

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 36-13 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Definition.**

6 In this chapter, unless the context otherwise requires, "estrays" means cattle, horses, or
7 mules, whether branded or unbranded, whose ownership has not been determined.

NOTE: Because the current law does not define an "estrays," the proposed language was added for the committee's consideration.

8 **SECTION 2. AMENDMENT.** Section 36-13-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **36-13-01. Estrays - Possession.**

11 A

12 1. If a person may take possession of an estray when it is discovered on property
13 that the person owns or controls, provided the person does not know who owns the
14 estrays.¹ As soon as practicable the person shall examine the estray to determine the
15 presence and identity of any brand, the location of the brand, and any other marks or
16 scars that may identify the estray. The person shall:

17 a. Take possession of the estray; and

18 b. Make a good-faith effort to determine its ownership and facilitate its return.

19 2. If the person taking possession of the estray cannot determine its ownership, the
20 person shall notify either the sheriff of the county in which the estray was found or the
21 chief brand inspector. Once notified, the sheriff or the chief brand inspector shall

1 ~~record the date and time of the notification and all information obtained from the~~
2 ~~person which may be helpful and:~~

3 a. (1) Provide to the sheriff or the chief brand inspector any information that may
4 assist in determining ownership of the estray. The chief brand inspector
5 shall direct a brand inspector to examine the estray for marks and brands;

6 (2) Make the estray available for examination if requested by the chief brand
7 inspector; and

8 (3) Follow the directives of the chief brand inspector regarding the estray's care
9 and disposal; or

10 b. Deliver the estray to a livestock auction market in this state and notify the chief
11 brand inspector of the delivery of what appears to be an estray.^{2,3}

12 3. Any person failing to comply with this section is liable to the owner of the estray for
13 treble damages and may not claim reimbursement for any expenses otherwise
14 allowed under this chapter.⁴

NOTE:

¹The phrase "provided the person does not know who owns the estray" was removed because the suggested definition indicates that in order for the animal to meet the definition of an "estray," its ownership must not have been determined.

²Are there any time limits within which the statutorily required actions are to be conducted?

³The source of subsection 2(b) is Section 36-13-03.1.

⁴The source of subsection 3 is Section 36-13-06.

15 **SECTION 3.** A new section to chapter 36-13 of the North Dakota Century Code is created
16 and enacted as follows:

17 **Notification - Record of date and time.**

18 A county sheriff or the chief brand inspector shall make a record of the date and time that
19 notification is received under section 36-13-01. The person taking possession of the estray is
20 not entitled to reimbursement for expenses incurred before the recorded date and time.

SOURCE: Section 36-13-01.

NOTE: This language is not new. It is merely relocated.

21 **SECTION 4. AMENDMENT.** Section 36-13-02 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **36-13-02. Estrays - Notification of chief brand inspector.**

2 ~~When notified~~ If a person notifies a county sheriff that the person has taken possession of
3 an estray possession, ~~a,~~ the sheriff shall contact the chief brand inspector and provide to the
4 chief brand inspector any identifying or descriptive information regarding the estray.

5 **SECTION 5. AMENDMENT.** Section 36-13-03.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 ~~**36-13-03.1. Alternate disposition of estray.**~~

8 ~~A person that finds an estray on property that the person owns or controls may dispose of~~
9 ~~the estray by delivering it to a public livestock market licensed by this state, provided the person~~
10 ~~first makes a reasonable effort to determine ownership of the estray. The person shall inform~~
11 ~~the brand inspector that the animal being delivered is an estray. The estray and the proceeds of~~
12 ~~its sale must be disposed of as provided in chapter 36-22.~~

NOTE: It is recommended that this section be removed. Its content is proposed for
inclusion in Section 36-13-01(2). See Section 2 of this bill draft.

13 **SECTION 6. AMENDMENT.** Section 36-13-04 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **36-13-04. Claiming estrays.**

16 If before the sale of an estray ~~the~~its owner of the estray presents to the person possessing
17 the estray an affidavit that includes the owner's name, place of residence, a declaration of
18 ownership, and a description of the estray, the person possessing the estray shall release it to
19 the owner on payment of all lawful charges.

NOTE: North Dakota Stockmen's Association personnel indicated that this section is not
reflective of the manner in which business is conducted. One alternative might be to provide
that:

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

20 **SECTION 7. AMENDMENT.** Section 36-13-05 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 ~~**36-13-05. Lawful charges**~~**Reimbursement for costs - Schedule.**

23 1. A person that ~~takes~~taking possession of an estray in accordance with this chapter may
24 charge for any actual damage done to the person's crops or property by the estray.¹

- 1 2. A person that takes possession of an estray in accordance with this chapter may
2 charge for any costs incurred after the person has notified either the sheriff or the chief
3 brand inspector, provided the costs were incurred for the care and feeding of the
4 estray or were incurred in complying with this chapter.²
- 5 3. If the person who takes possession of the estray and the owner of the estray cannot
6 agree as to the amount of charges that are payable, each shall choose one person
7 and the two so chosen shall choose a third person. The three persons so chosen shall
8 arbitrate and determine the amount of the charges. A determination under this
9 subsection is final. Entitled to receive reimbursement for incurred expenses,
10 according to a schedule developed by the North Dakota stockmen's association.³
- 11 2. The amount reimbursable under this section must be deducted from the proceeds of
12 the estray's sale. Any amount remaining thereafter must be forwarded to the North
13 Dakota stockmen's association and submitted to the state treasurer for deposit in the
14 North Dakota stockmen's association fund.^{4,5}

SOURCE: Sections 36-13-05 and 36-22-04.

NOTE:

¹According to North Dakota Stockmen's Association personnel, a person taking possession of an estray does not receive reimbursement for damage done to the person's crops or property.

²The reference to the date and time of notification as a starting point for calculating reimbursements has been relocated to Section 3 of this bill draft.

³According to North Dakota Stockmen's Association personnel, the method currently described in statute for determining the amount payable is not used. In its place is a schedule of allowable reimbursements developed by the association. Should this schedule be approved by the State Board of Animal Health? Should the statute require that the schedule be made available on the association's website?

⁴The North Dakota Century Code references the North Dakota Stockmen's Association fund. Apparently, there are several accounts within this fund, including one pertaining to estrays. Should the statute direct that the State Treasurer establish a separate account for proceeds from the sale of estrays?

⁵The statute does not address what should happen if the expense of caring for an estray exceeds its sale price. Is reimbursement limited to the amount of the estray's sale value or is the difference made up from the proceeds of the estray account or of the entire North Dakota Stockmen's Association fund?

- 15 **SECTION 8.** A new section to chapter 36-13 of the North Dakota Century Code is created
16 and enacted as follows:

1 **List of estrays - Publication - Proof of ownership.**

- 2 1. Each December, the North Dakota stockmen's association shall publish at least twice
3 in the official newspaper of each county a list of all estrays found in the county and for
4 which the association received sale proceeds. The association shall also make
5 available on its website¹ an updated list of all estrays for which the association
6 received sale proceeds during the preceding seventy-two months.
- 7 2. If a person demonstrates ownership of an estray to the satisfaction of the chief brand
8 inspector within seventy-two months of the date on which the proceeds of its sale were
9 distributed to the North Dakota stockmen's association, the association shall return the
10 amount it received to the owner, less any income earned.²

NOTE:

¹This section proposes to maintain publication of the estray list in the official newspaper of each county. It proposes to eliminate the posting of a copy in the courthouse by the county auditor and the keeping of a copy by the county auditor, in favor of an updated list on the North Dakota Stockmen's Association website.

²Because this section, like its source (Section 36-22-08), provides that a person has 72 months within which to claim ownership of an estray and collect any estray funds, there is no need to provide that the person may sue the North Dakota Stockmen's Association to recover the funds.

SOURCE: Sections 36-22-06, 36-22-07, and 36-22-08.

11 **SECTION 9. AMENDMENT.** Section 36-13-06 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 ~~**36-13-06. Liability for failure to give proper notice.**~~

- 14 1. ~~Any person that takes possession of an estray is liable to the owner of the estray for~~
15 ~~treble damages if the person fails to:~~
- 16 a. ~~Examine the estray to determine the presence and identity of any brand, mark, or~~
17 ~~sear; and~~
 - 18 b. ~~Notify either the sheriff or the chief brand inspector as provided in this chapter.~~
- 19 2. ~~A person liable for damages under subsection 1 may not make any claim or~~
20 ~~charge or seek damages in connection with the estray.~~

NOTE: The content of this section has been incorporated in proposed Section 2(3) of this bill draft. Therefore, it is recommended that this language be deleted.

21 **SECTION 10. AMENDMENT.** Section 36-13-07 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **36-13-07. Liability for death, theft, or escape of estray.**

2 If ~~the~~ a person that, without being negligent, takes possession of an estray notifies either the
3 sheriff or the chief brand inspector, ~~as provided in~~ and complies with this chapter, the person is
4 not liable if, ~~without fault on the part of the person~~, the estray dies, escapes, or is stolen, ~~or~~
5 ~~escapes and wanders away.~~

NOTE: The intent of this section is nebulous. Does it seek to provide that the person who takes possession of the estray is not liable to the rightful owner (a rancher or the North Dakota Stockmen's Association) for any economic loss if the estray dies, escapes, or is stolen? Does it seek to provide that the person who takes possession of the estray is not liable if the estray escapes and causes damage or injury to another?

6 **SECTION 11. AMENDMENT.** Section 36-13-08 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **36-13-08. Taking up estray -- Compliance with chapter -- Penalty.**

9 Any person that takes possession of an estray and willfully fails to comply with this chapter
10 is guilty of a class B misdemeanor.

11 **SECTION 12. AMENDMENT.** Section 36-22-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **36-22-01. Estray defined.**

14 ~~Any marked or branded cattle, horse, or mule found at any livestock market, to which a~~
15 ~~shipper cannot produce title or satisfactory evidence of ownership, is considered to be an~~
16 ~~estray.~~

NOTE: This should be repealed, provided the definition in Section 1 is determined to be adequate.

17 **SECTION 13. AMENDMENT.** Section 36-22-02 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **36-22-02. North Dakota stockmen's association authority.**

20 The North Dakota stockmen's association, a livestock association duly organized under the
21 laws of ~~the~~ this state of North Dakota, and duly registered as a market agency under the Act of
22 Congress ~~commonly known as the Packers and Stockyards Act, of~~ 1921 [Pub. L. 67-51;
23 42 Stat. 159; 7 U.S.C. 181 et seq.], for the better protection of the livestock industry ~~of their~~ this
24 state of North Dakota and for the purpose of securing uniformity of inspection and cooperation
25 with the department of agriculture of the United States, shall ~~make an inspection to~~
26 ~~determine~~ inspect, for the purpose of determining or verifying¹ ownership, of all cattle, horses,
27 and mules which are shipped or consigned ~~from this state to any public livestock markets,~~

1 including auction markets~~market~~, buying stations~~station~~, or packing plants ~~within or without~~
2 ~~the plant in this state of North Dakota~~ and all those that are shipped or consigned to a livestock
3 auction market located outside this state if the market receives brand inspection services in
4 accordance with section 36-09-26.²

NOTE:

¹In this case, it is statutorily helpful to indicate the purpose for which the animals are to be inspected.

²We need to ensure that the words fully and accurately reflect the intended statutory charge.

5 **SECTION 14. AMENDMENT.** Section 36-22-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **36-22-03. Rules - Fees for inspection.**

8 1. The state board of animal health, with the~~after seeking~~ advice of the~~officers offrom~~ the
9 North Dakota stockmen's association, shall adopt rules ~~regulating the inspection of~~
10 ~~cattle for brands at~~regarding:

11 a. Brand inspections at livestock auction markets, packing plants, and buying
12 stations; and shall set the

13 b. The fees to be charged by~~for~~ the brand inspector~~inspections required by this~~
14 chapter. Brand inspectors under this chapter

15 2. Each brand inspector shall charge and collect fees for inspections on all shipments or
16 consignments of cattle at livestock markets, at the rate~~a fee in the amount~~ authorized
17 by the United States department of agriculture, ~~and for inspecting all shipments and~~
18 consignments¹ of cattle, horses, and mules² at livestock auction markets, buying
19 stations, and packing plants.

NOTE:

¹Is it necessary to reference "shipments and consignments"?

²A reference to "horses and mules" has been added, as has a reference to "buying stations and packing plants."

20 3. Each brand inspector shall charge and collect fees for inspection at auction markets,
21 buying stations, and packing plants as must be set~~a fee in the amount established by~~
22 the state board of animal health, for performing the inspections required by this
23 chapter.

NOTE: Is the brand inspection fee paid directly to the brand inspector or is the fee submitted to the North Dakota Stockmen's Association? Is the fee paid at the conclusion of each day or at a set time, e.g., quarterly?

Please clarify the circumstances under which brand inspection fees are to be set by the United States Department of Agriculture and when they are to be set by the State Board of Animal Health.

1 ~~4. The North Dakota stockmen's association shall remit the fees collected must be-~~
2 remitted to the state treasurer for deposit in the North Dakota stockmen's association
3 fund.

4 **SECTION 15. AMENDMENT.** Section 36-22-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **36-22-04. Collection of estray funds.**

7 A brand inspector may receive and receipt for all funds from the sale of estray cattle and
8 shall remit the funds to the state treasurer for deposit in the North Dakota stockmen's
9 association fund.

NOTE: The use of the word "may" is confusing. The section authorizes the brand inspector to receive the funds. Are we requiring the inspector to collect all such funds from the auction markets? Are we requiring the auction markets to submit such funds to someone?

10 **SECTION 16. AMENDMENT.** Section 36-22-06 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 ~~**36-22-06. Payment to owners of estrays.**~~

13 ~~The secretary of the North Dakota stockmen's association, upon satisfactory proof of~~
14 ~~ownership of any estray for which the association has received the money, shall, with the~~
15 ~~approval of the board of directors of the association, pay the owner of the estray the amount~~
16 ~~received from the sale of the estray; provided, that the ownership of the estray must be proven~~
17 ~~within one year after the publication of the notice provided for in section 36-22-07. Any interest~~
18 ~~earned on the money reverts to the North Dakota stockmen's association fund.~~

NOTE: The content of this section has been included in Section 8 of the rewrite.

19 **SECTION 17. AMENDMENT.** Section 36-22-07 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 ~~**36-22-07. Publication of list of estrays.**~~

22 ~~The secretary of the North Dakota stockmen's association shall annually during the month-~~
23 ~~of December send two lists of all unclaimed estrays, for which the association has received~~
24 ~~payment, to the county auditor of each county from which the estrays were originally shipped.~~
25 ~~Said county auditor shall post one copy thereof in a conspicuous place in the courthouse and~~

1 place one copy on file in the county auditor's office. It is also the duty of the association to
2 cause a notice that such stray lists have been posted, to be advertised during the month of
3 December of each year in the county from which the estrays were originally shipped, said notice
4 to appear at least twice in the official newspaper of said county.

NOTE: The content of this section has been included in Section 8 of the rewrite.

5 **SECTION 18. AMENDMENT.** Section 36-22-08 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **~~36-22-08. Disposition of unclaimed receipts from sale of estrays.~~**

8 The North Dakota stockmen's association shall preserve all records relative to estrays for a
9 period of six years subsequent to the time the money is deposited by the state treasurer in the
10 North Dakota stockmen's association fund. This section does not bar the lawful owner of any
11 stray from maintaining an action against the association for the recovery of any sum to which
12 the owner may be entitled if the action is commenced within six years after the sum is
13 deposited.

NOTE: The content of this section has been included in Section 8 of the rewrite.

14 **SECTION 19. AMENDMENT.** Section 36-22-08.1 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **36-22-08.1. North Dakota stockmen's association fund - Continuing appropriation.**

17 The North Dakota stockmen's association fund is a special fund in the state treasury.
18 The shall forward all moneys received under this chapter to the state treasurer shall for deposit in
19 a special fund known as the North Dakota stockmen's association fund all brand fees and
20 stray funds received by the North Dakota stockmen's association in return for its performance
21 of statutory duties and services and remitted to the state treasurer. All moneys in the North
22 Dakota stockmen's association fund, together with all interest¹ income earned by moneys in the
23 fund, are appropriated on a continuing basis to the North Dakota stockmen's association to be
24 used for the purpose of carrying out duties statutorily assigned to the association carry out this
25 chapter.

NOTE:

¹The footnoted change is intended to clarify that all "income earned by the fund" is appropriated on a continuing basis, not just "interest."

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

1 **36-22-09. Audit of stockmen's association.**

2 It is the duty of the board of directors of ~~At least once every two years,~~ the North Dakota
3 stockmen's association ~~to~~ shall provide for an audit ~~at least once every two years~~ by a certified
4 public accountant or licensed public accountant. ~~Two~~ and shall submit two copies of each audit
5 report ~~must be submitted~~ to the legislative council.

NOTE: Given the current technology, one electronic copy of the report should be sufficient.