

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: S3/18/15
A Bill

HOUSE BILL 1960

5 By: Representative Ratliff
6

7 **For An Act To Be Entitled**

8 AN ACT CONCERNING THE BRANDING AND MARKING OF
9 LIVESTOCK; TO ELIMINATE THE DIVISION OF BRAND
10 REGISTRY OF THE ARKANSAS LIVESTOCK AND POULTRY
11 COMMISSION; TO ALLOW THE ARKANSAS LIVESTOCK AND
12 POULTRY COMMISSION TO CONTRACT WITH A PRIVATE ENTITY
13 TO ADMINISTER THE REQUIREMENTS FOR BRANDING AND
14 MARKING LIVESTOCK; AND FOR OTHER PURPOSES.
15

16
17 **Subtitle**

18 TO REGULATE THE BRANDING AND MARKING OF
19 LIVESTOCK; AND TO ALLOW THE ARKANSAS
20 LIVESTOCK AND POULTRY COMMISSION TO
21 CONTRACT WITH A PRIVATE ENTITY TO
22 ADMINISTER THE REQUIREMENTS FOR BRANDING
23 AND MARKING LIVESTOCK.
24

25
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

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

29 2-34-106. Disputes about earmarks or brands - Impounding of funds.

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

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



1 established.

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

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

10
11 SECTION 2. Arkansas Code Title 2, Chapter 34, Subchapter 1, is amended
12 to add an additional section to read as follows:

13 2-34-107. Branding or misbranding with intent to defraud.

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

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

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

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

23
24 SECTION 3. Arkansas Code Title 2, Chapter 34, Subchapter 2 is amended
25 to read as follows:

26 Subchapter 2 – ~~Division of~~ Brand Registry

27
28 2-34-201. Definitions.

29 As used in this subchapter:

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

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

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

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

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

7
8 2-34-202. Penalty.

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

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

17
18 2-34-203. ~~Creation~~ Conflicts of brands.

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

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

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

29
30 2-34-204. Rules ~~and regulations~~.

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

35
36 2-34-205. Custody of county brand records.

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

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

7 (c) The ~~division~~ commission shall furnish a record of any brand record
8 *in the county record books to any person for a reasonable fee ~~of one dollars~~*
9 *~~(\$1.00) per brand determined by the Executive Director of the Arkansas~~*
10 *Livestock and Poultry Commission to offset the costs of furnishing the*
11 *record.*

12
13 2-34-206. State Brand Book.

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

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

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

27
28 2-34-207. Notification to registrants.

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

34
35 2-34-208. Registration of brands.

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

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

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

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

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

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

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

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

17 (f) Applications for registration or reregistration shall be properly
 18 signed and notarized and accompanied by a reasonable fee ~~of five dollars~~
 19 ~~(\$5.00)~~ to be determined by the executive director to offset the costs of
 20 administering this section.

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

24
 25 2-34-209. Brands reserved to state.

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

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

30 (1) Claimed as reactors to:

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

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

34 (2) Designated for slaughter.

35
 36 2-34-210. Sale of book.

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

5 (b) ~~Any~~ A supplement to ~~any~~ a brand book shall be sold ~~at fifty cents~~
6 ~~(50¢) each~~ to the public for a reasonable fee determined by the executive
7 director to offset the costs of producing the supplement.

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

10
11 2-34-211. Book as evidence of ownership.

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

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

19
20 2-34-212. Transfers of registered brands.

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

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

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

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

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

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

3
4 2-34-213. Brand Registry Fund.

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

12
13 SECTION 4. Arkansas Code Title 2, Chapter 34, Subchapter 2, is amended
14 to add an additional section to read as follows:

15 2-34-214. Contracts for administration.

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

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

22 (A) Compensate the private entity for its services;

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

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

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

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

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

1 director under this section shall:

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

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

9
10 SECTION 5. Arkansas Code § 2-34-303 is amended to read as follows:

11 2-34-303. Certificate of compliance.

12 (a) Upon entering ~~the state, drovers~~ Arkansas, a cattleman from
13 another state shall apply to the Executive Director of the ~~Division of Brand~~
14 ~~Registry~~ Arkansas Livestock and Poultry Commission and there record their
15 mark or brand, and, upon the oath or affirmation, of one (1) or more credible
16 witnesses who ~~shall be~~ are citizens of the state to the effect that § 2-34-
17 302 has been complied with, the executive director shall give them a
18 certificate bearing the seal of the state, and attested by the executive
19 director, ~~which must show that shows~~ that the parties have complied with the
20 requirements of this section and § 2-34-302.

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

24
25 /s/Ratliff
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