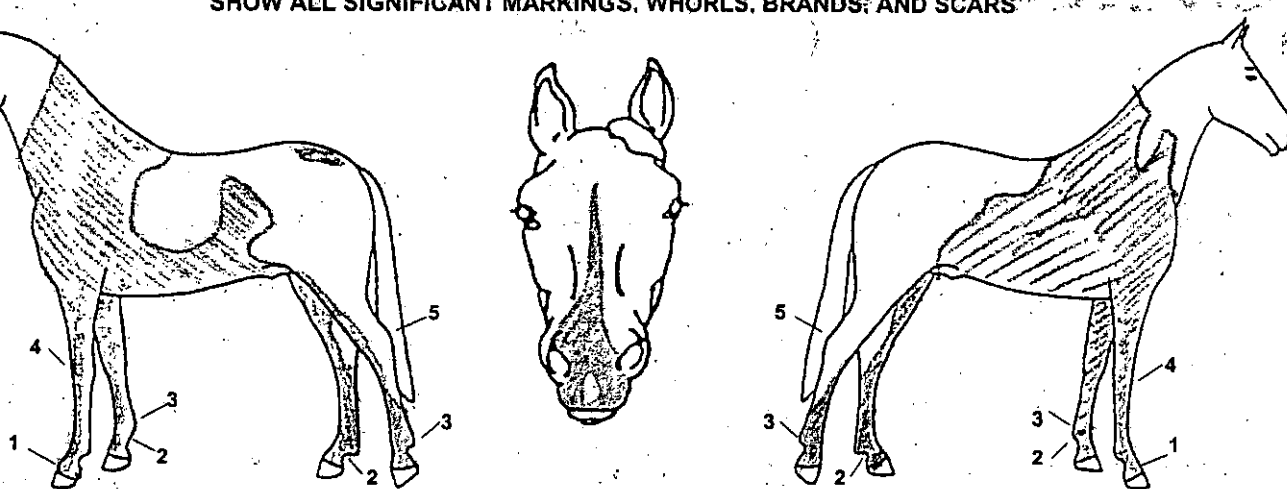
## CERTIFICATION OF OWNER OR OWNER'S AGENT

I certify that I have examined this form and, to the best of my knowledge and belief, this form is true, correct and complete.

13. SIGNATURE OF OWNER OR OWNER'S AGENT	14. TYPE OR PRINT SIGNATURE NAME	15. SIGNATURE DATE
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16. Tube No.	17. Official Tag No.	18. Tattoo/Brand	19. Name of Horse	20. Color <b>Grullo</b>	21. Breed <b>American Paint Horse</b>	22. Electronic I.D. No.	23. Age or DOB <b>3/1/00</b>	24. Sex <b>F</b>	M - Male F - Female G - Gelding N - Neuter
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SHOW ALL SIGNIFICANT MARKINGS, WHORLS, BRANDS, AND SCARS



1 - Coronet, 2 - Pastern, 3 - Fetlock, 4 - Knee, 5 - Hock

## NARRATIVE DESCRIPTION AND REMARKS

25. HEAD <b>long strip, large snip</b>	26. OTHER MARKS AND BRANDS	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>RECEIVED</b>   <b>FEB 15 2007</b>           BOARD OF ANIMAL HEALTH       </div>
27. LEFT FORELIMB <b>white</b>	28. RIGHT FORELIMB <b>white</b>	
29. LEFT HINDLIMB <b>sock</b>	30. RIGHT HINDLIMB <b>sock</b>	

## FOR LABORATORY USE ONLY

31. LABORATORY NAME/CITY/STATE <b>Mountain Valley Vet</b> <b>Siemarch No</b>	32. DATE RECEIVED <b>2-9-07</b>	33. DATE REPORTED OUT <b>2-9-07</b>	34. TEST RESULTS <input type="checkbox"/> Negative <input type="checkbox"/> Positive <input type="checkbox"/> AGID <input checked="" type="checkbox"/> ELISA
35. SIGNATURE OF TECHNICIAN <b>B. Voigt</b>		36. REMARKS	

Falsification of this form or knowingly using a falsified form is a criminal offense and may result in a fine of not more than \$10,000 or imprisonment for not more than 5 years or both (U.S.C. Section 1001).



**CERTIFICATE OF VETERINARY INSPECTION**  
NORTH DAKOTA DEPARTMENT OF AGRICULTURE  
STATE BOARD OF ANIMAL HEALTH  
SFN 50913-1 (3-00)

No. 45- 645742

THIS CERTIFICATE IS VALID FOR 30 DAYS

1. Name of Consignor/Owner		4. Name of Consignee		7. Brand Inspection Number S. 03726		10. PERMIT NO.	
2. Address		5. Address		8. Carrier Name Consignee		11. Date Inspected 1/25/07	
3. Origin Address (If Different From Above)		6. Destination Address (If Different From Above) Center City, MN 55102		9. Address			
12. Species <input checked="" type="checkbox"/> Cattle <input type="checkbox"/> Horses <input type="checkbox"/> Sheep <input type="checkbox"/> Swine		13. Number of Animals Shipped		15. Purpose of Movement <input type="checkbox"/> Breeding <input type="checkbox"/> Feeding/Grazing <input type="checkbox"/> Show <input type="checkbox"/> Slaughter <input type="checkbox"/> Other		16. Area Status <input type="checkbox"/> TB Free <input type="checkbox"/> TB Mod. Accred. <input type="checkbox"/> Brucellosis Free <input type="checkbox"/> Brucellosis A <input type="checkbox"/> Other	
14. ORIGIN OF SHIPMENT Market/County F-M 11095		17. Herd or Flock Status <input type="checkbox"/> Accredited Herd No. <input type="checkbox"/> Certified Herd No. <input type="checkbox"/> Validated Herd No. <input type="checkbox"/> Qualified <input type="checkbox"/> Other		18. HERD TEST DATES 1. 2. 3.		19. VACCINATION and/or For Date and Product	
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NDCC, 12.1-32-01

## NORTH DAKOTA CENTURY CODE

## TITLE 12.1. CRIMINAL CODE

## CHAPTER 12.1-32. PENALTIES AND SENTENCING.

**12.1-32-01 Classification of offenses - Penalties..**

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1- 32-09, relating to extended sentences.

**Source:** S.L. 1973, ch. 116, § 31; 1975, ch. 116, § 23; 1979, ch. 177, § 2; 1995, ch. 134, § 1; 1997, ch. 132, § 1.

1 of 1 DOCUMENT

NORTH DAKOTA CENTURY CODE  
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\*\*\* THIS DOCUMENT IS CURRENT THROUGH THE 2005 SESSION \*\*\*  
\*\*\* ANNOTATIONS CURRENT THROUGH DECEMBER 18, 2006 \*\*\*

TITLE 12.1 Criminal Code  
CHAPTER 12.1-02 Liability and Culpability

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

*N.D. Cent. Code, § 12.1-02-02 (2006)*

**12.1-02-02. Requirements of culpability.**

1. For the purposes of this title, a person engages in conduct:

- a. "Intentionally" if, when he engages in the conduct, it is his purpose to do so.
- b. "Knowingly" if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.
- c. "Recklessly" if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 12.1-04-02, awareness of the risk is not required where its absence is due to self-induced intoxication.
- d. "Negligently" if he engages in the conduct in unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
- e. "Willfully" if he engages in the conduct intentionally, knowingly, or recklessly.

2. If a statute or regulation thereunder defining a crime does not specify any culpability and does not provide explicitly that a person may be guilty without culpability, the culpability that is required is willfully.

3. a. Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to those attendant circumstances specified in the definition of the offense, except that where the required culpability is "intentionally", the culpability required as to an attendant circumstance is "knowingly".

b. Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required degree of culpability is required with respect to the result.

c. Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for grading.

d. Except as otherwise expressly provided, culpability is not required with respect to facts which establish that a defense does not exist, if the defense is defined in chapters 12.1-01 through 12.1-06; otherwise the least kind of culpability required for the offense is required with respect to such facts.

e. A factor as to which it is expressly stated that it must "in fact" exist is a factor for which culpability is not required.

4. Any lesser degree of required culpability is satisfied if the proven degree of culpability is higher.



5. Culpability is not required as to the fact that conduct is an offense, except as otherwise expressly provided in a provision outside this title.

**HISTORY:** S.L. 1973, ch. 116, § 2.

**NOTES:**

Applicability. Intentionally. Knowingly. Negligent Conduct. Sufficient Notice of Violation. Willful Conduct. -In General. -Violation of Injunction.

**Applicability.**

This section applies only to offenses or crimes described in Title 12.1. *City of Dickinson v. Mueller*, 261 N.W.2d 787 (N.D. 1977).

This section applies only to recodified Criminal Code and not to earlier statutes not repealed by recodification. *State v. North Dakota Educ. Ass'n*, 262 N.W.2d 731, 4 A.L.R.4th 724 (N.D. 1978).

Subsection (2) is only applicable to Title 12.1, and the willful culpability level will not be read into other chapters unless the legislature specifically states as such. *State v. Eldred*, 1997 ND 112, 564 N.W.2d 283 (1997).

District court did not commit error in failing to give an instruction on culpability, since culpability is a non-essential element of DUI because DUI is a strict liability offense. *State v. Glass*, 2000 ND 212, 620 N.W.2d 146 (2000).

Under N.D.C.C. § 12.1-02-01 and subsection (1) of this section, the level of culpability for an offense is analyzed at the time a person engages in the conduct which constitutes an offense. *State v. Jahner*, 2003 ND 36, 657 N.W.2d 266 (2003).

**Intentionally.**

Although this section may be directly applicable only to offenses or crimes described in Title 12.1, it was an appropriate source to look to in determining the definition of "intent" in section 57-38-45(3). *State v. Benson*, 376 N.W.2d 36 (N.D. 1985).

**Knowingly.**

"Knowingly" does not require absolute knowledge, but merely a firm belief, unaccompanied by substantial doubt. *State v. Kaufman*, 310 N.W.2d 709 (N.D. 1981).

Evidence was sufficient to sustain a criminal trespass conviction where defendant admitted that he received the divorce decree, which awarded his ex-wife the parties' home, the ex-wife testified that she informed defendant that he could not come to the house without her approval, and defendant admitted that he had been told not to come to the house without her approval. The ex-wife testified that she did not receive a phone call from defendant, but awoke and discovered him in her residence, and defendant admitted that he entered the house through the window. *State v. Bertram*, 2006 ND 10, 708 N.W.2d 913, 2006 N.D. LEXIS 6 (Jan. 31, 2006).

**Negligent Conduct.**

It is not necessary to show that defendant realized her conduct would in all probability produce death in order to establish that death was negligently caused; negligent conduct requires only showing of an unreasonable disregard of a substantial likelihood of existence of relevant facts or risks. *State v. Ohnstad*, 359 N.W.2d 827 (N.D. 1984).

In a case involving leaving the scene of an accident involving death under N.D.C.C. § 39-08-04, a motion for an acquittal under N.D.R.Crim.P. 29 was properly denied because an argument that defendant was not aware he had hit someone did not apply the negligence culpability standard under N.D.C.C. § 12.1-02-02; based on the age of a truck and problems that it was having, defendant should have at least gotten out and checked after he felt a bump while backing out of a parking lot near a bar. A witnesses' testimony regarding the amount of time defendant spent around his truck made the jury's conclusion that defendant acted negligently by leaving the scene even more reasonable because it seemed more likely he would have known a drunk man was in the vicinity and could have been the source of the bump, even if he did not think the man was behind the truck when he backed up. *State v. Jacob*, 2006 ND 246, - N.W.2d -, 2006 N.D. LEXIS 253 (Nov. 28, 2006).

**Sufficient Notice of Violation.**

The language of section 12.1-16-03, when read together with the definition of "negligently," is sufficiently explicit to enable a reasonable person to determine what type of conduct renders him liable under the statute. *State v. Tranby*, 437 N.W.2d 817 (N.D. 1989), cert. denied, 493 U.S. 841, 110 S. Ct. 128, 107 L. Ed. 2d 88 (1989).

**Willful Conduct.****-- -In General.**

A person acts "'Willfully' if he engages in the conduct intentionally, knowingly, or recklessly." Negligent conduct does not constitute willful conduct. *State v. Anderson*, 480 N.W.2d 727 (N.D. 1992).

**-- -Violation of Injunction.**

There was sufficient evidence for the jury to find that the defendant was guilty of disobeying a lawful preliminary injunction where the defendant evidenced knowledge of the injunction by her initial lawful demonstration, by her response to a warning, and by her testimony, where there was ample evidence that the defendant was part of a group that demonstrated other than quietly and peacefully, and where there were evidentiary conflicts and factual questions about the defendant's state of mind sufficient for the jury to infer a willfulness to violate the injunction. *State v. Franck*, 499 N.W.2d 108 (N.D. 1993).

**DECISIONS UNDER PRIOR LAW** Corruptly. Culpable Negligence. Negligence. Willful Resistance.**Corruptly.**

Even though an information did not charge that the bribery was done "corruptly", it did charge that the defendant did the acts "willfully, unlawfully, and feloniously" and this was the equivalent of an allegation that the money was given with corrupt intent. *State v. La Flame*, 30 N.D. 489, 152 N.W. 810 (1915).

**Culpable Negligence.**

As applied to the operation of a motor vehicle, culpable negligence implied a total lack of care defined as driving in a reckless and heedless manner with utter disregard for the lives and limbs of persons upon the highway. *State v. Gulke*, 76 N.D. 653, 38 N.W.2d 722 (1949), decided prior to the enactment of this section and N.D.C.C. section 12.1-16-02.

**Negligence.**

An instruction defining the terms "negligence" and "negligently" in the exact language of the statute was sufficient where no more specific instruction was asked. *Zilke v. Johnson*, 22 N.D. 75, 132 N.W. 640 (1911).

**Willful Resistance.**

A defendant could not be convicted of the willful resistance of a search warrant of which he had no notice or knowledge at the time the resistance was made. *State ex rel. Register v. McGahey*, 12 N.D. 535, 97 N.W. 865 (1904).

**Collateral References.**

Criminal Law 19-25.

21 Am. Jur. 2d, Criminal Law, § 129 et seq.

22 C.J.S. Criminal Law, §§ 31-45.

Intoxication: modern status of the rules as to voluntary intoxication as defense to criminal charge, 8 A.L.R.3d 1236.

Mental or emotional condition as diminishing responsibility for crime, 22 A.L.R.3d 1228.

Modern status of test of criminal responsibility-state cases, 9 A.L.R.4th 526.

Necessity and sufficiency of showing, in criminal prosecution under "hit and run" statute, accused's knowledge of accident, injury, or damage, 26 A.L.R.5th 1.

Adequacy of defense counsel's representation of criminal client - conduct occurring at time of trial regarding issues of diminished capacity, intoxication, and unconsciousness, 78 A.L.R.5th 197.

Adequacy of defense counsel's representation of criminal client - pretrial conduct or conduct at unspecified time regarding issues of diminished capacity, intoxication, and unconsciousness, *79 A.L.R. 5th 419*.

**BILL OF SALE** \_\_\_\_\_, North Dakota, \_\_\_\_\_ 20\_\_\_\_

SOLD TO \_\_\_\_\_

ADDRESS \_\_\_\_\_

No. HEAD	KIND	BRAND	LOCATION

I hereby covenant with the said grantee that I am the lawful owner of said livestock, that they are free from all incumbrance, that I have good right to sell the same. That I will warrant and defend the same against lawful claims and demands of all persons.

WITNESS \_\_\_\_\_

WITNESS \_\_\_\_\_

\_\_\_\_\_  
Seller.

NDSA Form 6 3-94 20M

**(Not valid unless witnessed)**  
\_\_\_\_\_

## BRAND LAW VIOLATIONS - PENALTY COMPARISON BETWEEN CURRENT LAW AND 2007 PROPOSED LEGISLATION

This memorandum examines various brand law violations identified in North Dakota Century Code (NDCC) Chapter 36-09 and compares the current penalties to those proposed in Senate Bill No. 2206 and Engrossed Senate Bill No. 2206.

NDCC Section - Activity	Current Penalty	SB 2206	Engrossed SB 2206
36-09-17 - Defacing brands and unlawfully branding	Class A misdemeanor	Class C felony	Class A misdemeanor (1st offense) Class C felony (2nd offense)
36-09-20 - Bills of sale	Infraction	Class A misdemeanor (1st offense) Class C felony (2nd offense)	Class A misdemeanor (1st offense) Class C felony (2nd offense)
36-09-20.1 - False proof of ownership	Class B misdemeanor	Class A misdemeanor (1st offense) Class B felony (2nd offense)	Class A misdemeanor (1st offense) Class C felony (2nd offense)
36-09-22 - Sale under false registration certificate	Class B misdemeanor	Class A misdemeanor (1st offense) Class B felony (2nd offense)	Class A misdemeanor (1st offense) Class C felony (2nd offense)
36-09-23 - Removal of livestock from state	Class B misdemeanor Class C felony (2nd offense within 15 years or 3rd offense)	Class A misdemeanor (1st offense) Class B felony (2nd offense)	Class A misdemeanor (1st offense) Class C felony (2nd offense)

ATTACH:1

**12.1-32-01. Classification of offenses - Penalties.** Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

# AQHA

AMERICAN QUARTER  
HORSE ASSOCIATION

## Certificate of Registration

Registered Name  
M READYON THERIGHT

Foaling Date  
APRIL 12, 2006

Registration Number

State/Country Foaled  
NORTH DAKOTA

Color

BAY

Sex

STALLION

Breeder

Identification Number

NORTH DAKOTA

Current Owner

NORTH DAKOTA

Date Acquired

APRIL 12, 2006

Date Issued

OCTOBER 04, 2006

### Markings

BLAZE. LEFT FORE PASTER WHITE. LEFT HIND STOCKING. NO OTHER MARKINGS.



This is to certify the above named and described horse has been registered with American Quarter Horse Association. This certificate is issued in sole reliance on written application submitted by the owner at time of foaling without further verification by AQHA. Ownership of this certificate is retained by AQHA, and issued upon express condition that AQHA has the continuing privilege to demand immediate return thereof for correction, cancellation, or any other official reason AQHA rules, and pending resolution of the matter, AQHA may retain possession thereof.



*Bill Bunn*  
Executive Vice President

ZIP CASH 2426538

DASH FOR CASH 1238058

ZIPP ZORO 1566665

HARD CASH DASH 1757128

JESSIES CASH 3661186

DOCS JESSIE JAMIE 2889748

ROCKET WRANGLER 0692535

FIND A BUYER TB T0120549

ZEVI TB T0149131

QUINCY HOP 0991961

DASH FOR CASH 1238058

LINDA TE 1350048

LYNX SILVER SOCKS 1910115

JESSIE JAMIE 0713528

The name at the top of this certificate listed as Current Owner is the present owner of this horse as shown on the records of American Quarter Horse Association. If ownership changes have occurred, up to three previous owners are listed below. All other ownership records are on file in the AQHA office.

(Physical address)  
1600 Quarter Horse Drive  
Amarillo, Texas 79104

Telephone: (806)376-4811

www.aqha.com

(Mailing address)  
P.O. Box 200  
Amarillo, Texas 79168

**Before purchasing, please be certain the photograph on the front of this Certificate of Registration matches the horse being purchased.**



**Seller's ID:** [REDACTED]

Daytime Telephone Number( )

**Gelded:** ☐ Yes \_\_\_/\_\_\_/\_\_\_ ☐ No  
Date(if known)



List month, day, and year horse actually changed ownership.

Buyer must have a current year membership in exact name listed above or pay a nonmember fee. Print buyer's name, which must not exceed 30 characters (letters, spaces and punctuation).

BUYER'S HOME TELEPHONE NUMBER \_\_\_\_\_ BUYER'S DAYTIME TELEPHONE NUMBER \_\_\_\_\_

Signature of [REDACTED] or an authorized agent. Authorization must be on file with AQHA.

<hr/> <b>Company Name</b>	<hr/> <b>Mailing Address</b>	<hr/> <b>Date of Auction</b>
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**PHOTOGRAPH REPLACEMENT:** If you would like to have the photograph on the front of the certificate replaced with a more current picture, please submit a 3/4 left or right side view photograph using AQHA's guidelines for taking photographs. There is a replacement fee for updating the photograph.

**SUBJECT TO CHANGE WITHOUT NOTICE**

- |   |      |   |      |
|---|------|---|------|
| <input type="checkbox"/> Transfer fee for current AQHA or AQHYA Member .....                    | \$15 | <input type="checkbox"/> OPTIONAL - Special Handling - two day service (in addition to regular fee) .....   | \$25 |
| <input type="checkbox"/> Transfer fee for nonmember who wishes to become a 12-month Member .... | \$50 | <input type="checkbox"/> OPTIONAL - Overnight Mail Service is available to those who requested special handling above. This fee is only applicable for service within the United States and does not include Saturday delivery charges. |      |
| <input type="checkbox"/> Transfer fee for nonmember who wishes to become a Youth Member .....   | \$30 | For service outside the U.S. and/or Saturday service, contact our office for current rates .....  | \$15 |

Dues payments may be deductible by Members as an ordinary and necessary business expense; however, contributions or gifts to the American Quarter Horse Association are not deductible as charitable contributions for federal income tax purposes. However, donations to the American Quarter Horse Foundation ARE tax deductible to the extent allowed by law. \$1 of your annual membership dues is designated for a subscription to *America's Horse* AQHA's publication for Members only.

Figure 1. Schematic representation of the experimental design. The subjects were divided into three groups: (a) control group, (b) group with a 10% reduction in the number of trials, and (c) group with a 20% reduction in the number of trials. The subjects were divided into three groups: (a) control group, (b) group with a 10% reduction in the number of trials, and (c) group with a 20% reduction in the number of trials.

Expires: \_\_\_\_\_ - \_\_\_\_\_ AQHA ID # (if known): \_\_\_\_\_

Child's Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Daytime Phone: ( ) \_\_\_\_\_

<input type="checkbox"/> <i>The American Quarter Horse Journal</i>	1 Year U.S.....	\$25	<input type="checkbox"/>
or	3 Year U.S.....	\$60	<input type="checkbox"/>
<input type="checkbox"/> <i>The American Quarter Horse Racing Journal</i>	1 Year Canada.....	\$50	<input type="checkbox"/>
	1 Year International.....	\$80	<input type="checkbox"/>
 <input type="checkbox"/> Both Magazines	1 Year U.S.....	\$40	<input type="checkbox"/>
	3 Year U.S.....	\$100	<input type="checkbox"/>
	1 Year Canada.....	\$81	<input type="checkbox"/>
	1 Year International.....	\$150	<input type="checkbox"/>



# LOCAL INSPECTION CERTIFICATE

**CIRCLE ONE**

**TOTALS**

U See U m  
Signature of Brand Inspector

H	S	Cash	PD	PT
F	M	RD	DP	

NDSA Form No. 54

***Make all checks payable to the North Dakota Stockmen's Association***