

Introduced by

1 A BILL for an Act

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

3 **SECTION 1.** A new section to chapter 36-09 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Definition.**

6 For purposes of this chapter, "brand" means an identifying imprint that is placed on livestock
7 by use of a hot branding iron or a freeze branding technique.

SOURCE: New section.

8 **SECTION 2. AMENDMENT.** Section 36-09-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **36-09-01. Chief brand inspector - Office for recording brands.**

11 1. The North Dakota stockmen's association shall ~~appoint a~~employ¹ an individual to
12 serve as the chief brand inspector of this state.

13 2. The ~~chief brand inspector~~North Dakota stockmen's association² shall maintain a
14 general~~an~~ office for recording marks and brands³. As used in this chapter, "chief brand-
15 inspector" means the chief brand inspector of the North Dakota stockmen's-
16 association.⁴

NOTE:

¹The verbiage change reflects the fact that the "chief brand inspector" is an employee of the North Dakota Stockmen's Association.

²Because the chief brand inspector is an employee of the North Dakota Stockmen's Association, it would be more accurate to provide that the "North Dakota Stockmen's Association shall maintain an office for recording brands."

³According to North Dakota Stockmen's Association personnel, only brands are recorded--not marks. Therefore, the statutory references to "marks and brands" has been changed to reference only "brands."

⁴This sentence is not necessary.

1 **SECTION 3. AMENDMENT.** Section 36-09-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **36-09-02. Brand - Application for exclusive use of brand or markownership.**

4 Any person desiring the exclusive use of any mark or brand shall file with the chief brand
5 inspector an application:

- 6 1. ~~Setting forth a description of the mark or brand of which the person desires the~~
7 ~~exclusive use and a facsimile thereof;~~
- 8 2. ~~Stating the kind or kinds of livestock upon which the mark or brand is to be used; and~~
- 9 3. ~~Indicating clearly the place or position upon each kind of livestock where such brand is~~
10 ~~to be placed, except that the hips of any cattle may not be used for registered-~~
11 ~~numerical brands. Nonregistered numerical brands may be located upon the hips of~~
12 ~~cattle for individual identification. Registered brands other than numerical brands may~~
13 ~~also be located on the hips of cattle. Numerical brand means a brand consisting~~
14 ~~entirely of upright number or numbers, and does not include brands consisting of lazy~~
15 ~~numbers, or combinations of letters, or characters and numbers. The provisions of this~~
16 ~~chapter do not apply to any numerical brand recorded prior to July 1, 1957.¹~~

17 In order to acquire ownership of a brand, a person shall file an application with the North
18 Dakota stockmen's association.

- 19 1. The application must contain a depiction² of the proposed brand.
- 20 2. If the proposed brand is to be used for purposes of livestock identification, the
21 application must include a statement regarding:
 - 22 a. The kind of livestock on which the brand will be placed; and
 - 23 b. The placement or position of the brand on each kind of livestock listed in this
24 subsection.
- 25 3. The chief brand inspector shall review each application to ensure compliance with the
26 requirements of this chapter.

NOTE:

¹Section 36-09-02 also contains verbiage that pertains to acceptable placements or positions of brands on specific kinds of livestock. For purposes of clarity, this verbiage has been moved to a separate section. See Section 4.

²Section 36-09-02 requires that the application include "a description" of the brand. Because words do not always accurately reflect intended meanings, North Dakota

Stockmen's Association personnel suggested it would be preferable to require that the applicant draw or depict the proposed brand.

1 **SECTION 4.** A new section to chapter 36-09 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Recorded numerical brand - Impermissible placement or position.**

4 A person may not place a recorded brand that consists entirely of upright numbers on the
5 hips of cattle.

SOURCE: Section 36-09-02(3).

NOTE: Section 36-09-02(3) provides that "the hips of any cattle may not be used for registered numerical brands. Nonregistered numerical brands may be located upon the hips of cattle for individual identification. Registered brands other than numerical brands may also be located on the hips of cattle." Because the proposed language prohibits **only** the placement of "recorded" brands that consist entirely of "upright numerical numbers," it is not statutorily necessary to include a litany of other recorded or nonrecorded brands or placements that are in fact permissible.

Section 36-09-02(3) also defines a "numerical brand" as "a brand consisting entirely of upright number or numbers, and does not include brands consisting of lazy numbers, or combinations of letters, or characters and numbers." Because the proposed language references only recorded brands that consist entirely of upright numbers, it is not statutorily necessary to include a litany of other permissible brands.

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

8 **Numerical brands - Applicability of chapter.**

9 The design and placement restrictions set forth in this chapter do not apply to:

- 10 1. The continued rerecording and use of a numerical brand by a person having
11 ownership of the brand, provided the numerical brand was recorded before July 1,
12 1957;¹
13 2. An unrecorded numerical brand that is used for purposes such as herd or animal
14 identification or registration;² and
15 3. Tattoos.³

SOURCE: Section 36-09-02(3).

NOTE:

¹Section 36-09-02(3) states that the "provisions of this chapter do not apply to any numerical brand recorded prior to July 1, 1957." This language would in fact apply to rerecording requirements, recordkeeping, defacing, bills of sale, etc. The proposed language attempts to more accurately reflect the intent to grandfather the use of single numerical brands.

^{2,3}As indicated in prior notes, subsections 2 and 3 are not statutorily necessary. However, personnel from the North Dakota Stockmen's Association indicated that it would be helpful to clarify that nonrecorded numerical brands used for purposes other than those envisioned

by this chapter, as well as tattoos, can be placed or positioned in a manner not permissible for recorded numerical brands.

1 **SECTION 6. AMENDMENT.** Section 36-09-02.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **36-09-02.1. Standards for recording brands or marks.**

- 4 1. ~~The chief brand inspector shall record the brand or mark described in the application-~~
5 ~~except that the chief brand inspector shall refuse to record any brand or mark that:~~
- 6 a. ~~Has been recorded in favor of another person.~~
 - 7 b. ~~Has been recorded in another state.~~
 - 8 c. ~~Is deceptively similar to any previously recorded livestock brand or mark.~~
 - 9 d. ~~Contains less than two characters.~~
 - 10 e. ~~Contains:~~
 - 11 (1) ~~The letter "g";~~
 - 12 (2) ~~The letter "q";~~
 - 13 (3) ~~Any letter not in the gothic style;~~
 - 14 (4) ~~A dot;~~
 - 15 (5) ~~The Arabic numeral "0" or "1";~~
 - 16 (6) ~~Any non-Arabic numeral;~~
 - 17 (7) ~~Any symbol other than a diamond, a half-diamond, an arrow, a mill iron, a-~~
18 ~~cross, a heart, a box, a triangle, a quarter circle, a bar, or a star; and~~
 - 19 (8) ~~Any letter, number, or symbol within another letter, number, or symbol.~~
 - 20 f. ~~Is not legible when placed on the livestock.~~
 - 21 g. ~~Would be placed upon the livestock in a location other than a permissible-~~
22 ~~location.~~
- 23 2. ~~For purposes of this section, permissible locations for cattle are the left and right-~~
24 ~~shoulder, the left and right rib, and the left and right hip. Permissible locations for~~
25 ~~horses and mules are the left and right jaw, the left and right shoulder, and the left and~~
26 ~~right hip. Permissible locations for buffalo are the left and right rib and the left and right~~
27 ~~hip. The chief brand inspector may determine permissible locations for other types of~~
28 ~~livestock as necessary. The determination of permissible locations under this section-~~
29 ~~is not subject to rulemaking under chapter 28-32.~~

- 1 3. ~~Notwithstanding any other provision of this section, the chief brand inspector shall~~
2 ~~accept for rerecording under section 36-09-09 or under section 36-09-09.1:~~
- 3 a. ~~Any previously recorded livestock brand or mark.~~
4 b. ~~A single character brand provided the animals on which the brand is to be placed~~
5 ~~are goats or sheep.~~
- 6 1. The chief brand inspector shall approve an application for ownership of a brand, filed
7 in accordance with section 36-09-02, and record the brand, unless:
- 8 a. The chief brand inspector determines:
- 9 (1) Official records indicate the brand is owned by another person;
10 (2) The brand is deceptively similar to another recorded brand;
11 (3) The brand is recorded in another state;
12 (4) The brand may not be legible when placed on livestock; or
13 (5) The proposed placement or position of the brand does not meet the
14 requirements of section 7; or
- 15 b. The brand:
- 16 (1) Consists of only one letter, number, or symbol, except as provided in
17 subsection 2;
18 (2) Contains either the letter "g" or the letter "q";
19 (3) Contains a letter not found in the modern English alphabet;¹
20 (4) Contains the numeral "0" or "1";
21 (5) Contains a non-Arabic numeral;
22 (6) Contains a dot;
23 (7) Contains a letter, number, or symbol placed within another letter, number, or
24 symbol; or
25 (8) Contains a symbol other than:
- 26 (a) A diamond or a half-diamond;²
27 (b) An arrow;
28 (c) A mill iron;
29 (d) A cross;
30 (e) A heart;
31 (f) A box;

- 1 (g) A triangle;
- 2 (h) A quarter circle;
- 3 (i) A bar; or
- 4 (j) A star.

5 2. The chief brand inspector may permit the recording of a brand that consists of one
6 letter, number, or symbol, provided the brand meets all other statutory requirements
7 for recording and is for use on either goats or sheep.³

NOTE:

¹To ensure that there is no misunderstanding about the current requirement that a brand not contain any "letter not in the gothic style," the rewrite proposes a reference to the "modern English alphabet."

²What is the distinction between a half-diamond and a triangle?

³Subsection 2 is not new language. It is merely relocated from Section 36-09-02(2).

8 **SECTION 7.** A new section to chapter 36-09 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Brands - Permissible locations.**

- 11 1. Brands that meet all other statutory requirements for recording may be placed, in the
12 case of cattle, only on:
 - 13 a. A designated shoulder;
 - 14 b. A designated rib; or
 - 15 c. A designated hip.
- 16 2. Brands that meet all other statutory requirements for recording may be placed, in the
17 case of horses and mules, only on:
 - 18 a. A designated shoulder;
 - 19 b. A designated hip; or
 - 20 c. A designated jaw.
- 21 3. Brands that meet all other statutory requirements for recording may be placed, in the
22 case of bison, only on:
 - 23 a. A designated rib; or
 - 24 b. A designated hip.
- 25 4. Brands that meet all other statutory requirements for recording may be placed, in the
26 case of any other livestock, only on those locations designated by the chief brand

1 inspector. For purposes of this subsection, the designation of locations is not subject
2 to rulemaking under chapter 28-32.

NOTE: This section is not new language. It is merely relocated from Section 36-09-02(2).

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

5 **Chief brand inspector - Determination regarding brand.**

6 A determination by the chief brand inspector regarding the acceptability of a brand or the
7 permissibility of its location or placement, for purposes of recording, is final.

NOTE: New section.

8 **SECTION 9. AMENDMENT.** Section 36-09-04 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **36-09-04. Record of brands kept - Inspection of record -~~Certificate of brand~~**
11 **ownership.**

- 12 1. The chief brand inspector shall keep a record of all marks and brands showing the
13 names and residences of the persons owning the marks and brands, a description and
14 facsimile of each mark or brands issued in this state. The record must include:
- 15 a. The name and address of the person that owns the brand;
 - 16 b. A description¹ of the brand;
 - 17 c. A depiction of the brand, and in the case of livestock, the range occupied by the
18 livestock, as nearly as may be determined²;
 - 19 d. The type of livestock³ on which the brand is authorized for use; and
 - 20 e. The location or placement of the brand, authorized by the chief brand inspector.

NOTE:

¹North Dakota Stockmen's Association personnel suggested that a requirement for inclusion of the brand's description in the application process should be eliminated because of inherent inaccuracies in descriptions. Please note that it is the intent to maintain inclusion of the brand's "description" in the official record.

²Current law provides that the record must include "in the case of livestock, the range occupied by the livestock, as nearly as may be determined." North Dakota Stockmen's Association personnel suggested that it is not necessary to include the "range" of livestock.

³North Dakota Stockmen's Association personnel suggested that the statute should include a requirement for a reference to the type of livestock on which the brand is to be used, as well as the brand's permitted location or placement.

- 21 2. The record of all brands is open to inspection by any personindividual.

1 ~~3.~~ The chief brand inspector shall ~~deliver~~provide to the owner of each ~~mark or~~ brand a
2 certificate of the ~~mark or~~ brand. The certificate is evidence of the brand's ownership of
3 ~~the mark or brand described in the certificate.~~

NOTE: Subsection 3, which pertains to the brand certificate, should probably be relocated so it is with or follows the approval of the brand by the chief brand inspector.

4 **SECTION 10. AMENDMENT.** Section 36-09-06 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **36-09-06. Cancellation of brand.**

- 7 1. The chief brand inspector shall cancel a legally recorded brand ~~when~~if the chief brand
8 inspector:
- 9 a. ~~The chief brand inspector receives~~Receives for filing a bill of sale ~~effor~~ the brand,
10 properly executed by the ~~record~~ owner, as shown ~~by~~in the records ~~in~~of the chief
11 brand inspector's ~~office~~inspector; or
- 12 b. ~~When it is found that a brand has been issued inadvertently in duplication~~
13 ~~of~~Determines that the brand duplicates a previously recorded brand.

NOTE: This section provides for the cancellation of a brand in only one of two circumstances. Might there be any other circumstance that could possibly require the cancellation of a brand, e.g., a brand containing an impermissible letter is inadvertently recorded or the brand is found not to be legible when placed on livestock?

14 2. The chief brand inspector may cancel a legally recorded brand if the chief brand
15 inspector determines that the brand has been recorded in another state.

16 **SECTION 11. AMENDMENT.** Section 36-09-08 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **36-09-08. Official brandbooks to be presumptive evidence.**

19 ~~Any~~An official brandbook published by the chief brand inspector must be received in all
20 courts of this state as presumptive evidence of the recording and ownership of livestock brands
21 ~~therein described.~~

22 **SECTION 12. AMENDMENT.** Section 36-09-09.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **36-09-09.1. Cancellation**Expiration **of brands - Updated rerecording - Limitation on**
25 **brands.**

26 1. ~~On the first day of January 2006~~1, 2016, each livestock brand ~~or mark must be~~
27 ~~canceled~~expires and no person may use or have any ~~right, title, or~~ownership interest

1 in or to any livestock brand or mark previously recorded in this state unless the person
2 has rerecorded the brand in accordance with this section.

3 2. If a person should desire intends to continue the person's ownership of a brand or
4 mark, the person shall rerecord the brand or mark must be rerecorded on or before
5 January first 1, 2016, and every five years thereafter. Rerecording is not required from
6 an owner who has registered for

7 3. The requirements set forth in this section for rerecording a brand do not apply in the
8 case of a new brand recorded within six months before the six-month period
9 immediately preceding the date provided for the rerecording of brands.

10 **SECTION 13. AMENDMENT.** Section 36-09-10 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **36-09-10. Failure to rerecord brand - ~~Abandonment~~Expiration.**

13 Failure to rerecord any previously recorded livestock

14 1. Unless a person rerecords the person's brand or mark on or before the time date
15 specified in section 36-09-09 or 36-09-09.1 is deemed an abandonment of the
16 previously recorded, the brand or mark expires. For one year from the date of
17 cancellation

18 2. a. Except as provided in subdivision b, for a period of one year from the date of a
19 brand's expiration, the chief brand inspector may not reassign a canceled the
20 expired brand or mark to any person other than the registered owner at the time
21 of cancellation. By written notice to the chief brand inspector, the registered
22 owner the brand's expiration

23 b. If the person who owned the brand at the time of cancellation it expired provides
24 the chief brand inspector with written authorization, the chief brand inspector may
25 authorize reassignment of reassign the brand or mark with into a new owner, at
26 any time during the one-year period. Thereafter

27 3. Upon expiration of a brand and the passage of time or procurement of authorization,
28 as set forth in subsection 2, the chief brand inspector shall may accept any regular an
29 application for the issuance to anyone of the abandoned livestock to record the brand
30 or mark, provided the abandoned livestock brand or mark complies with the standards
31 of section 36-09-02.1. The chief brand inspector shall issue a certificate for the use of

1 ~~the abandoned brand or mark within this state, provided the abandoned livestock~~
2 ~~brand or mark complies with the standards of section 36-09-02.1~~brand meets the
3 ~~requirements of this chapter.~~

4 **SECTION 14. AMENDMENT.** Section 36-09-11 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **36-09-11. Notice of expiration of brand to be given.**

7 The

- 8 1. ~~Before September 1, 2015, the~~ chief brand inspector, ~~on or before the beginning of the~~
9 ~~fourth month prior to the cancellation of all brands, shall notify each and every record~~
10 ~~owner of a livestock brand or mark of the final date set for cancellation thereof and~~
11 ~~also of the~~ shall provide to each owner of record written notice of:
12 a. The brand's expiration date; and
13 b. The owner's prior right to rerecord such previously recorded livestock~~the brand or~~
14 ~~mark.~~
15 2. ~~The notice must be given in writing, legibly written, sent by ordinary~~chief brand
16 ~~inspector shall send the notice to the owner electronically or by first-class mail,~~
17 ~~addressed to the record owner at the address as shown upon the present records.~~

NOTE: Given technological advancements, it is suggested that the method of notification not be statutorily limited to use of the United States postal system. First-class mail does not provide any record that a document was sent or received.

18 **SECTION 15. AMENDMENT.** Section 36-09-12 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **36-09-12. Publication of notice.**

- 21 1. The chief brand inspector shall publish in ~~each~~the official newspaper ~~in~~of each county
22 ~~where brands or marks are in use, a notice of the expiration of the time fixed by law for~~
23 ~~the rerecording of~~date by which livestock brands or marks, ~~and the prior right of any~~
24 ~~record owner to rerecord the owner's previously recorded brands or marks~~must be
25 ~~rerecorded as provided in section 36-09-09.1.~~
26 2. The publication must begin ~~on or about~~¹ between the first and fifteenth day of
27 September, ~~prior to~~before the cancellation of all brands, and ~~the publication must~~
28 continue at least three successive² times in each of ~~such~~the newspapers.

1 3. The chief brand inspector also shall request each newspaper publishing the notice to
2 call attention to the provisions of this chapter in a news item in the regular columns of
3 the newspaper, for which no charge is allowed.³

NOTE:

¹Current law provides that the publication must begin "on or about" the first of September. It is statutorily preferable to eliminate opportunities for interpretation. The rewrite therefore proposes a window between September 1st and September 15th.

²Does the word "successive" require publication on three consecutive days in the case of a daily newspaper. If so, is that the intent?

³What happens if a newspaper is not interested in publishing the story? We should consider either requiring that a story be done, without charge, in accordance with information provided by the chief brand inspector, or eliminate the sentence from the statute.

4 **SECTION 16. AMENDMENT.** Section 36-09-13 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **36-09-13. Recording Application for recording and rerecording of brands - Fee.**

7 ~~The rerecording of abandoned livestock brands or marks, and the recording of new brands~~
8 ~~and marks, must conform to this chapter.~~¹ Each application² for recording ~~and~~ or rerecording a
9 brand must be accompanied by a fee ~~for each place or position upon each type of livestock~~
10 ~~where the brand or mark is to be placed. The~~ in the amount established by the state board of
11 animal health ~~shall establish the fee,~~ with the advice and consent³ of the North Dakota
12 stockmen's association. The fee may not exceed twenty-five dollars.⁴

NOTE:

¹Because all of the stated activities are governed by this chapter, it is not necessary to statutorily require that they conform to the chapter.

²This is the first mention of an "application" for rerecording.

³A private entity is frequently asked for "advice" regarding governmental action. This language in fact gives a private entity veto power over a governmental board.

⁴Because the fee is statutorily capped at \$25, and because the fee being charged is in fact \$25, is it necessary to statutorily provide for "advice and consent" by the North Dakota Stockmen's Association? If the fee being charged is \$25, and there is a statutory cap, is it necessary to maintain references to fee-setting authority on the part of the State Board of Animal Health?

13 **SECTION 17.** A new section to chapter 36-09 of the North Dakota Century Code is created
14 and enacted as follows:

15 **Brands authorized for rerecording - Exceptions.**

16 Notwithstanding any other provision of this chapter, the chief brand inspector shall accept
17 for rerecording:

- 1 1. Any brand that the owner previously recorded; and
- 2 2. A single character brand, provided the brand is to be placed only on goats or sheep.

SOURCE: Section 36-09-02.1(3).

NOTE: This is relocated verbiage, not new verbiage.

3 **SECTION 18. AMENDMENT.** Section 36-09-13.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **36-09-13.1. Use of unrecorded brand - Penalty.**

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

NOTE: Should this be a strict liability crime?

8 **SECTION 19. AMENDMENT.** Section 36-09-14 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **36-09-14. Chief brand inspector to issue brandbook.**

11 1. The chief brand inspector shall compile and issue¹ a brandbook from the records of
12 livestock brands ~~in recorded with~~ the chief brand inspector's office ~~inspector~~ as of the
13 final date for rerecording, and shall compile and issue an annual supplement.

14 2. The chief brand inspector shall provide a copy of the brandbook ~~must be delivered~~
15 free of charge to every and each annual supplement, free of charge to:

16 a. Each brand inspector; and ~~upon written request from~~

17 b. Any other law enforcement officers of the ~~officer~~ located in this state². ~~Annually~~
18 thereafter the chief brand inspector shall prepare a supplement of brands
19 registered during the year and shall distribute the supplement free of charge to
20 every brand inspector and upon written request from other law enforcement
21 officers of the state of North Dakota. Brandbooks and supplements must also be
22 sold to all interested persons at the general office for recording marks and brands
23 maintained in the office of the chief brand inspector at a price set by the North
24 Dakota stockmen's association and approved by the state board of animal health,
25 upon request.

26 3. The chief brand inspector shall make brandbooks and annual supplements available
27 for purchase by all other persons. The purchase price must be established by the
28 North Dakota stockmen's association and approved by the state board of animal
29 health.³

NOTE:

¹Should the statute specify how often this needs to happen, e.g., "Once every five years?"

²The statute needs to be clear regarding which law enforcement officers are intended to be referenced, i.e., officers "of" this state versus "located in" this state.

³By requiring the approval of the State Board of Animal Health, the statute is in fact allowing the board to establish the price.

1 **SECTION 20. AMENDMENT.** Section 36-09-15 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **36-09-15. Butcher to keep record of branded cattle slaughtered - Penalty.**

4 1. Any person engaged in the business of killing domestic animals and slaughtering cattle
5 on a custom basis or for the purpose of selling the meat of those animals at retail or
6 wholesale, or who slaughters animals on a custom basis, is deemed a butcher for the
7 purposes of this section. Any butcher who kills any head of neat cattle shall keep a
8 shall record¹ showing all of the following:

9 4. a. The date each animal was purchased or accepted for custom slaughtering;

10 b. The name and place of residence of the address of:

11 (1) The seller; or

12 (2) The person from whom such animal was purchased or for whom any
13 custom slaughtering is being performed.

14 2. When and where such animal was purchased or from where the animal came.¹

15 3. c. The animal's age or estimated age;

16 d. The animal's sex of such animal and its age to the best of the butcher's
17 knowledge.

18 4. A description of any and all marks and brands on the; and

19 e. Any brand found on the animal.

20 The record is open to inspection during business hours

21 2. Any person required to record information in accordance with this section shall
22 compile the information in the manner directed by the North Dakota stockmen's
23 association and:

24 a. Forward the information to the North Dakota stockmen's association at least
25 quarterly; or

26 b. (1) Retain the information for at least two years² from the date of the animal's
27 slaughter; and

1 (2) Allow for inspection of the information by a representative of the North
2 Dakota stockmen's association³, upon request.

3 3. Any person who violates this section is guilty of an infraction.

NOTE:

¹Although current law requires butchers to keep a record of the required information, personnel from the North Dakota Stockmen's Association indicated that it is common practice for the butchers to file quarterly slaughter reports. If this is the case, is it still necessary to maintain an option for the butchers to retain the information themselves for a stated period, as proposed in subsection 2(b)(1)?

²Current law requires that the records be kept but does not specify a particular length of time. The reference to "two years" was inserted as a suggestion, subject to approval by the interim committee.

³The North Dakota Stockmen's Association is a private organization, not a governmental entity. Is it the intent that these be considered public records and open to all? Is it the intent that access to the records be limited to individuals or entities with legitimate enforcement interests? Should the reference be to the chief brand inspector versus the association? If the information is forwarded to the association in the form of a "slaughter report," is this report open to the public or confidential?

4 **SECTION 21. AMENDMENT.** Section 36-09-17 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **36-09-17. Defacing brands and ~~unlawfully~~ Unlawful branding - Penalty.**

7 A person is guilty of a class A misdemeanor for a first offense and a class C felony for a
8 second or subsequent offense if the person:

- 9 1. Alters, defaces, or attempts to alter or deface the ~~mark or~~ brand on any animal owned
10 by another for the purpose of deceiving others as to the animal's ownership; or
11 2. Willfully ~~marks, brands, or causes to be marked or~~ branded any animal owned by
12 another for the purpose of deceiving others as to the animal's ownership.

13 **SECTION 22. AMENDMENT.** Section 36-09-18 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **36-09-18. Collection of fees - ~~Discrimination prohibited~~ Continuing appropriation.**

16 ~~Any fees collected~~ The North Dakota stockmen's association shall forward all moneys
17 received under this chapter ~~must be remitted~~ to the state treasurer for deposit in a special fund
18 known as the North Dakota stockmen's association fund. ~~The North Dakota stockmen's~~
19 ~~association may not discriminate between or among members of the association and persons~~
20 ~~who are not members of the association with respect to fees, recordings, complaints, requests~~
21 ~~for assistance, and any other services to be provided under this chapter.~~ ¹ All moneys in the

1 North Dakota stockmen's association fund are appropriated on a continuing basis to the North
2 Dakota stockmen's association to carry out statutory directives.²

NOTE:

¹The language prohibiting discrimination has been moved to a new section. See Section 23.

²Chapter 36-22, which pertains to estray inspection, clarifies that all moneys in the North Dakota Stockmen's Association fund are appropriated on a continuing basis to the North Dakota Stockmen's Association. The proposed change adds this piece of information to the current chapter.

3 **SECTION 23.** A new section to chapter 36-09 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Discrimination - Prohibited.**

6 The North Dakota stockmen's association may not discriminate between or among
7 members of the association and persons who are not members of the association with respect
8 to fees, recordings, complaints, requests for assistance, or any other duties assigned under this
9 chapter.

SOURCE: Section 36-09-18. This language is not new. It is merely relocated.

10 **SECTION 24. AMENDMENT.** Section 36-09-19 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **36-09-19. Effect of ~~registered~~recorded brand ~~or mark~~ - Bill of sale to be given and**
13 **kept.**

14 A ~~legally registered~~ brand recorded in accordance with this chapter and properly located on
15 livestock is prima facie evidence that the animal bearing the ~~same~~brand is the property of the
16 brand's owner ~~of such brand~~, unless covered by a bill of sale as provided by section 36-09-20.

17 **SECTION 25. AMENDMENT.** Section 36-09-20 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **36-09-20. Bill of sale to be given and kept - Copy with shipment - Effect - Penalty.**

- 20 1. A person may not sell ~~cattle, horses, mules, or any other~~ livestock carrying a
21 ~~registered~~recorded brand unless:
- 22 a. The seller is the owner of the ~~registered~~recorded brand and delivers a bill of sale
23 for the ~~cattle, horses, mules, or other~~ livestock to the purchaser; or
- 24 b. The seller delivers to the purchaser a bill of sale executed by the owner of the
25 ~~registered~~recorded brand and endorsed by the seller evidencing the later
26 transaction.

- 1 2. The bill of sale must include:
- 2 a. The date;
- 3 b. The name, address, and signature of the seller;
- 4 c. The name, address, and signature of an individual who is at least eighteen years
- 5 of age and who can verify the name and signature of the seller;
- 6 d. The name and address of the buyer;
- 7 e. The total number of animals sold;
- 8 f. A description of each animal sold as to sex and ~~kind~~color¹; and
- 9 g. A description² of the registered brands.

NOTE:

¹North Dakota Stockmen's Association personnel suggested that the animal's color is more likely to be accurate than its "kind."

²Which of these options would be preferable for subdivision g:

A description of the registered brands.

A depiction of the registered brands.

A description and a depiction of the registered brands.

A description or a depiction of the registered brands.

- 10 3. The buyer shall retain the bill of sale ~~must be kept by the buyer for two years and for~~ as
- 11 long ~~thereafter~~ as the buyer owns any ~~of the~~ animals described in the bill of sale.

NOTE: North Dakota Stockmen's Association personnel suggested that the bill of sale would change hands with the animals. Therefore, it is not appropriate to keep the bill of sale for two years. Is it the intent of this section that a person keep a "copy" rather than the original?

- 12 4. AThe seller shall provide a copy of the bill of sale ~~must be given to each hauler of to~~
- 13 the individual hauling the livestock, ~~other than railroads, and must go with the~~
- 14 ~~shipment of.~~ The individual shall ensure that the document remains with the livestock
- 15 while in transit.

NOTE: The rewrite clarifies that the "seller" is to provide a copy of the bill of sale to the hauler?

- 16 5. The bill of sale or a copy of the bill of sale must be shown by the possessor on
- 17 demand to any ~~peace~~law enforcement officer or brand inspector.
- 18 6. The bill of sale is prima facie evidence of the sale of the livestock described in the bill
- 19 of sale.

- 1 7. A bill of sale is not required relative to sales of livestock covered by a legal livestock-
2 ~~brand inspection.~~ Subsections 1 through 6 do not apply to the sale of livestock for
3 which a brand inspector has issued a certificate of ownership.

NOTE: Rather than referencing a "legal livestock brand inspection," the rewrite references a certificate of ownership issued by a brand inspector. This certificate could be issued by the brand inspector at a livestock auction market (aka "market clearance") or at any point outside an auction market (aka "local inspection").

- 4 8. Any person that willfully ~~violates~~violating this section is guilty of a class B
5 misdemeanor for a first offense and a class A misdemeanor for a second or
6 subsequent offense.

7 **SECTION 26. AMENDMENT.** Section 36-09-20.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **36-09-20.1. False proof of ownership - Sale of livestock - Penalty.**

10 A person that willfully ~~provides~~providing false proof of ownership in conjunction with the sale
11 of livestock is guilty of a class B misdemeanor for a first offense and a class A misdemeanor for
12 a second or subsequent offense.

13 **SECTION 27. AMENDMENT.** Section 36-09-20.2 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **36-09-20.2. Proof of ownership - Alteration or falsification - Penalty.**

16 A person that, with intent to deceive or harm another, knowingly and falsely makes,
17 completes, or alters any writing evidencing proof of livestock ownership is guilty of a class B
18 felony.

19 **SECTION 28. AMENDMENT.** Section 36-09-22 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **36-09-22. Sale of animal~~livestock~~¹ under false registration certificate - Changing**
22 **marking - Penalty.**

- 23 1. A person may not willfully:
24 a. Sell an animal~~any livestock~~ with a certificate of registration or certificate of
25 breeding that ~~the person knows does not belong to the animal.~~ does not pertain to
26 the livestock;
27 b. Alter any animal's Falsify a certificate of registration or certificate of breeding~~;~~;
28 c. Misrepresent any production record specified in a certificate of registration
29 certificate~~;~~²

- 1 d. Change the markings of ~~any animal~~livestock with intent to deceive the
2 purchaser; ~~or~~
3 e. Misrepresent the sire³ to which ~~such animal~~livestock has been bred.

NOTE:

¹Under current law, this section appears to have applicability to more animals than merely livestock. The rewrite therefore configures this section to apply solely to livestock for purposes of this chapter and duplicates the language applying to non-livestock animals for placement in a yet-to-be-determined chapter. See Section 35.

²Subdivision c should reference the misrepresentation of production information or the falsification of a production record. Is there a preference?

³Is there any reason to limit the misrepresentation to the sire?

- 4 2. A person ~~that violates~~violating this section is guilty of a class A misdemeanor for a first
5 offense and a class C felony for a second or subsequent offense.

6 **SECTION 29. AMENDMENT.** Section 36-09-23 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **36-09-23. Transportation of livestock from state - Brand inspection - Penalty.**

- 9 1. A person may not transport or attempt to transport cattle, horses, or mules from this
10 state unless a brand inspector has inspected the livestock ~~has been inspected for~~
11 ~~marks and brands by an official brand inspector of the North Dakota stockmen's~~
12 ~~association. And issued a certificate of ownership. The certificate of inspection must~~
13 ~~accompany~~remain with the livestock to its ~~while in transit and be presented to the~~
14 purchaser upon approval at the destination. This subsection does not apply to a
15 person that:
16 a. Transports cattle, horses, or mules from this state to obtain for the animals
17 emergency medical treatment by a licensed veterinarian; or
18 b. Transports cattle, horses, or mules from this state to an auction market that is
19 located in a bordering state and which ~~has been designated by rule as an~~
20 ~~official~~is provided with brand inspection market ~~services in accordance with~~
21 section 36-09-24.
22 2. ~~The owner or possessor of livestock~~A person may not remove the ~~livestock~~cattle,
23 horses, or mules from any place of regular official brand inspection until ~~an official~~
24 ~~brand inspection has been made and the brand inspection certificate has been~~a brand
25 inspector has inspected the livestock and issued a certificate of ownership.

NOTE: Is "any place of regular official brand inspection" a livestock auction market, buying station, or packing plant?

- 1 3. ~~A~~Any person that willfully ~~violates~~violating this section is guilty of a class A
2 misdemeanor. ~~A~~Any person that ~~violates~~willfully violating this section a second time
3 within five years or ~~violates~~willfully violating this section three or more times is guilty of
4 a class C felony.

5 **SECTION 30. AMENDMENT.** Section 36-09-24 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **36-09-24. Police powers of chief brand inspector and fieldmen.**

8 The chief brand inspector and all ~~fieldmen~~individuals employed by the North Dakota
9 stockmen's association to provide brand inspection services have the power:

- 10 1. Of a ~~police~~law enforcement officer for the purpose of enforcing brand laws and any
11 other state laws or rules relating to livestock;
12 2. To make arrests upon view and without warrant for any violation of this chapter or any
13 other state laws or rules relating to livestock committed in the inspector's presence;
14 and
15 3. To respond to requests from other law enforcement agencies or officers for aid and
16 assistance. ~~For the purposes of this subsection, a request from a law enforcement~~
17 ~~agency or officer means only a request for assistance to, provided the requests are for~~
18 a particular and single violation or ~~suspicion of~~suspected violation of law, ~~and does~~
19 and not constitute afor continuous request ~~for~~or ongoing assistance.

20 **SECTION 31. AMENDMENT.** Section 36-09-25 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **36-09-25. Animal identification program - Administration.**

23 The North Dakota stockmen's association shall serve as the state's administrator and
24 allocator for that portion of any federally sponsored animal identification program which pertains
25 to cattle, horses, and mules.

NOTE: Review the applicability of this section in light of federal programmatic changes.

26 **SECTION 32. AMENDMENT.** Section 36-09-26 of the North Dakota Century Code is
27 amended and reenacted as follows:

1 **36-09-26. Brand inspection services - Out-of-state facilities.**

2 An out-of-state livestock facility¹ that seeks to obtain brand inspection services from this
3 state may file a written request with the North Dakota stockmen's association. Upon receiving a
4 request for brand inspection services, the North Dakota stockmen's association shall petition
5 the state board of animal health for permission to provide the services. The state board of
6 animal health shall adopt rules setting forth the criteria that must be met before out-of-state
7 brand inspections are approved.

NOTE:

¹Do we mean an out-of-state livestock auction market or are there any other types of "facilities" that are intended to be covered by this section, e.g., buying stations or packing plants?

Step 1 requires the out-of-state livestock facility to file a written request with the North Dakota Stockmen's Association.

Step 2 requires the North Dakota Stockmen's Association to petition the State Board of Animal Health for permission to provide brand inspection services at that facility.

Question: Why not have the request (or a petition) for inspection go directly to the State Board of Animal Health (perhaps with a copy to the North Dakota Stockmen's Association)?

Question: If the North Dakota Stockmen's Association is not supportive of the request, why is it being put in the position of having to formally "petition" for permission to provide the inspection services?

8 **SECTION 33. AMENDMENT.** Section 36-09-27 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **36-09-27. Reinspection request - Responsibility for costs.**

11 ~~Alf a person that contends a brand inspection error occurred and that,~~ as a result of the
12 error, cattle, horses, or mules were shipped erroneously, the person may request a reinspection.
13 If during the reinspection it is determined that a brand inspection error was made, the North
14 Dakota stockmen's association shall bear the costs of the reinspection. If it is determined that a
15 brand inspection error was not made, the person that requested the reinspection shall
16 reimburse the stockmen's association for the costs of the reinspection.

NOTE: Is the erroneous shipping of cattle the only event that could/should trigger a reinspection? Can a reinspection be requested under any other condition?

17 **SECTION 34. AMENDMENT.** Section 36-09-28 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **36-09-28. Premises and animal identification program - Open records - Exception.**

20 1. ~~Except as provided in subsection 2, the following information is confidential and not~~
21 ~~subject to the open records requirements of section 44-04-18:~~

- 1 a. ~~Any~~any information created, collected, or maintained by the state veterinarian or
2 the North Dakota stockmen's association regarding premises or animal
3 identification;
- 4 b. ~~The name and address of the owner of the premises or of any animals identified~~
5 ~~under this section; and~~
- 6 c. ~~The name and address of the lessee of any premises or of any animals identified~~
7 ~~under this section~~ is confidential and not subject to the open records
8 requirements of section 44-04-18.

NOTE: The content of subdivisions b and c is already included within subdivision a.

NOTE: Is the section overly broad in protecting "any" information created, collected, or maintained by the State Veterinarian or the North Dakota Stockmen's Association regarding premises or animal identification?

- 9 2. ~~The~~Neither the state veterinarian nor the North Dakota stockmen's association may
10 not release any information designated as confidential under subsection 1 except:
- 11 a. Upon the written consent of every person identified or identifiable by the
12 information;
- 13 b. In accordance with federal law ~~for the purpose of a national animal identification~~
14 ~~program;~~¹
- 15 c. To any state or federal agency for the purposes of animal disease control and
16 animal disease traceback;
- 17 d. To the attorney general and any other law enforcement agency pursuing a
18 criminal investigation; or
- 19 e. Pursuant to an order issued by a court upon a showing of good cause.
- 20 3. This section does not preclude the exchange of information between the state
21 veterinarian and the North Dakota stockmen's association.
- 22 4. A violation of this section is subject to section 44-04-21.2. For purposes of applying
23 section 44-04-21.2, "public entity" includes any person that has contracted with the
24 state for the provision of services related to the premises or animal identification
25 program.

NOTE:

¹If a federal law requires release of information for a purpose other than animal identification, the persons having the information will have to provide it.

26 **SECTION 35.**

1 **Sale of animal under false registration certificate - Changing marking - Penalty.**

2 1. A person may not willfully:

3 a. Sell an animal with a certificate of registration or breeding that the person knows
4 does not belong to the animal;

5 b. Alter any animal's certificate of registration or breeding;

6 c. Misrepresent any production record specified in a registration certificate;

7 d. Change the markings of any animal with intent to deceive the purchaser; or

8 e. Misrepresent the sire to which such animal has been bred.

9 2. A person violating this section is guilty of a class A misdemeanor for a first offense and
10 a class C felony for a second or subsequent offense.

SOURCE: Section 36-09-22.

NOTE: Section 36-09-22 refers to "animals" rather than "livestock." It has been reconfigured to refer only to "livestock" for purposes of the rewrite of Chapter 36-09. However, if the section was intended to apply to a broader array of animals and not merely livestock, e.g., domestic animals, it is recommended that the language be retained in its current form and placed in a different chapter.