

2013 SENATE AGRICULTURE

SB 2158

2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2158
January 25, 2013
17755

Conference Committee

Hauge

To help protect livestock producers' investments when marketing their animals.

Minutes:

Written testimony

Chairman Miller opened the hearing on SB 2158 relating to bill of sale requirements in livestock transactions.

All committee members were present.

Senator Erbele, District 28, introduced SB 2158 saying that he chaired the Interim Agriculture committee and they were in charge of the rewrite. Their charge for the rewrite was not to make any substantiate changes. This change requires a hearing and if approved it will have to be attached to the rewrite. The bill deals with bills of sales and how we transfer cattle. It addresses how private sales are handled.

Julie Ellingson, Executive Director for the North Dakota Stockmen's Association (NDSA), spoke of their support for SB 2158 and explained the need for the bill and how it would work. **Written testimony #1**

Senator Larsen asked if it was normal practice for producers to rebrand the cows when buying them from another individual and are their many of these cattle transactions.

Julie Ellingson replied that there are several cattle transactions whether they are feeder cattle moving into feedlots or bred animal or cows that are traded. She added that there is no law that animals have to be branded in North Dakota but in some cases they are rebranded and some they are not. She said that the NDSA advocates branding for a good trace back system.

Senator Larsen asked if they were rebranding at the feedlots.

Julie Ellingson said that many feedlots cattle would be moving outside the state and would have different requirements. They would require a brand inspection. She said the situations that they are talking about in SB 2158 would be private transactions within the state of North Dakota.

Chairman Miller asked if the only way to keep things clear is to have a brand inspection done at each sale of the animal.

Julie Ellingson replied that the brand bill of sale works as a very good system in transferring ownership. The difficulty arises either in the secondary cases or when those whole lots aren't sold.

Steve Brooks, NDSA Director and cattle producer from Bowman, ND, testified in support of SB 2158. He said that more and more producers are not rebranding cattle especially in eastern ND. He said that they might own a cow for three or four years and when they come to an auction sale to sell it, and if the bill of sales wasn't handled properly, the money gets held at the auction until they can prove ownership. Oftentimes the brand inspectors are the ones who follow the paper trails. The first time bill of sales works good but often the second doesn't and SB 2158 should make things clearer.

Senator Luick asked him if he could think of any detriment of passing this bill.

Steve Brooks replied that there isn't any real detriment but distance could be an inconvenience for isolated ranchers. With that said, there are a lot of brand inspectors across the state.

No opposing testimony

Chairman Miller closed the hearing on SB 2158.

Senator Luick moved a **do pass** on SB 2158.

Senator Heckaman seconded the motion.

Roll call vote: 5-0-0

Senator Luick will be the carrier.

Date:
Roll Call Vote #:

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2158

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass

Motion Made By Senator Luick Seconded By Senator Heckman

Senators	Yes	No	Senator	Yes	No
Chairman Joe Miller	✓				
Vice Chairman Larry Luick	✓				
Senator Jerry Klein	✓				
Senator Oley Larsen	✓				
Senator Joan Heckaman	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Senator Luick

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

REPORT OF STANDING COMMITTEE

SB 2158: Agriculture Committee (Sen. Miller, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2158 was placed on the
Eleventh order on the calendar.

2013 HOUSE AGRICULTURE

SB 2158

2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

SB 2158
March 21, 2013
Job #20291

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to bill of sale requirements in livestock transactions

Minutes:

Attachments #1a and 1b

Julie Ellingson, North Dakota Stockmen's Association: (See attached #1a, 1b)
We don't have copies of bills of sale in our office.

(8:25)

Representative M. Nelson: What happens in the case of a sale of an estray?

Julie Ellingson: An estray is either an animal found without an owner; or, a brand hold where we are unable to prove ownership at the market level. Most of the checks held at the market are cleared up in the 60 days. If the owner isn't known after 60 days, they are an estray. We are hopeful we can eliminate some of those checks being held at the market.

Representative Fehr: Under Situation C where you were talking about rebranding and reissuing a bill of sale, why couldn't the second individual who is reissuing make a photocopy of the original Bill of Sale they received and attach it to their reissue and pass that forward?

Julie Ellingson: We require original documentation so there isn't fraud.

Representative Trottier: If there is no brand but there is a brucellosis tag, do they list that number?

Julie Ellingson: The bangs number is not listed on our local inspection sheets. In animal health or veterinarian certificates, they are recorded.

Representative Rust: This bill eliminates the secondary bill of sale. Every bill of sale is original.

Julie Ellingson: The intention of the bill is to continue to provide various opportunities for legal proof of ownership either through a local inspection or a bill of sale. The goal is to

retain the ability for a livestock seller to provide proof of ownership through a bill. The concern comes where the whole lot is not sold. This will make sure each person in line has the proper paper work. Also to make sure that producers aren't providing a fraudulent bill of sale by signing over the back or a new bill of sale with somebody else's brand which is illegal to do.

Julie Ellingson: We want to make sure the first person provides clear title to the second person. It gets messy when the original lot is not sold in entirety. This makes sure there is a mechanism where everybody in the chain has the piece of paper that they need so we don't need to hold their check.

Representative Rust: First example, buys 28, sells 20. What kind of documentation goes with it? The first person would keep the bill of sale for all 28?

Julie Ellingson: The first owner has 28 head of cattle with his brand. He will sell 28 cows with a bill of sale. The second owner sells 8 head and needs either a local inspection or a bill of sale. The problem comes when the second owner is passing on a bill of sale but doesn't have the right to make a new bill of sale with the first owner's brand because he is not the owner of the brand. That is an invalid ownership. The second owner can sign over the back of the first bill of sale but then he doesn't have proof of the original purchase.

The fix is to have the first owner provide a bill of sale. After that they need a local inspection with a clear title with a new piece of paper.

Chairman Dennis Johnson: The second inspection gives the second owner a new bill of sale on 20 head?

Julie Ellingson: The second owner will have title to 20 head and will have the correct paperwork for the 8 head to the third owner.

Representative Larson: How does the Bill of Sale begin?

Julie Ellingson: There is a standard Bill of Sale form. HB 1026 enumerates in statute the components of a Bill of Sale such as name, address, phone number, description, witnesses, etc. You can print off a form from our website. It is very similar to a title to a vehicle.

Representative Larson: If the third party splits half to a son, would everyone down the line need new inspection?

Julie Ellingson: The intention is for the first time and any transaction thereafter would need a new piece of paper.

Representative Larson: When the first owner gets the original bill of sale, could that have come from someone else?

Julie Ellingson: If those are purchased, he will have a proof of ownership.

Chairman Dennis Johnson: If you have 50 heifers to sell to a neighbor and they are not branded, do you get a third party to inspect them? How do you get a bill of sale for unbranded cattle that you raised?

Julie Ellingson: By law you need to provide a proof of ownership on any livestock transaction whether they are branded or not.

Chairman Dennis Johnson: How do you get a bill of sale when you raised them?

Julie Ellingson: You as the seller generate it. The other person is the disinterested witness who needs to verify it.

Chairman Dennis Johnson: That disinterested person can be a third neighbor?

Julie Ellingson: Yes, anyone who is not involved with the purchase of those animals.

Representative Rust: Line 5 says "if HB1026 doesn't become effective", if it does become effective, then the rest isn't needed?

Julie Ellingson: This component would alter one component of the brand chapters that you worked on for the rewrite. This will fit into the new language.

Representative Rust: Starting with line 7 it applies only to branded cattle. If they don't brand their cattle, how does that fit into this?

Julie Ellingson: There still is a proof of ownership requirement,

Chairman Dennis Johnson: Closed the hearing.

Representative Headland: I can see the bill is needed. Moved Do Pass.

Representative Trottier: Seconded the motion.

A Roll Call vote was taken: Yes 12, No 0, Absent 1. (Rep. Haak)

Do Pass carries.

Representative Nelson will carry the bill.

Date: 3/21/13

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2158**

House **Agriculture** Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Consent Calendar
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Headland Seconded By Rep. Trottier

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman John Wall	X		Rep. Jessica Haak	AB	
Rep. Wesley Belter	X		Rep. Marvin Nelson	X	
Rep. Alan Fehr	X				
Rep. Craig Headland	X				
Rep. Joe Heilman	X				
Rep. Dwight Kiefert	X				
Rep. Diane Larson	X				
Rep. David Rust	X				
Rep. Wayne Trottier	X				

Total Yes 12 No 0

Absent 1

Floor Assignment Rep. Nelson

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

REPORT OF STANDING COMMITTEE

SB 2158: Agriculture Committee (Rep. D. Johnson, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2158 was placed on the
Fourteenth order on the calendar.

2013 TESTIMONY

SB 2158

SB 2158

Good morning, Chairman Miller and members of the Senate Agriculture Committee. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

The Stockmen's Association stands in support of SB 2158, as it will help protect livestock producers' investments and save many of them unnecessary hassle and headaches when it comes time to market their animals. The idea for SB 2158 was brought forth by Stockmen's members at our recent convention in Fargo and was passed as a resolution during our annual membership meeting there.

Here's the situation: State law requires livestock sellers to provide their livestock buyers with proper proof of ownership. When they are selling privately, within the state of North Dakota, that proof of ownership can come in one of two forms: a local inspection certificate, issued by a brand inspector, or a bill of sale, issued by the seller. Either form is perfectly and equally fine, if properly completed.

If I can ask you to now turn your attention to the attached diagram, I will walk you through a couple of different scenarios, starting on the top with Situation A, to give you a better understanding of the challenges that exist with the use of secondary bills of sale. Let's say Rancher 1 sells 28 cows to Rancher 2 and gives him a properly completed bill of sale. That serves as proper title to those 28 animals. If Rancher 2 keeps eight of those cows and sells the rest to Rancher 3, he too is required to provide Rancher 3 with some type of proof of ownership. What sometimes happens, under current statute, is that Rancher 2 signs over the bill of sale he received from Rancher 1 and gives it to Rancher 3. The problem is that bill of sale indicates that Rancher 3 has 28 head of cattle, when he really has only 20. Rancher 2 is left with no proof of ownership on the eight head he retained and will have his check held at the market because he is unable to provide proper proof of ownership on the cattle wearing Rancher 1's brand. Meanwhile, Rancher 3 has a bill of sale indicating 28 head of cattle, when he really has only 20, which

could put Rancher 1 at risk if Rancher 3 was unscrupulous and wanted to steal eight additional head from Rancher 1. On the flipside, Rancher 2 sometimes retains his bill of sale and leaves Rancher 3 without one, which will hold up Rancher 3's proceeds when he goes to sell and give him the crooked frowny face like on the illustration.

In Situation B, Rancher 1 sells 28 cows to Rancher 2 and gives him a proper bill of sale. Then, Rancher 2 decides to keep eight head and sell the remaining 20 head to Rancher 3. In many cases, Rancher 2 decides to issue a new bill of sale to Rancher 3 for the 20 remaining head, trying to do the right thing and abide by the law, but issues a bill of sale with someone else's legal brand on it, which makes this new bill of sale fraudulent and invalid. Consequently, when Rancher 3 wants to market some or all of those purchased animals, he does not have the paperwork he needs and his check will be held at the market.

In Situation C, Rancher 2 might rebrand the cattle with his own legally registered brand and give Rancher 3 a bill of sale with that brand indicated on it, but, when Rancher 3 goes to sell them, he may be asked to prove ownership on the original brand, and he does not have the paperwork to show how he came by them with Rancher 1's brand. His check could be held until he provides proper proof of ownership.

And, finally, in Situation D, Rancher 1 could provide proof of ownership for Rancher 2 by having a local inspection done. Similarly, Rancher 2 could have a local inspection done when he sells the 20 head of cows to Rancher 3, and the inspector would provide Rancher 3 with clear title and Rancher 2 with a cutback to reflect the animals that are sold and the animals remaining in his herd with Rancher 1's brand on it.

So, what SB 2158 proposes to do is to eliminate the use of a secondary bill of sale, to 1) make certain that livestock owners' investments are protected through a proper proof of ownership and 2) to eliminate the hardship and hassle of having a brand hold.

It is important to note that SB 2158 would not eliminate the use of a bill of a sale for the first transaction. It would, however, give producers additional protection – wherever they are in the transaction chain.

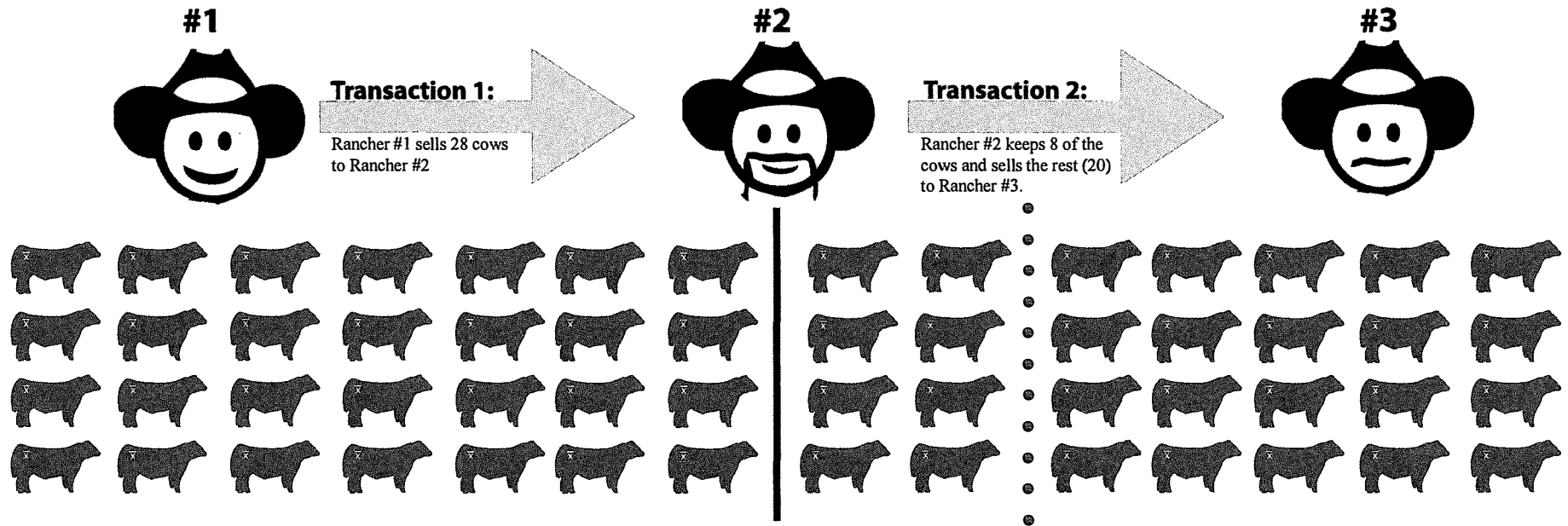
An added plus for those who would be utilizing a local inspection instead of a bill of sale is that the papers are archived in our Bismarck office and that copies of those local inspections can be retrieved and duplicated for a producer if he or she loses the original. Copies of bills of sale are not filed with our office, so there is no way for the NDSA to assist in locating a lost copy under the current structure.

For these reasons, Mr. Chairman and committee members, the Stockmen's Association stands in support of SB 2158 and asks for your favorable consideration of it.

I would be happy to answer any questions that you have, or refer you to Stan Misek or Fred Frederikson, our chief brand inspector and east river fieldman, respectively, who encounter situations like these each day.

SB 2158 protects producers' investments

Situation A. Under current code: Rancher #1 sells 28 cows to Rancher #2 and gives #2 a properly completed bill of sale. #2 has proper title to those 28 cows. He keeps 8 cows but sells 20 cows to Rancher #3 and signs the back of the bill of sale to transfer ownership of the cattle. Rancher #3 now holds proof of ownership for the entire 28 head (although he, in reality, only owns 20 head). Rancher #2 still owns 8 head from the original purchase, but no longer holds the proof of ownership (title). His money will be held at the market if he attempts to sell the remaining 8 head. #1 is open to risk because #3 has a document that shows he owns 28 head of cows with #1's brand on them.



Situation B. Rancher #1 sells 28 cows to Rancher #2 and gives #2 a properly completed bill of sale. #2 has proper title to those 28 cows. He keeps 8 cows, but sells 20 cows to Rancher #3. Rancher #2 creates a new bill of sale using #1's brand. This is a fraudulent and invalid bill of sale, because Rancher #2 does not own the brand he listed on the bill of sale. Producer #3 does not have proper proof of ownership and his money will be held at the auction market.

Situation C. What if #2 re-brands the cattle and gives #3 a new bill of sale using the brand that #2 owns? This is fine. However, when #3 goes to sell them, he may be asked to prove ownership on the cattle (provide documentation for both brands) and would be unable to do so. His money would be held until he provided proper proof of ownership.

Situation D. What if #2 asked for a local inspection on the cows he bought from #1? That is fine. There will be a paper trail in Bismarck in the event that #2 loses his before he sells the 20 head to #3. #3 could ask #2 for a local inspection on the 20 head, and that would provide proper proof of ownership, too. Again, the sale records would be available in Bismarck, if #3 loses his.

*Not legal unless
Bill of Sale is fully
completed by seller.*

NDCC 36-09-20

BILL OF SALE

NUMBER of HEAD	KIND	BRAND	BRAND LOCATION

DATE: _____

SELLER: _____

BUYER: _____

No. HEAD _____

BRAND _____

AMT. PAID \$ _____

Sold To

Address

_____, 20_____
Date

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, and I am the registered owner of the brand listed above. All instruments of payment must clear purchaser's bank. Failure of such instrument(s) clearance shall constitute a retention of ownership interest by seller.

Witness Signature: _____ **Seller Signature:** _____

Witness Print: _____ **Seller Print:** _____

Address: _____ **Address:** _____

#1

SB 2158

#1/a
3/21/13
Julie Ellingson

Good morning, Chairman Johnson and members of the House Agriculture Committee. For the record, I am Julie Ellingson and I represent the North Dakota Stockmen's Association.

The Stockmen's Association stands in support of SB 2158, as it will help protect livestock producers' investments and save many of them unnecessary hassle and headaches when it comes time to market their animals. The idea for SB 2158 was brought forth by Stockmen's members at our recent convention and passed as a resolution during our annual membership meeting.

Here's the situation: Just like with a title to a vehicle, state law requires livestock sellers to provide buyers with the proper proof of ownership. When they are selling privately, within the state of North Dakota, that proof of ownership can come in one of two forms: a local inspection certificate, issued by a brand inspector, or a bill of sale, issued by the seller. Either form is perfectly and equally fine, if properly completed.

If I can ask you to now turn your attention to the attached diagram, I will walk you through a couple of different scenarios, starting on the top with Situation A, to give you a better understanding of the challenges that exist with the use of secondary bills of sale. For purposes of this example, let's say Rancher 1 is Rep. Belter; Rancher 2 is Rep. Headland; and Rancher 3 is Rep. Kiefert.

Let's say Rep. Belter sells 28 cows to Rep. Headland and gives him a properly completed bill of sale. That serves as proper title to those 28 animals. If Rep. Headland keeps eight cows and sells the rest to Rep. Kiefert, he too is required to provide Rep. Kiefert with some type of proof of ownership. What sometimes happens is that Rep. Headland signs over the bill of sale he received from Rep. Belter and gives it to Rep. Kiefert. The problem is that bill of sale indicates that Rep. Kiefert has 28 head of cattle, when he really has only 20.

Rep. Headland is left with no proof of ownership on the eight head he retained and will have his check held at the market because he is unable to provide proper proof of ownership on the cattle wearing Rep. Belter's brand. Meanwhile, Rep. Kiefert has a bill of sale indicating 28 head of cattle, when he really has only 20, which could put Rep. Belter at risk if Rep. Kiefert was unscrupulous and wanted to steal eight head from Rep. Belter. On the flipside, Rep. Headland might retain his bill of sale and leave Rep. Kiefert without one, which will hold up Rep. Kiefert's proceeds when he goes to sell and give him the crooked frowny face, like on the illustration.

In Situation B, Rep. Belter sells 28 cows to Rep. Headland and gives him a proper bill of sale. Then, Rep. Headland decides to keep eight head and sell the remaining 20 head to Rep. Kiefert. Rep. Headland might decide to issue a new bill of sale to Rep. Kiefert for the 20 remaining head, trying to do the right thing and abide by the law, but issues a bill of sale with someone else's legal brand on it, which makes this new bill of sale fraudulent and invalid. Consequently, when Rep. Kiefert wants to market some or all of those purchased animals, he does not have the paperwork he needs and his check will be held.

In Situation C, Rep. Headland might rebrand the cattle with his own legally registered brand and give Rep. Kiefert a bill of sale with that brand indicated on it, but, when Rep. Kiefert goes to sell them, he may be asked to prove ownership on the original brand, and he does not have the paperwork to show how he came by them with Rep. Belter's brand. His check could be held until he provides proper proof of ownership.

And, finally, in Situation D, Rep. Belter could provide proof of ownership for Rep. Headland by having a local inspection done. Similarly, Rep. Headland could have a local inspection done when he sells the 20 head of cows to Rep. Kiefert, and the inspector would provide Rep. Kiefert with clear title and Rep. Headland with a cutback to reflect the animals that are sold and the animals remaining in his herd wearing Rep. Belter's brand.

What SB 2158 proposes to do is to eliminate the use of a secondary bill of sale to 1) make certain that livestock owners' investments are protected through a proper proof of ownership and 2) to eliminate the hardship and hassle of having a brand hold.

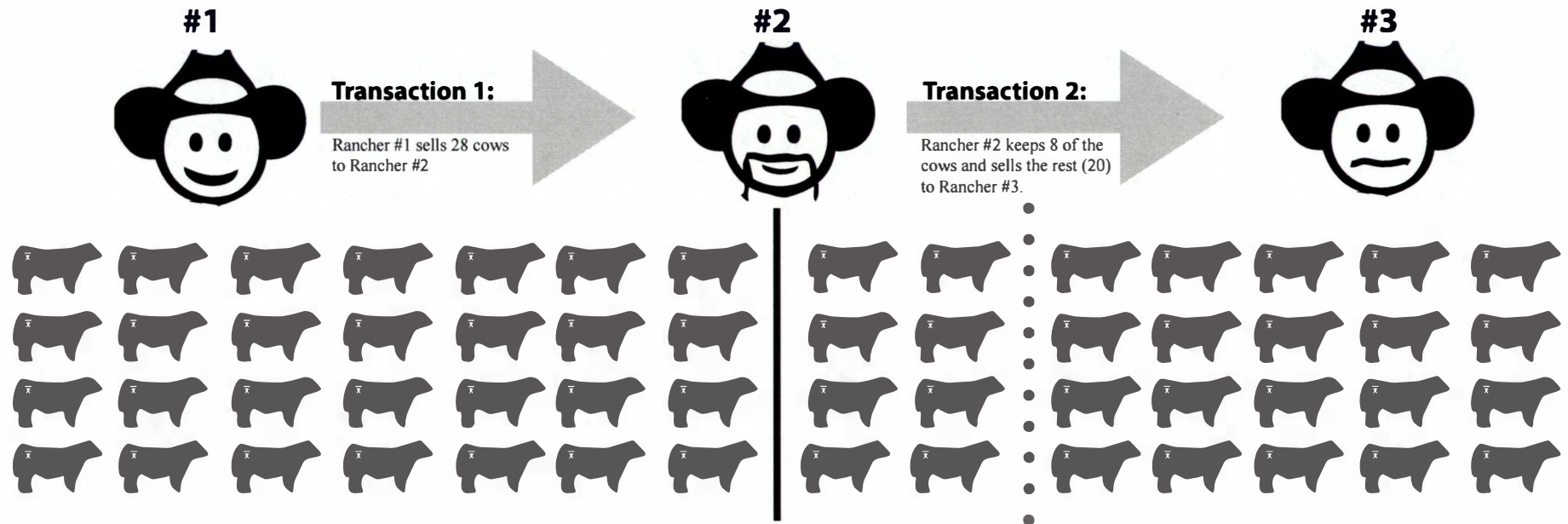
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An added plus for those who would be utilizing a local inspection instead of a bill of sale is that the papers are archived in our Bismarck office and that copies of those local inspections can be retrieved and duplicated for a producer if he or she loses the original. Copies of bills of sale are not filed with our office, so there is no way for the NDSA to assist in locating a lost copy under the current structure.

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SB 2158 protects producers' investments

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Situation B. Rancher #1 sells 28 cows to Rancher #2 and gives #2 a properly completed bill of sale. #2 has proper title to those 28 cows. He keeps 8 cows, but sells 20 cows to Rancher #3. Rancher #2 creates a new bill of sale using #1's brand. This is a fraudulent and invalid bill of sale, because Rancher #2 does not own the brand he listed on the bill of sale. Producer #3 does not have proper proof of ownership and his money will be held at the auction market.

Situation C. What if #2 re-brands the cattle and gives #3 a new bill of sale using the brand that #2 owns? This is fine. However, when #3 goes to sell them, he may be asked to prove ownership on the cattle (provide documentation for both brands) and would be unable to do so. His money would be held until he provided proper proof of ownership.

Situation D. What if #2 asked for a local inspection on the cows he bought from #1? That is fine. There will be a paper trail in Bismarck in the event that #2 loses his before he sells the 20 head to #3. #3 could ask #2 for a local inspection on the 20 head, and that would provide proper proof of ownership, too. Again, the records would be available in Bismarck, if #3 loses his.

*Tulie Ellingson #16
3/21/13*