

2009 HOUSE AGRICULTURE

HB 1491

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1491

House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8812

Committee Clerk Signature

Re Mae Kueh

Minutes:

Chairman Johnson, Bill Sponsor: This is the brand bill that we introduced for the Stockmen's Assn. We had this before us last session. I think we have a product this time that will meet the expectations of everyone around the table here. We've changed some of the penalties and fines. **(Penalties attached #1)**

Julie Ellingson, ND Stockmen's Assn.: Gave history of brands and bill from previous session. Suggested changes to bill:

Use "willfully" as the adverb in front of violations.

In the legal world, "willfully" means that a person engages in the conduct intentionally, knowingly, or recklessly. **(Written testimony attached #2)**

Representative Belter: Does this change anything for registered feedlots?

Julie Ellingson: No

Representative Mueller: I remember this bill from last time. One of the discussions had to do with someone taking their prize steer to a fair that is in South Dakota. Does the bill require in that instance that brand inspection be done?

Julie Ellingson: For those animals leaving the state, they need a brand inspection.

Exemptions that you refer to are on page 4. If you need to transport an animal for emergency

care. If you have a cow, for example, that is in need of a C-section and you need to go to Sidney, MT, we don't want you to call the brand inspector. Take care of the animal and then call the office. The other exemption has to do with out-of-state markets. We do have open markets that are located in the perimeter area. The ND Stockmen's Assn. has a contracted employee to provide routine inspections because we have such a large volume of ND producers that utilize those markets.

Representative Mueller: They're going to be guilty of an infraction if a school kid takes his prize steer to the State Fair out of state?

Julie Ellingson: Our intention is not to punish people who make honest mistakes. Only when you are a multiple offender are there significant penalties.

Representative Vig: How many violations?

Julie Ellingson: Referred question to Darryl Howard

Darryl Howard, Chief Brand Inspector, ND Stockmen's Assn.: We have approximately 30-40 operators that leave the state without inspection every year. The ones that actually get sent through the legal process are about 3 or 4 per year. We're not after a young person starting out in his show steer career. Inspection shows ownership. Once you get to your destination that inspection is the only proof of ownership that you have for that animal. They may not have the brand books of all the western states. It is an important document.

Representative Belter: Back to Representative Mueller's question. If somebody is taking their calf across the state line, are we saying that animal needs to be inspected whether it has a brand or not.

Darryl Howard: Yes they do.

Representative Belter: These people would be in violation if they don't call you.

Darryl Howard: They would only be in violation if they didn't get their inspection before they left.

Representative Kingsbury: Going back to crossing the state line with a sick animal. It's on a weekend. Is a phone call to the office enough?

Darryl Howard: Yes, but take care of animal first. Then call once you are home.

Representative Belter: If the animal is not branded, then you inspect it and the person takes it across state line to a fair. Isn't the inspection meaningless because there is no identification to it. What good is the inspection?

Darryl Howard: We don't know that there isn't a brand on the animal until it has been inspected. Through the course of the inspection, it is sexed, colored, and listed with any markings or tags.

Representative Vig: Do you get involved with DNA of an animal as well?

Darryl Howard: We have in the past but not for quite a while.

Representative Uglem: As far as crossing the state line with a 4-H animal, does this change that law? It is illegal now and with the bill?

Darryl Howard: Correct.

Vice Chairman Brandenburg: I remember this bill from last session. What is the difference of this bill?

Julie Ellingson: Our goal is to punish the bad, the ones that are ripping off cattle producers. We wanted to present a product that was palatable that you would be able to defend to your constituents. We modified from our last proposal, removed some that had been proposed before as felonies. We have the two tier penalty. There is an opportunity for learning. If we have a multiple-time offender, that's when we take it to the next level. The basic changes have

to do with modifying penalty levels from last time and inserted the word "willfully" which makes prosecuting more difficult.

Vice Chairman Brandenburg: Who would impose those penalties?

Darryl Howard: The States Attorney. We would have to initiate action. There is a whole list of people this has to get through in order to carry out a penalty.

Vice Chairman Brandenburg: So we're going through the judicial process. We're not giving this authority to the Stockmen's Assn.

Chairman Johnson: We tried to address those concerns in drafting the bill. The only concern we had was on the last page on line 11. The time frame—the second time in "fifteen" years would be changed to "five."

Representative Belter: The veterinary service on the eastern edge of the state at the last session expressed concern because of the large amount of interstate traffic with horses. Has anything been changed?

Julie Ellingson: I don't recall that. Emergency medical treatment would be on line 1, page 4.

Darryl Howard: You were concerned about the folks in Minnesota coming to North Dakota. The veterinarians along the eastern part of the state have the ability to inspect livestock on our behalf. It's not a problem.

Representative Froelich: Page 4, line 1. "Emergency medical treatment by a licensed veterinarian." A horse chiropractor is not a licensed veterinarian. Could we say instead of "licensed veterinarian" to say "for medical treatment"?

Darryl Howard: It is emergency treatment?

Representative Froelich: Could be.

Vice Chairman Brandenburg: We'll talk about that.

Opposition: None

Vice Chairman Brandenburg: Closed the hearing.

Chairman Johnson: I'd like to hear an answer on Representative Froelich's concerns. Do you have a problem if we amend that?

Julie Ellingson: We would prefer to leave the language as is. Emergency medical treatment explains that. We don't want that area to be muddled up.

Representative Froelich: I'll have to give it some thought.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1491

House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009 (**Committee Work**)

Recorder Job Number: 8832

Committee Clerk Signature



Minutes:

Representative Froelich: Moved to accept amendment with LC#90812.0102

Representative Boe: Seconded

Voice vote taken. Passed

Representative Kingsbury: What about the chiropractor and the question of emergency medical treatment?

Representative Froelich: I see the point made by the Stockmen's Assn. When moving cattle for testing, etc. it's often not a medical emergency. I would hope the Brand Division wouldn't get too rambunctious. I don't like the idea of penalizing people for taking their own livestock out of state. I live along the North Dakota/South Dakota border. I have neighbors that call to help work cattle and they are in South Dakota. I may have a horse brand inspected. When I want to take that horse, what if it is lame? If I take a different horse that isn't brand inspected, I'm in violation of the law if I go across the state line. I'm concerned about the border.

Representative Boe: What would happen if we had a 24-48 hour permit?

Representative Froelich: By law you have to have your livestock branded to take them out of state.

Representative Mueller: If I heard the testimony correctly, they are not going to be out looking for people.

Representative Mueller moved Do Pass as amended.

Representative Uglem seconded.

A Roll Call vote was taken. **Yes: 12, No: 0, Absent: 1**, (Representative Belter).

Representative Froelich will carry the bill.

VK
2/5/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1491

Page 4, line 11, overstrike "fifteen" and insert immediately thereafter "five"

Renumber accordingly

2/5/09

Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1491

House Agriculture☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Rep. Freulich Seconded By Rep. Roe

[illegible]

Total (Yes) _____ No _____

Absent _____

Bill Carrier _____

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

Change 15 to 5.

Date: 2/5/09Roll Call Vote #: 12009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1491House Agriculture Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 90812-0102Action Taken ☒ Do Pass ☐ Do Not Pass ☒ AmendedMotion Made By Rep. Mueller Seconded By Rep. Uglem

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	✓		Tracy Boe	✓	
Mike Brandenburg, Vice Chair	✓		Rod Froelich	✓	
Wesley R. Belter	AB		Richard Holman	✓	
Joyce M. Kingsbury	✓		Phillip Mueller	✓	
David S. Rust	✓		Benjamin A. Vig	✓	
Mike Schatz	✓				
Gerry Uglem	✓				
John D. Wall	✓				

Total (Yes) 12 No 0Absent 1Bill Carrier Rep. Froelich

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

REPORT OF STANDING COMMITTEE

HB 1491: 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). HB 1491 was placed on the
Sixth order on the calendar.

Page 4, line 11, overstrike "fifteen" and insert immediately thereafter "five"

Renumber accordingly

2009 SENATE AGRICULTURE

HB 1491

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1491

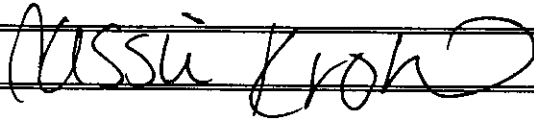
Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 12, 2009

Recorder Job Number: 10820

Committee Clerk Signature



Minutes:

Sen. Flakoll opened the hearing on HB 1491, a bill relating to penalties imposed for violation of brand laws. All members (7) were present.

Rep. D. Johnson, district 15, testified in favor of the bill.

Rep. D. Johnson- What we have before us today is a bill that we have seen last session and is brought back to us this session, there are some concerns that some had and it does a good job I believe in giving the brand inspectors some rule for using brand laws that they are confronted with.

Sen. Behm- do we have enough brand inspectors?

Rep. Johnson- I have not followed it that close so I am not sure, I know they are doing a good job with what they have.

Julie Ellingson, ND stockmen's association, testified in favor of the bill. See attached testimony, attachment #1.

Sen. Klein- We modified the penalty levels over previous versions, do you want to tell us kind of what the penalty levels are?

Julie- The bill that was introduced last session had a lot of concerns about the penalties, so there has been modifications and have made 2 tiers so that people can learn about what the

laws and expectations are and if they are a repeat offender it gives us more leverage with the law to process the people that are willfully violating it.

Fred Frederikson, ND stockmen's association, testified in favor of the bill and stood to answer questions that the committee had.

Fred- I have been a fieldsman for the ND stockmen's association for about 11 years now. I run into a lot of the problems that we are trying to get resolved on these bills. We have dealt with a lot of these cases. We now have the highway patrol helping check brand papers as well when they pull someone over.

Sen. Flakoll- on page 1 line 14 and 15, what do you guys deem as a mark?

Fred- some people that do not brand ear notch or put an ear tag in. In my book a tag is only as good as a person's Knife.

Sen. Klein- do you find a lot of cases out there that this law change will really help?

Fred- for a person to get charged out they have to be turned in, we have to get the public educated and then confront the person with a photo copy of the law and we bring all the information of the rules they have broke, I sit and talk with the person and if it was just a accident I just write them a warning citation, if they just say that they did it and that there is nothing that we can do about it we just send them to court.

Sen. Flakoll- does this still apply if they are going to a slaughter facility?

Fred- no they still have to be inspected.

No opposition to the bill.

Sen. Flakoll closed the hearing.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1491

Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 13, 2009

Recorder Job Number: 10882

Committee Clerk Signature

Assu Krow

Minutes:

Sen. Flakoll opened discussion on HB 1491. Members present (6) yea (1) absent- **Sen.**

Behm.

Sen. Taylor motioned for a do pass and was seconded by **Sen. Heckaman**. **Sen. Taylor** was

designated to carry the bill to the floor.

Date: March 13, 09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1491

Senate Agriculture

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Taylor

Seconded By Heckaman

[illegible]

Total (Yes) 6 No 0
Absent 1 - Baker

Absent 1 - Behm

Floor Assignment Taylor

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

REPORT OF STANDING COMMITTEE (410)
March 16, 2009 1:13 p.m.

Module No: SR-47-4941
Carrier: Taylor
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1491, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1491 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1491

#1
Rep. D. Johnson
1491
2/5/09

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 persons sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that persons 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 years 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.

HB 1491

#2
1491
~~Amend~~
Julie Ellingson
2/5/09

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

The Stockmen's Association, as many of you know, got its start 80 years ago when a handful of western North Dakota ranchers banded together to put a stop to the chronic cattle rustling of the era. At their first meeting in 1929, they kicked in \$5 a person to build a reward for the information leading to the arrest and conviction of livestock thieves. That reward, which has grown to \$5,000 in some cases, still stands today and is indicative of our organization's commitment to keeping livestock criminals at bay.

And while the reward is helpful as a crime deterrent, it could be even more effective if coupled with the legislation we are discussing today.

It was at the prompting of our members that our organization worked with legislators to introduce HB 1491. At our annual convention three years ago, those grassroots members passed a resolution calling for increased penalties for violating livestock laws. They were frustrated that, even when there was plenty of evidence against livestock criminals, they often got off scott-free or almost scott-free, because state's attorneys were unwilling to prosecute the cases because these are designated as minor crimes and because they had to put their resources into other priorities before them.



Our members argue that while the penalties are small, the crimes are big – often representing thousands and thousands of dollars worth of livestock and, even more importantly, a family’s livelihood and legacy. Certainly, the value of cattle has changed since our laws were originally written, and certainly North Dakota’s current penalty structure is far milder than most all other brand states.

Our chief brand inspector, Darryl Howard, recently completed his term as the president of the International Livestock Identification Association. He and our two fieldmen, all who are licensed peace officers, have served in leadership capacities in related trade organizations and have seen the differences between the states. In Darryl’s words, “We don’t want it to be profitable to be a crook in North Dakota,” but right now, if he or she had to choose a venue, North Dakota would be a good one.



Darryl Howard has discussed the concept of this bill with the state’s attorneys association several times and earned the support of many of its members who agree that a change in penalties for brand law violations are warranted.

The bill addresses several laws, namely: defacing brands, unlawful branding, bill of sale maintenance, false proof of ownership, the sale of animals under false registration, marking changes and transportation outside the state without a brand inspection. You’ll notice that each law has a two-tiered penalty associated with it, with the first offense being the minor penalty and the second being the more significant offense. We believe this will give those in violation the



opportunity to learn from their mistakes and do better, or pay the consequences as a multiple-time offender.

Many of you remember a version of this bill being introduced and then failing during the last legislative session. At the time, opponents of the bill expressed concern over those who make honest mistakes being found guilty and being charged of significant crimes. Our organization's position was then as it is now: to penalize the bad actors, not the average producer who makes a mistake. It is standard procedure for our chief and his fieldmen to issue warning citations for first-time offenders. It gives them a chance to educate people about the state's livestock laws and why it is important that they are followed. They have no quotas to fill, but they have a commitment to protecting the state's domestic herds.

To make our intentions crystal clear, we made some significant modifications to the bill we posed to you two years ago. For instance, per the advice of Anita Thomas of the Legislative Council, we used the word "willfully" as the adverb in front of the violations. In the legal world, "willfully" means that a person engages in the conduct intentionally, knowingly, or recklessly, and is the strongest word we could have used to convey our intentions – strongest in the sense that prosecutors have the heaviest burden of proof when they must show that someone "willfully" did something. The prosecutors must show that the person in question knew what he or she was doing and knew that what he or she was doing was bad.

Also to make the bill more palatable, yet able to accomplish its original purpose of extending more ownership protection to the state's livestock producers, we modified the penalty levels over previous versions.

We also added in the descriptive phrase "for the purpose of deceiving others as to the animal's ownership" where applicable to further clarify the intent of the bill.

Many of you, like me, raise cattle as part of your living on operations that have been in your family for generations. This bill is designed to afford hardworking livestock producers protection for their beloved herds, to serve as a deterrent to would-be livestock criminals and to empower prosecutors who are committed to bringing them to justice.

In the 21st century, cattle rustling can mean stealing animals out of pens or pastures during the night like in the old western movies, or it can mean altering paperwork to defraud creditors and lay false claim to animals. Whatever the form, we ask for your help in putting a stop to it by beefing up North Dakota's livestock laws with your support of this bill.

I'd like to introduce NDSA Chief Brand Inspector Darryl Howard, who manages the state's brand inspection program. He or I would be happy to address any questions you may have.

North Dakota



STOCKMEN'S ASSOCIATION

407 SOUTH SECOND STREET
BISMARCK, NORTH DAKOTA 58504

Ph: (701) 223-2522

Fax: (701) 223-2587

e-mail: ndsa@ndstockmen.org

www.ndstockmen.org

HB 1491

The Stockmen's Association, as many of you know, got its start 80 years ago when a handful of western North Dakota ranchers banded together to put a stop to the chronic cattle rustling of the era. At their first meeting in 1929, they kicked in \$5 a person to build a reward for the information leading to the arrest and conviction of livestock thieves. That reward, which has grown to \$5,000 in some cases, still stands today and is indicative of our organization's commitment to keeping livestock criminals at bay.

And while the reward is helpful as a crime deterrent, it could be even more effective if coupled with the legislation we are discussing today.

It was at the prompting of our members that our organization worked with legislators to introduce HB 1491. At our annual convention three years ago, those grassroots members passed a resolution calling for increased penalties for violating livestock laws. They were frustrated that, even when there was plenty of evidence against livestock criminals, they often got off scott-free or almost scott-free, because state's attorneys were unwilling to prosecute the cases because these are designated as minor crimes and because they had to put their resources into other priorities before them.

Our members argue that while the penalties are small, the crimes are big – often representing thousands of dollars worth of livestock and, even more importantly, a family's livelihood and legacy. Certainly, the value of cattle has changed since our laws were originally written, and certainly North Dakota's current penalty structure is far milder than that in most all other brand states.

Our chief brand inspector, Darryl Howard, recently completed his term as the president of the International Livestock Identification Association. He and our two fieldmen, all who are licensed peace

officers, have served in leadership capacities in related trade organizations and have seen the differences between the states.

Darryl Howard has discussed the concept of this bill with the state's attorneys association several times and earned the support of many of its members who agree that a change in penalties for brand law violations are warranted.

The bill addresses several laws, namely: defacing brands, unlawful branding, bill of sale maintenance, false proof of ownership, the sale of animals under false registration, marking changes and transportation outside the state without a brand inspection. You'll notice that each law has a two-tiered penalty associated with it, with the first offense being the minor penalty and the second being the more significant offense. We believe this will give those in violation the opportunity to learn from their mistakes and do better, or pay the consequences as a multiple-time offender.

Many of you remember a version of this bill being introduced during the last legislative session. While it was widely supported in the Senate chambers, it met its fate in the House. At the time, opponents of the bill expressed concern over those who make honest mistakes being found guilty and being charged of significant crimes. Our organization's position was then as it is now: to penalize the bad actors, not the average producer who makes a mistake. It is standard procedure for our chief and his fieldmen to issue warning citations for first-time offenders. It gives them a chance to educate people about the state's livestock laws and why it is important that they are followed. They have no quotas to fill, but they have a commitment to protecting the state's domestic herds.

To make our intentions crystal clear, we made some significant modifications to the bill we posed to you two years ago. For instance, per the advice of Anita Thomas of the Legislative Council, we used the word

North Dakota



STOCKMEN'S ASSOCIATION

407 SOUTH SECOND STREET
BISMARCK, NORTH DAKOTA 58504

Ph: (701) 223-2522

Fax: (701) 223-2587

e-mail: ndsa@ndstockmen.org

www.ndstockmen.org

"willfully" as the adverb in front of the violations. In the legal world, "willfully" means that a person engages in the conduct intentionally, knowingly, or recklessly, and is the strongest word we could have used to convey our intentions – strongest in the sense that prosecutors have the heaviest burden of proof when they must show that someone "willfully" did something. The prosecutors must show that the person in question knew what he or she was doing and knew that what he or she was doing was bad.

Also to make the bill more palatable, yet able to accomplish its original purpose of extending more ownership protection to the state's livestock producers, we modified the penalty levels over previous versions.

We also added in the descriptive phrase "for the purpose of deceiving others as to the animal's ownership" where applicable to further clarify the intent of the bill.

Many of you, like me, raise cattle as part of your living on operations that have been in your family for generations. This bill is designed to afford hardworking livestock producers protection for their beloved herds, to serve as a deterrent to would-be livestock criminals and to empower prosecutors who are committed to bringing them to justice.

In the 21st century, cattle rustling can mean stealing animals out of pens or pastures during the night like in the old western movies, or it can mean altering paperwork to defraud creditors and lay false claim to animals. Whatever the form, we ask for your help in putting a stop to it by beefing up North Dakota's livestock laws with your support of this bill.

I'd like to introduce NDSA East River Fieldman Fred Frederikson. He or I would be happy to address any questions you may have.