

Stricken language would be deleted from and underlined language would be added to present law.
Act 965 of the Regular Session

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/18/15
A Bill

HOUSE BILL 1960

By: Representative Ratliff

For An Act To Be Entitled

AN ACT CONCERNING THE BRANDING AND MARKING OF LIVESTOCK; TO ELIMINATE THE DIVISION OF BRAND REGISTRY OF THE ARKANSAS LIVESTOCK AND POULTRY COMMISSION; TO ALLOW THE ARKANSAS LIVESTOCK AND POULTRY COMMISSION TO CONTRACT WITH A PRIVATE ENTITY TO ADMINISTER THE REQUIREMENTS FOR BRANDING AND MARKING LIVESTOCK; AND FOR OTHER PURPOSES.

Subtitle

TO REGULATE THE BRANDING AND MARKING OF LIVESTOCK; AND TO ALLOW THE ARKANSAS LIVESTOCK AND POULTRY COMMISSION TO CONTRACT WITH A PRIVATE ENTITY TO ADMINISTER THE REQUIREMENTS FOR BRANDING AND MARKING LIVESTOCK.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 2-34-106 is amended to read as follows:

2-34-106. Disputes about earmarks or brands - Impounding of funds.

(a) If ~~any~~ a dispute ~~shall arise~~ arises about ~~any~~ an earmark or brand, it shall be decided by reference to the book of marks and brands kept by the clerk of the county court.

(b)(1) A state-certified law enforcement officer or a livestock association in the state that is authorized to perform brand inspection services under 9 C.F.R. 201.86, as it existed on January 1, 2015, may order funds of an animal of questionable ownership held until ownership is



established.

(2)(A) If ownership of the animal is not established within thirty (30) days, the funds shall be sent to the Arkansas Livestock and Poultry Commission to be held for one (1) year from the date of receipt by the commission.

(B) If ownership of the animal cannot be ascertained during the one-year period stated in subdivision (b)(2)(A) of this section, then after the expiration of the one-year period, the funds shall be deposited into the Livestock and Poultry Fund Account.

SECTION 2. Arkansas Code Title 2, Chapter 34, Subchapter 1, is amended to add an additional section to read as follows:

2-34-107. Branding or misbranding with intent to defraud.

(a) As used in this section, "domestic animal" means cattle, horses, sheep, goats, and hogs.

(b) A person who does the following upon conviction is guilty of a Class C felony:

(1) Purposely brands, misbrands, marks, or mismarks a domestic animal with an intent to defraud; or

(2) Purposely brands over a previous brand or cuts out or obliterates a previous mark or brand on a domestic animal with an intent to defraud.

SECTION 3. Arkansas Code Title 2, Chapter 34, Subchapter 2 is amended to read as follows:

Subchapter 2 – ~~Division of~~ Brand Registry

2-34-201. Definitions.

As used in this subchapter:

(1) "Brand" means for purposes of ownership identification a permanent identification burned or frozen into the hide of a live animal with a hot iron or hot or frozen chemical in letters, numbers, or figures, each of which is at least three inches (3") in overall length or diameter and is to be considered in relation to its location on the animal; and

~~(2) "Commission" means the Arkansas Livestock and Poultry Commission;~~

~~(3) "Director" means that person employed by the Arkansas Livestock and Poultry Commission to administer the provisions of this subchapter;~~

~~(4) "Division" means the Division of Brand Registry; and~~

~~(5) (2) "Livestock" and "animal" mean any cattle, horse, or mule.~~

2-34-202. Penalty.

(a) ~~Any~~ A person who knowingly places ~~any~~ a brand upon ~~any~~ livestock that has not been registered with the ~~Division of Brand Registry~~ Arkansas Livestock and Poultry Commission upon ~~livestock~~ livestock ~~or~~ and that duplicates a brand that is registered with the ~~division~~ commission shall be guilty of a Class A misdemeanor.

(b) Duplication ~~shall constitute~~ constitutes the use of a similar brand used in any position on the animal designated for use of a registered brand such as the head, neck, shoulder, rib, hip, or breeching.

2-34-203. ~~Creation~~ Conflicts of brands.

~~(a)(1) There is created in the Arkansas Livestock and Poultry Commission a Division of Brand Registry which shall consist of a director and such other personnel as may be necessary to carry out the provisions of this subchapter.~~

~~(2) The Director of the Division of Brand Registry in the Arkansas Livestock and Poultry Commission shall be employed by the commission.~~

~~(b) The~~ commission Arkansas Livestock and Poultry Commission shall serve as an adjusting committee in the matter of determining conflicts of brands, and the decision of the committee shall be final.

2-34-204. Rules ~~and regulations~~.

~~The Director of the Division of Brand Registry in~~ Executive Director of the Arkansas Livestock and Poultry Commission ~~shall have the authority to~~ may prescribe all rules ~~and regulations~~ he or she shall deem necessary to carry out ~~the provisions of~~ this subchapter.

2-34-205. Custody of county brand records.

(a) All county brand records of the various counties of the state shall be property of the ~~Division of Brand Registry in the~~ Arkansas Livestock and Poultry Commission, and it shall be unlawful for ~~any a~~ county clerk to accept ~~any a~~ brand for registry.

(b) The ~~division~~ commission shall collect all county brand record books and place them in its office and preserve them as public records.

(c) The ~~division~~ commission shall furnish a record of any brand record *in the county record books to any person for a reasonable fee of one dollars (\$1.00) per brand determined by the Executive Director of the Arkansas Livestock and Poultry Commission to offset the costs of furnishing the record.*

2-34-206. State Brand Book.

(a) The Executive Director of the ~~Division of Brand Registry in the~~ Arkansas Livestock and Poultry Commission shall publish the State Brand Book, which shall contain a facsimile of each ~~and every~~ brand and mark that is registered with the ~~Division of Brand Registry in the~~ Arkansas Livestock and Poultry Commission showing the name and address of the owner, together with the pertinent laws, and rules, ~~and regulations~~ pertaining to registration and reregistration of brands and marks.

(b) The executive director, on or before January 1, 1960, and every five (5) years thereafter, ~~will have published~~ shall publish the State Brand Book showing all the brands recorded with the ~~division prior to~~ commission before December 1, 1959, and every five (5) years thereafter.

(c) Supplements to the State Brand Book shall be published ~~every three (3) months~~ annually.

2-34-207. Notification to registrants.

~~Prior to~~ Before publication of ~~any a~~ revised State Brand Book, ~~all each~~ registered brand ~~owners and assignees~~ owner or assignee in the previous book or supplements ~~thereto~~ shall be notified in writing that ~~their~~ his or her brand has terminated and that the brand must be renewed if the person desires to keep the brand.

2-34-208. Registration of brands.

(a) ~~Every~~ A person desiring to adopt a brand, or to continue to use a

brand, shall ~~make application~~ apply to the ~~Division of Brand Registry in the~~ Arkansas Livestock and Poultry Commission for the registration of the brand in the manner prescribed in this section.

(b) The ~~division~~ commission shall prepare a standard form, which shall be made available to those persons who desire to apply for a brand.

(c) ~~The applicants~~ An applicant shall show a front, rear, left, and right side view of the animals upon which the brand will be eligible for registry.

(d) The brand location shall be designated in the following body regions: head, right jaw, neck, shoulder, rib and right and left jaw, neck, shoulder, rib and neck, right and left hip, thigh, and breeching.

(e) The applicant shall select ~~not less than~~ at least three (3) distinct:

(1) Distinct brands and list them in the preferred order; and ~~shall likewise select three (3) locations~~

(2) Locations on the animal and list them in preferred order.

(f) Applications for registration or reregistration shall be properly signed and notarized and accompanied by a reasonable fee ~~of five dollars (\$5.00)~~ to be determined by the executive director to offset the costs of administering this section.

(g) A brand, if approved and accepted by the ~~division~~ commission for registry, shall be of good standing during the five-year period in which it is recorded.

2-34-209. Brands reserved to state.

(a) There is reserved to the state the brands of "B", "S", and "T" on the left jaw of any cattle, and it ~~shall be~~ is unlawful for ~~any a~~ a person to use ~~them~~ the brands of "B", "S", and "T".

(b) *Cattle carrying these brands shall be ~~claimed:~~*

(1) Claimed as reactors to:

(A) Brucellosis abortus, known as bangs disease, and tuberculosis; or

(B) Tuberculosis, known as T.B.; or

(2) Designated for slaughter.

2-34-210. Sale of book.

(a) The State Brand Book and all supplements ~~thereto~~ to the State Brand Book, for a five-year period, shall be sold to the public for ~~ten dollars (\$10.00)~~ a reasonable fee to be determined by the executive director to offset the costs of producing the book.

(b) ~~Any~~ A supplement to ~~any~~ a brand book shall be sold ~~at fifty cents (50¢) each~~ to the public for a reasonable fee determined by the executive director to offset the costs of producing the supplement.

(c) The county clerk and the sheriff of each county shall receive all brand books and supplements without cost to their respective county.

2-34-211. Book as evidence of ownership.

(a) Brands appearing in the current edition of the State Brand Book or supplements ~~thereto~~ to the current edition of the State Brand Book shall be prima facie evidence of ownership and shall take precedence over brands of like kind should the question of ownership arise.

(b) The owner whose brand does not appear in the State Brand Book or supplement ~~thereto~~ to the State Brand Book shall produce evidence to establish his or her title to the property in the event of controversy.

2-34-212. Transfers of registered brands.

(a)(1) Only brands appearing in the current edition of the State Brand Book and the supplements ~~thereto~~ to the current edition of the State Brand Book shall be subject to sale, assignment, transfer, devise, or bequest, the same as other personal property.

(2)(A) The transfer of title ~~must~~ shall be recorded with the ~~Division of Brand Registry in the~~ Arkansas Livestock and Poultry Commission.

(B) The fee for recording ~~it~~ a transfer of title shall be ~~one dollar (\$1.00)~~ determined by the Executive Director of the Arkansas Livestock and Poultry Commission based on the costs of administering this section.

(b)(1) All persons selling livestock branded with their brand recorded in a current edition of the State Brand Book or supplements ~~thereto~~ to the current edition of the State Brand Book shall execute a written transfer of ownership to the purchaser.

(2) ~~Should~~ If the purchaser ~~suffer any~~ suffers damages due to seller's failure to execute a written transfer of ownership, then the seller

~~shall be~~ is liable for ~~any and all~~ the damages decided upon by ~~any a~~ a court of competent jurisdiction.

2-34-213. Brand Registry Fund.

All funds collected by the ~~Division of Brand Registry in the~~ Arkansas Livestock and Poultry Commission ~~pursuant to~~ or an agent of the commission under this subchapter shall be deposited monthly ~~in~~ into the State Treasury as special revenues, and ~~they~~ the funds shall be credited by the Treasurer of State to the "Brand Registry Fund", which is established by this section, to be used exclusively for the ~~maintenance and operation of the division~~ administration of this subchapter.

SECTION 4. Arkansas Code Title 2, Chapter 34, Subchapter 2, is amended to add an additional section to read as follows:

2-34-214. Contracts for administration.

(a)(1) The Executive Director of the Arkansas Livestock and Poultry Commission shall enter into a contract with a private entity that operates primarily as a livestock association to administer the registration and recording of marks and brands under this subchapter.

(2) When the executive director enters into a contract under this subsection, the executive director shall:

(A) Compensate the private entity for its services;

(B) Appoint the private entity as an agent of the Arkansas Livestock and Poultry Commission for purposes of receiving fees allowed under this subchapter; and

(C) Except as provided in subsection (b) of this section, direct the private entity to perform duties assigned to the commission or the executive director under this subchapter.

(b) The executive director shall not contract with a private entity to promulgate rules or set fees under this subchapter.

(c) Records concerning the administration of this subchapter are subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., regardless of whether the records are in the custody or control of the commission or a private entity acting as an agent of the commission under this section.

(d) A private entity entering into a contract with the executive

director under this section shall:

(1) Make a monthly accounting to the commission of all funds received by the private entity as an agency of the commission under this section; and

(2) File with the commission a surety bond of a corporate surety authorized to do business in this state in an amount determined by the commission, conditioned on the faithful performance of the private entity's duties and obligations as an agent of the commission under this subchapter.

SECTION 5. Arkansas Code § 2-34-303 is amended to read as follows:

2-34-303. Certificate of compliance.

(a) Upon entering ~~the state, drovers~~ Arkansas, a cattleman from another state shall apply to the Executive Director of the ~~Division of Brand Registry~~ Arkansas Livestock and Poultry Commission and there record their mark or brand, and, upon the oath or affirmation, of one (1) or more credible witnesses who ~~shall be~~ are citizens of the state to the effect that § 2-34-302 has been complied with, the executive director shall give them a certificate bearing the seal of the state, and attested by the executive director, ~~which must show~~ that shows that the parties have complied with the requirements of this section and § 2-34-302.

(b) A failure to comply with this section ~~shall subject~~ subjects the parties to having their ~~drove~~ cattle detained until they procure the necessary certificate.

/s/Ratliff

APPROVED: 04/02/2015