

# **SOUTH DAKOTA BRAND LAWS**

## **SOUTH DAKOTA STATUTES**

### **TITLE 40. ANIMALS AND LIVESTOCK CHAPTER 40-18. STATE BRAND BOARD**

#### **40-18-1 Composition of board -- Nomination and appointment of members.**

The state brand board shall consist of five members appointed by the Governor. Statewide nonprofit agricultural organizations, incorporated under state law, may submit nominations to the Governor prior to December first each year from which nominations for appointment or appointments shall be made. In the event no nominations are received, the Governor shall make such appointment without reference to such nominations.

#### **40-18-1.1 Board attached to department of agriculture for reporting -- Function retained -- Appointment of staff director.**

The board is attached to the department of agriculture for reporting purposes. It shall retain all its prescribed functions including administrative functions. The board shall appoint a staff director to serve at its pleasure.

#### **40-18-1.2 Definitions.**

Terms used in chapters 40-18 to 40-22, inclusive, and 40-29 mean:

- (1) "Agency," any private or nonprofit corporation, or its employees, incorporated under state law, designated by the board as its authorized agent to carry out the functions contracted for by the board to inspect livestock for ownership identification purposes;
- (2) "Approved brand," any brand accepted for registration by the board;
- (3) "Authorized bill of sale," any limited use form approved by the board to transfer ownership of livestock;
- (4) "Board," the South Dakota State Brand Board;
- (5) "Brand ownership period," the five year time period during which brands are valid if the fees are paid;
- (6) "Carrier," any person in charge of a conveyance which transports livestock;
- (7) "Conflicting brand," any brand which is a duplicate of, or is similar to, or may be altered to resemble, a registered brand;
- (8) "Conveyance," any vehicle used to transport livestock;
- (9) "Estray," any unclaimed cattle, horse, mule, sheep or buffalo the ownership of which is in question;

- (10) "Evidence of ownership," any authorized bill of sale, market clearance, local inspection, health certificate, current registration papers, court order or other official document or in lieu thereof an affidavit of ownership;
- (11) "Healed brand," a brand that has shed the scab and for which the healing process is complete;
- (12) "Hold," the possession of livestock or the possession of the proceeds from the sale of livestock for purposes of establishing ownership;
- (13) "Hot iron," a metal instrument heated and used to brand livestock;
- (14) "Inspect," to examine livestock for the purpose of determining ownership;
- (15) "Inspector," any person who is authorized by the board to perform ownership inspection of livestock;
- (16) "Investigator," any person employed by the board to enforce the ownership inspection laws;
- (17) "Livestock," cattle, horses and mules;
- (18) "Local ownership inspection certificate," an ownership inspection certificate of livestock ownership issued by a brand inspector at any point outside the auction market;
- (19) "Market clearance," an inspection certificate of ownership for livestock issued by a brand inspector at a South Dakota livestock auction market;
- (20) "Open market," any livestock market or shipping point where ownership inspection is conducted by written agreement with the board;
- (21) "Owner," the person to whom a recorded brand is registered or who owns cattle, horses, mules, sheep or buffalo;
- (21A) "Process," to cut and wrap a livestock carcass for human consumption;
- (22) "Producer," any person engaged in the raising of livestock;
- (23) "Recordable brand," any brand acceptable for registration;
- (24) "Recorded brand," any brand registered with the board;
- (25) "Registered brand," any recorded brand for which the fees are currently paid;
- (26) "Seller," any person offering for sale or selling livestock;
- (27) "Selling agent," any person engaged in livestock commerce;
- (28) "Shipper," any person making delivery of livestock to a market or shipping point;
- (29) "Shipper's permit," any permit to transport livestock to a market or point approved by the board;
- (30) "Slaughter," the killing of livestock for processing for human consumption;
- (31) "Split brands," any brand parts of which are applied on more than one location of an animal;
- (32) "Tally," any board-approved form used by inspectors to list and describe livestock;
- (33) "Trail," to herd or drive livestock from place to place without conveyance; and

(34) "Transport," to carry by conveyance.

#### **40-18-2 Qualification of board members.**

The members of the board shall be persons who derive the major portion of their income from the livestock business and who are owners of brands duly recorded with the board. At least three of the five members of the board shall reside in the livestock ownership inspection areas. No appointed member may act as a member of the board while he holds an elective or appointive state or federal office. No more than three of the members shall be of any one political party.

#### **40-18-3 Terms of appointment to board -- Vacancies.**

Appointments to the board shall be made for terms of five years expiring on the first Monday in January in each year and in case of vacancy prior to expiration of a term, appointment shall be made for the balance of the unexpired term only, under the same procedure provided for in s 40-18-1.

#### **40-18-5 Quorum of board -- Vote required for action.**

Three members of the board shall constitute a quorum for the transaction of business, but the affirmative vote of three members of the board is required to adopt any motion or resolution.

#### **40-18-6 Office of board.**

The board shall maintain an office in Pierre.

#### **40-18-7 President and vice-president of board.**

The board shall elect from its members a president and vice president each year, who may vote on all matters before the board.

#### **40-18-8 General duties of staff director -- Call of meetings.**

The staff director shall keep a record of all proceedings, transactions, communications, and official acts of the board, shall be custodian of all records of the board and shall perform such other duties as the board may require. The staff director shall call a meeting of the board at the direction of the president or upon the written request of three or more members of the board.

#### **40-18-9 Employment of other persons by board -- Compensation -- Expenditures.**

The board may in accordance with chapter 3-6A employ such persons as it may consider necessary to properly carry out the provisions of chapters 40-18 to 40-22, inclusive, and chapter 40-29, under the supervision and control of the

board, and fix the salaries and compensation of such persons and may make such expenditures as are necessary properly to carry out the provisions of chapters 40-18 to 40-22, inclusive, and chapter 40-29.

#### **40-18-10 Designation of private or nonprofit corporation for provision of ownership inspection -- Terms of contract.**

The board may designate as an agency for the carrying on of livestock ownership inspection work a private or nonprofit corporation, and fix the compensation. Any contract entered into for the provision of livestock ownership inspection work shall contain provisions requiring a separate accounting of all income received and expenses paid by the agency based on such contract. Such accounting information shall be available to the public upon request to the board.

#### **40-18-10.1 Agreements with other states for livestock ownership inspection.**

The board may enter into reciprocal agreements or contracts with an agency of any other state, which provides livestock ownership inspection.

#### **40-18-11 Bond required of custodian of board funds.**

Any person employed or contracted with by the board who collects or is the custodian of any funds, shall furnish a surety bond, the amount and conditions of which shall in each case be prescribed by the board.

#### **40-18-12 Seal of board.**

The board shall adopt a seal which shall contain among other things the words: "South Dakota state brand board." Brand certificates and any other official certificates and documents of the board shall bear the seal of the board.

#### **40-18-13 Administration of marking and branding laws.**

The board shall administer chapters 40-18 to 40-22, inclusive, chapter 40-29 and any rules promulgated pursuant thereto.

#### **40-18-14 Employment of law enforcement officers for enforcement of marking and branding laws -- Hiring of additional inspectors.**

The board may employ four investigators for the purpose of enforcing the provisions of chapters 40-19 to 40-22, inclusive, and chapter 40-29. The investigators shall be certified law enforcement officers and shall enforce laws pertaining to inspection, sale, branding, misbranding, ownership, transportation or theft of cattle, horses, mules, sheep and buffalo. The investigators have all of the powers and authority of any law enforcement officer within the state of South Dakota while enforcing laws pertaining to cattle, horses, mules, sheep and buffalo. This section does not restrict the board from hiring inspectors, who are not law enforcement officers.

#### **40-18-15 Ownership inspection on transportation of livestock.**

The board may inspect all livestock moved within the South Dakota livestock ownership inspection area and all livestock leaving the South Dakota livestock ownership inspection area for the purpose of determining the proper ownership and brands, if any, of such livestock and shall have general charge, supervision and custody of all instruments, records and files in connection with such ownership inspection activities.

#### **40-18-16 Rules promulgated by board.**

The board may promulgate rules pursuant to chapter 1-26 to:

- (1) Describe prohibited brand symbols for various types of livestock and identify locations on animals where a brand is permitted;
- (2) Provide for the registration, transfer and renewal of livestock brands;
- (3) Establish a brand registration fee not to exceed twenty-five dollars;
- (4) Establish a brand renewal fee not to exceed ten dollars per year or a brand renewal fee not to exceed fifty dollars for each five-year ownership period and a brand transfer fee not to exceed twenty-five dollars;
- (5) Establish an ownership inspection fee not to exceed eighty cents for each head of livestock;
- (6) Establish recordable livestock brands;
- (7) Establish law enforcement, ownership inspection and transportation requirements within or without the ownership inspection area;
- (8) Establish a duplicate certificate fee not to exceed five dollars;
- (9) Establish a mileage fee for inspectors not to exceed the rate set by the state board of finance.

#### **40-18-17 Board to provide for brand registration, livestock inspection and enforcement of laws.**

The brand board shall provide for the registration of livestock brands, for the inspection of livestock for ownership identification purposes, and for the enforcement of laws pertaining to the inspection, sale, branding, ownership, transportation, and theft of livestock within the ownership inspection area and the state.

## **TITLE 40. ANIMALS AND LIVESTOCK**

### **CHAPTER 40-19. BRAND REGISTRATION AND USE**

#### **40-19-1 Use of unregistered brand as misdemeanor.**

It is a Class 1 misdemeanor to hot iron brand any domestic animal or other livestock or to otherwise use any recordable brand, unless the brand is valid as provided by law and is registered in the name of the user with the Office of the State Brand Board.

#### **40-19-2 Exclusive right to use brand after registration.**

Any person may apply for a brand and use that brand exclusively in this state after registering the brand and by renewing it as provided in this chapter.

#### **40-19-2.1 Placement of brand.**

Hot iron brands may be placed on the right or left shoulder, rib or hip of cattle, on the right or left shoulder or hip of horses and mules, on the right or left jaw of horses, on the nose or jaw of sheep and on the rib or hip of buffalo. No brand may be recorded for ownership identification purposes on either the left or right jaw of cattle. No brand may be recorded on the ribs of horses or mules.

#### **40-19-3 Single symbol brand not recordable -- Validity of presently recorded brands -- Exception for sheep -- Hot iron or paint for sheep.**

The branding of cattle, horses, mules and buffalo shall be done by use of a hot iron. A freeze brand may, however, be applied to horses and mules. A single letter, number, figure, bar, quarter circle, half circle, or complete circle, or a half diamond or complete diamond placed on livestock are unrecordable brands under this chapter, including new split-brands. However, presently recorded brands are valid as long as fees are paid and there is no conflict with board policy.

A single letter, symbol, or number brand is recordable for sheep. A sheep brand shall be either a hot iron brand or shall be applied with branding paint. No more than two colors or one color and a hot iron brand may be recorded for sheep under one application fee. Authorized paint colors are yellow, blue, green, black, red or purple. No dot, bar, slash, quarter circle, circle or the letter "Q" may be registered as a sheep brand. A brand may be recorded for the side, hip, nose or jaw on either the left or right side of sheep. No brand may be recorded as "across the back" of a sheep. A brand, regardless of position, is only recordable in a different color on the same location.

#### **40-19-4 Filing of application for brand -- Facsimile included.**

Any person desiring to use or adopt any recordable brand for livestock ownership identification purposes shall make and sign an application setting forth a facsimile of the brand desired and file the application for registration in the office of the board.

#### **40-19-5 Application form -- Notice if brand recordable -- Fees.**

An application for a registered brand shall be submitted on a form provided by the board. Applications shall be processed in the order of their receipt and the applicant shall be notified if the brand is recordable and of the fees due for registration.

#### **40-19-6 Registration of brand -- Certificate of registration.**

If the brand is recordable, the board shall register the brand upon payment of the required fees and shall issue a certificate of registration. Ownership of a brand begins on the date of registration.

**40-19-7 Rejection of brands by board -- Grounds -- Composition of brands - - Location on animal as part of brand.**

The board shall reject any brands formed from any letter, number or symbol which is a duplicate of, or in conflict with, any brand previously registered for that location on an animal. Any brand approved for registration shall be composed from the combination of no less than two or more than three letters, numbers or symbols, except for sheep. Only the following shall be accepted for registration:

- (1) Letters A to P and R to Z, in the plain gothic style of print;
- (2) Arabic numerals from two to nine, inclusive;
- (3) Symbols, including diamond, half diamond, arrow, mill iron, heart, box, half box, quarter circle, bar or slash.

All brands that are similar to any previously registered brand or that the board determines may be changed to resemble a previously registered brand may be rejected. Location of a brand on an animal shall be construed as part of the brand. A variation in the size of a letter, number, or figure does not constitute a new brand and shall be rejected.

**40-19-9 Rejection of brand adding symbol to existing brand -- Exception.**

The board shall reject any brand that has, in addition to being the same as one previously registered, any of the following marks, whether placed across, above, below, at either side or encircling the main brand: a straight bar, a quarter, half or entire circle, half or entire diamond, unless one or more of such marks is filed by the current owner of the first registered brand, in which case it may be accepted.

**40-19-10 Brands on imported animals to be filed -- Conflict with existing brand -- Notification and rebrandings -- Violation as misdemeanor.**

Any person before bringing into this state and turning loose for grazing purposes any livestock already branded, shall present to the board a statement of the brand on such livestock, and if in the judgment of the board, such brand is a duplicate of or in conflict with any previously registered brand, the board shall so notify the person bringing the livestock into this state. The board may require the owner of the livestock to rebrand the livestock with a nonconflicting brand prior to turning the livestock loose. A violation of this section is a Class 1 misdemeanor.

**40-19-11 Registration of brands approved -- Preservation of applications on certificates -- Registration and renewal fees.**

Any brand approved by the board shall be registered, and the board shall keep and maintain a register of any application filed and certificate issued relating to a brand. Any person desiring to have a brand registered shall remit to the board a fee pursuant to s 40-18-16, for each brand. In addition to the registration fee, any person registering a brand shall remit to the board a renewal fee pursuant to s 40-18-16.

**40-19-12 Five-year renewal of brands -- Renewal fee.**

Each registered brand is subject to renewal on January first in years ending in zero and five. Each brand owner shall pay to the board a renewal fee pursuant to s 40-18-16.

#### **40-19-13 Abandonment of brand by failure to renew -- Open to new registration.**

Any registered brand which is not renewed within one hundred twenty days after January first as provided for in s 40-19-12 is deemed abandoned by its owner, is canceled, and may not be renewed.

#### **40-19-13.1 Cancellation of certificate paid for with bad check.**

The board may cancel any certificate issued pursuant to this chapter if the registration fee, renewal fee or transfer fee is paid by an insufficient funds or no-account check.

#### **40-19-14 Rerecording of cancelled brand by previous owner after first two years.**

During the first two years following the current brand ownership period, only the previous owner may apply for a brand canceled under § 40-19-13. If the brand is recordable, the previous owner may register the brand by paying the registration fee and a one hundred dollar rerecord fee. Moreover, during the two years following the current ownership period, it is not a violation of § 40-19-21;

- (1) If the previous owner sells livestock bearing the canceled brand; or
- (2) If the previous owner brands livestock with the canceled brand prior to becoming aware of the cancellation.

#### **40-19-15 Change of registration on receipt of bill of sale -- Fees for recording transfers -- Certain brands not to be transferred to separate owners.**

The board shall change the name of the owner of registered brands upon receipt of a legally executed bill of sale. The board shall charge a transfer fee pursuant to s 40-18-16. If an owner has recorded an identical brand for both shoulder and rib locations on one side of any livestock, the brands may not be transferred separately to different owners. A separate fee is required for each brand location if transferred.

#### **40-19-16 Replacement of lost or destroyed certificate -- Affidavit -- Fee.**

The board shall issue a duplicate brand certificate in case of loss or destruction of the original certificate upon receipt of an affidavit signed by the owner and notarized describing the brand. The board shall charge a fee pursuant to s 40-18-16.

#### **40-19-17 Cancellation of brand conflicting with previous brand.**

The board may cancel from record any brand which has been registered in conflict with a previously recorded brand or which is a duplicate thereof.

#### **40-19-18 Cancellation of brand used for felony or theft.**

The board may cancel from record any brand owned and used by any person to perpetrate any felony or theft of cattle,



horses, mules, sheep and buffalo.

#### **40-19-19 Replacement brand for canceled brand -- Application -- No assessment of fee.**

If a brand is canceled as provided in s 40-19-17, the owner of the brand may select a replacement brand that does not conflict with any other brands of record. The owner may apply for a replacement brand as though he is applying for a new brand except that no new brand fee may be assessed for the brands.

#### **40-19-20 Conflict by unrecorded brand -- Statement by users of registered brand -- Notice and hearing or statement by user of unrecorded brand -- Notice to discontinue use -- Liability for damages -- Misdemeanor.**

If any brand conflicts with another person's registered brand, the person using the registered brand may file a written statement with the board showing the brand which conflicts with his registered brand. The board shall notify the person accused of using such conflicting brand, by certified or registered mail. The person upon whom such notification is served may appear in person before the board or present a statement to the board explaining how the unrecorded brand is not an infringement upon or in conflict with the registered brand. If the board decides that the unrecorded or last registered brand conflicts with the first registered brand, a notice shall be served upon the person using the unrecorded or last recorded brand to discontinue its use within thirty days from the receipt of such notice. Any person failing to comply with the provisions of this section is liable for all damages resulting from such failure and is guilty of a Class 1 misdemeanor.

#### **40-19-21 Unlawful use of brand as misdemeanor.**

Any person who uses a brand upon cattle, horses, mules, sheep or buffalo which has been canceled, continues to use a brand upon cattle, horses, mules, sheep or buffalo after it has been rejected, or uses any recordable brand upon cattle, horses, mules, sheep or buffalo without first registering it is guilty of a Class 1 misdemeanor.

#### **40-19-22 Fees paid into brand fund -- Purposes for which used.**

Fees required by ss 40-19-11, 40-19-12, 40-19-15 and 40-19-16 shall be collected by the board and be paid into the state treasury to the credit of the brand fund, which fund shall not at any time revert to the general fund of the state or be diverted to any other purposes than those stated in this chapter, or chapters 40-20 and 40-21.

#### **40-19-23 Administrative expenses paid from brand fund -- Vouchers and warrants -- Publication and sale of brand books and supplements.**

All expenses for salary of employees, per diem and traveling expenses of members of the board, books, records, files and office equipment necessary for the maintenance of a permanent system of brand registration, rerecording and renewals as provided for in this chapter, and the execution and enforcement of the provisions of chapters 40-18 to 40-22, inclusive, and chapter 40-29 shall be allowed upon vouchers approved by the board and warrants issued therefor by the state auditor, and paid out of the brand fund by the state treasurer.

The expenses referred to in this section include the expense of printing brand books and supplements sold for a price to be fixed by the board at not less than cost. The receipts from such sales shall be paid to the state treasurer and shall be deposited in the brand fund.

#### **40-19-23.1 Brand board activities.**

The board may:

- (1) Contract and cooperate with any person, organization or governmental department or agency for education, research, theft prevention and carrying out the provisions of chapters 40-18 to 40-22, inclusive, and chapter 40-29;
- (2) Expend the funds collected pursuant to chapters 40-19, 40-21 and 40- 29, and appropriated for their administration; and
- (3) Accept donations of funds, property, services or other assistance from public or private sources to carry out the provisions of chapters 40-18 to 40-22, inclusive, and chapter 40-29; and
- (4) Develop and disseminate information relating to the purpose of livestock ownership inspection and theft prevention.

#### **40-19-24 Registered brand as prima facie evidence of ownership -- Copy of register as proof of brand.**

In any action or proceeding at law or in equity, if the title to any cattle, horses, mules, sheep or buffalo is involved, the brand on any animal shall be prima facie evidence of the ownership of the person whose brand it may be, if such brand is currently registered and renewed as provided by law. Proof of the right of any person to use any brand shall be made by a copy of the register of the same, certified in all cases of brands registered under this chapter, by the board.

#### **40-19-25 Misuse or alteration of brand as felony.**

Any person who, with intent to defraud, brands or marks any cattle, horse, sheep, buffalo or mule, not his own; intentionally brands over a previous brand or in any manner alters, defaces or obliterates a previous brand; or cuts out or obliterates a previous brand on any cattle, horse, sheep, buffalo or mule is guilty of a Class 5 felony.

#### **40-19-26 Property rights unimpaired.**

Nothing in this chapter shall be so construed as in any manner to impair the property rights of any owner of livestock in this state.

## **TITLE 40. ANIMALS AND LIVESTOCK**

### **CHAPTER 40-20. LIVESTOCK OWNERSHIP INSPECTION AREA**

#### **40-20-1 Counties included in inspection area.**

The South Dakota livestock ownership inspection area consists of all of that part of the state of South Dakota lying within the following counties: Harding, Butte, Lawrence, Pennington, Custer, Fall River, Perkins, Meade, Shannon, Corson, Dewey, Ziebach, Haakon, Stanley, Jackson, Jones, Mellette, Bennett, Todd, Lyman, Tripp and Gregory.

**40-20-2 Petition for addition of county contiguous to ownership inspection area -- Discretion of board -- Minimum area added.**

Any county contiguous to the livestock ownership inspection area may become a part of such area upon a petition signed by a majority of the owners of livestock residing within such county to be attached, which shall be presented to the board. The board shall, in its discretion, either reject or approve such petition at its next regular or special meeting. No area in the brand inspection area may be smaller than a county.

**40-20-3 Withdrawal of county from inspection area by petition -- Minimum area withdrawing.**

Any county which has become a part of the livestock inspection area by petition and which adjoins a noninspection area may withdraw from the inspection area by a petition requesting withdrawal. The petition shall be signed by a majority of the owners of livestock in the county seeking withdrawal. The petition shall be filed with the board. The board shall at its next regular or special meeting enter a resolution approving the withdrawal, which action removes the county described in the petition from the ownership inspection area. No area seeking withdrawal may be smaller than a county.

**40-20-4 Ownership inspection and certificate required for transportation, trailing or exportation of livestock, horses or mules from inspection area -- Misdemeanor -- Inspection -- Impoundment -- Venue.**

Except as provided in this chapter, it is a Class 1 misdemeanor for any person to remove or authorize the removal of any livestock from any point within the livestock ownership inspection area to any point within one mile of the border with a destination outside the ownership inspection area unless the livestock have first been inspected for ownership and unless the shipper possesses the local inspection certificate, market clearance, shippers permit, or such other form of authorization as may be required by the board. Except as provided in s 40-20-29, a local inspection certificate is valid for transportation of livestock out of the inspection area only on the date issued. If there is no valid local inspection certificate, the livestock shall be inspected before leaving the inspection area. Livestock being removed from the ownership inspection area without authorization from the board may be impounded by any law enforcement officer until the livestock are inspected for ownership by an authorized brand inspector. The venue of any offense under this section is in the county where such livestock were loaded or in any county through which the livestock were transported or trailed. Any livestock being transported to a destination outside the ownership inspection area shall be inspected for ownership if they cease to be in the custody of the carrier at any time prior to leaving the ownership inspection area. Any livestock shipper within the livestock ownership inspection area wanting livestock inspected as provided in this section shall notify an inspector in advance of the inspection and allow the inspector reasonable time to provide the inspection.

**40-20-4.1 Permit to move livestock from area -- Duration of permit -- Fee -- Permit to transport horses and mules.**

Notwithstanding the provisions of s 40-20-4, an owner of any livestock who wishes to move the livestock out of the ownership inspection area for any purpose other than sale or trade of the livestock may obtain a written permit from the board for movement of the livestock. The written permit shall remain in effect for the life of the livestock described, or for a specific term, and it is void if the livestock changes ownership. The fee for the permit shall be established by rules promulgated pursuant to chapter 1-26. The permit fee includes the costs of any inspection and the fee imposed under the provisions of s 40-18-16. A permit for the transportation of horses and mules may be authorized by the board pursuant to s 40-18-16.

**40-20-4.2 Inspection of livestock while in or on conveyance as misdemeanor.**

It is a Class 1 misdemeanor to make an inspection of livestock while the livestock are loaded in or on any conveyance. The inspector shall tally the livestock according to the number of head, sex and brands.

#### **40-20-4.3 Inspector prohibited from inspecting own livestock -- Violation as misdemeanor.**

It is a Class 1 misdemeanor for an inspector to inspect livestock or issue shipper's agreements for livestock owned by himself.

#### **40-20-5 Livestock ownership inspection area dividing ranch -- Movement of livestock without inspection.**

If the border of the livestock ownership inspection area of South Dakota divides any ranch or farm, written permission may be given by the board to the owner or lessee of the ranch or farm to trail livestock out of the South Dakota inspection area for grazing purposes without inspection. The border of the South Dakota inspection area shall be contiguous to an inspection area of an adjacent state. The board may cancel such permission at any time subject to the provisions of chapter 1-26.

#### **40-20-6 Ownership inspection not required for transportation or trailing to open market.**

Subject to the conditions set forth in ss 40-20-7 to 40-20-12, inclusive, if livestock is transported or trailed to a designated inspection point outside the livestock ownership inspection area designated by the board as an open market, no livestock ownership inspection is required at point of origin.

#### **40-20-7 Authorization for transportation to open market or slaughter plant.**

In lieu of an ownership inspection, any person who intends to remove livestock from the livestock ownership inspection area for the purpose of sale or slaughter may obtain a shipper's permit from the board or its authorized agent for the transportation of livestock to a previously designated open market or slaughter plant pursuant to s 40-18-16. The permit may be obtained forty-eight hours in advance of shipment from an authorized agent of the board.

#### **40-20-7.1 Reinspection required of livestock unloaded anywhere other than market of origin.**

A market clearance is valid for transporting livestock out of the ownership inspection area only if the transportation originates at the market where the livestock were inspected. If the livestock are unloaded or held at any other location other than the market of origin, they shall be reinspected for ownership immediately prior to further transportation.

#### **40-20-10 Transportation of livestock without required authorization as misdemeanor.**

If authorization is required, it is a Class 1 misdemeanor for any carrier or owner to transport any livestock from the livestock ownership inspection area or to within a mile of the border with a destination outside the livestock ownership inspection area unless the carrier or owner is in possession of authorization by the board.

#### **40-20-10.1 Proceeds of sale held in trust pending authorization.**

If livestock have been shipped to an open market and no authorization for the transportation of such livestock has been obtained, the proceeds of the sale of such livestock shall be held in trust by the operators of the open market until the board authorizes the release of the proceeds.

**40-20-12 Inspection and clearance required for diversion of livestock consigned to open market -- Neglect by carrier as misdemeanor.**

If livestock shipped from the livestock ownership inspection area are consigned to an open market described in s 40-20-6, it is a Class 1 misdemeanor for any person to change the consignment to a point other than a livestock market previously designated by the board as an open market, unless the livestock receive a livestock ownership inspection and the carrier receives a certificate or clearance from the board showing that all the livestock belongs to the shipper.

**40-20-18 Exhibition of authorization on demand of law enforcement officer -- Failure to possess authorization as misdemeanor.**

Any person in charge or control of any motor vehicle transporting livestock from any point within the livestock ownership inspection area shall, upon demand of any state law enforcement officer, exhibit to the officer authorization as required pursuant to § 40-20-4. It is a Class 2 misdemeanor for any person not to be in possession of such authorization if required by the provisions of this section.

**40-20-24 Law enforcement officer stopping vehicle for inspection -- Unloading of livestock.**

Any law enforcement officer may require any person transporting livestock to stop any vehicle transporting such livestock for the purpose of examination and inspection of the shipper's permit, local ownership inspection certificates, livestock market clearances, bills of sale, brands, marks, or other means of identification. The law enforcement officer may demand any such person to unload such livestock at the nearest suitable location for further inspection and examination.

**40-20-25 Law enforcement officer not liable for damages in stopping vehicle.**

Any law enforcement officer described in s 40-20-24 or surety on his official bond is not liable for any damages claimed to have been incurred by reason of any injury to such livestock, loss of time, shrinkage or any other similar damage.

**40-20-26 Licensed auction markets in inspection area to require ownership inspection of livestock -- Neglect as misdemeanor -- Discretionary reinspection.**

It is a Class 1 misdemeanor for any licensed livestock auction market in the livestock ownership inspection area to allow any livestock brought into the yards of the market for purpose of sale to leave the yards until first inspected for ownership. However, if a shipment of livestock arrives at any auction market in the ownership inspection area after daylight hours, facilities shall be made available to yard such livestock separate and apart from any other livestock. The auction market may sell such livestock that night, but livestock so sold shall be returned to the separate yard facilities, and may not be removed therefrom until an ownership inspection has been made. The livestock ownership inspector may, in his discretion, reinspect the livestock before they leave the yards of the auction market.

**40-20-26.1 Sale or transfer of ownership without ownership inspection as misdemeanor -- Exception.**

It is a Class 1 misdemeanor for any person to sell or to transfer ownership of any livestock within the livestock ownership inspection area without first obtaining an ownership inspection, except as provided in s 40-20-26.

**40-20-26.2 Authorized bill of sale transfer -- Requirements -- Limits -- Exception from inspection requirement - Violation as misdemeanor.**

The provisions of s 40-20-26.1 notwithstanding, ownership of livestock with the seller's South Dakota recorded and healed brand or the owner's unbranded livestock may be transferred by means of an authorized bill of sale without a brand inspection. The bill of sale shall be on a form prescribed by the board. A copy of an authorized bill of sale shall be forwarded to the board. A violation of the forwarding requirement is a Class 2 misdemeanor. An authorized bill of sale does not substitute for inspection of livestock being removed from the ownership inspection area of South Dakota.

An authorized bill of sale may transfer no more than five head of livestock to any one buyer. Multiple authorized bills of sale may not be executed to subdivide numbers of livestock greater than five to any one buyer. The transfer of livestock without an authorized bill of sale under this section or in violation of the requirements relating to the number of livestock that may be transferred to a single buyer is a Class 1 misdemeanor.

**40-20-26.3 Promulgation of rules exempting certain persons from s 40-20- 26.1.**

The board may, by rules promulgated pursuant to chapter 1-26, exempt any person licensed pursuant to chapter 40-15A from the provisions of s 40-20-26.1.

**40-20-27 Livestock ownership inspection certificate issued to buyer.**

The board shall issue a livestock ownership inspection certificate, in such form as the board may prescribe, to each livestock buyer showing such information as may be required by the board.

**40-20-28 Fee for inspection services -- Determination of rate -- When collected.**

The board may charge and collect a fee from any open market for services pertaining to the brand inspection of livestock as required by chapters 40-20 and 40-21. The amount of such fees shall be based upon the cost of providing ownership inspection at the market and shall be collected if the current inspection income does not cover the cost of brand inspection.

**40-20-29 Inspection and certificate required for slaughter or processing of livestock commercially within inspection area -- Misdemeanor -- Out-of-state certificate -- Exhibition on demand.**

It is a Class 1 misdemeanor for any person to slaughter or process livestock commercially within the livestock ownership inspection area until the livestock have received an ownership inspection and the certificate of such inspection is filed and is made a part of that person's permanent records, or unless the person has the hide of each slaughtered carcass available for inspection. An ownership brand inspection certificate on livestock is valid for no longer than four days from the date of issue. Livestock arriving at slaughter destination later than four days from the

date indicated on the inspection certificate shall be inspected and the fee collected. All certificates of ownership inspection shall, at any time upon demand, be displayed to any law enforcement officer or to the board.

#### **40-20-30 Injunction to restrain violation of this chapter or chapter 40- 21.**

The board may apply for an injunction in any court of competent jurisdiction to restrain any violation of this chapter or chapter 40-21.

#### **40-20-37 Removal of livestock before ownership inspection prohibited -- Violation as misdemeanor.**

It is a Class 1 misdemeanor for any buyer of livestock at a licensed livestock auction market in the ownership inspection area, or any person on the buyer's behalf, to remove any livestock from the market until the livestock have been inspected for ownership as provided in s 40-20-26.

#### **40-20-38 Grounds for refusal to inspect.**

A livestock inspector may refuse to inspect livestock for ownership purposes if, in the judgment of the inspector, the livestock are confined to an area not accessible for inspection or if insufficient light exists for inspection.

#### **40-20-39 Inspection of livestock removed from inspection area -- Fee.**

Livestock that is removed from the ownership inspection area in violation of this chapter may be inspected at any place outside the inspection area and the fee collected for the inspection. The inspection does not exempt any person from prosecution for violation of the inspection laws.

#### **40-20-40 Mileage fee for travel to inspection.**

The board may charge a fee for actual mileage traveled to perform a local inspection or an inspection at an open market. The mileage fee shall be in addition to the inspection fee and may not exceed the rate set by the State Board of Finance pursuant to s 3-9-1.

## **TITLE 40. ANIMALS AND LIVESTOCK CHAPTER 40-21. BRAND INSPECTION AND THEFT PREVENTION**

#### **40-21-3.1 Transporting cattle, horses, mules, sheep, buffalo or carcasses without owner's permit prohibited -- Contents of permit -- Written statement in lieu of permit -- Violation as misdemeanor.**

No person may transport cattle, horses, mules, sheep or buffalo or the carcasses thereof on any public highway in this state or over any land of which he is not the owner or tenant, without the written permission of the owner of the cattle, horses, mules, sheep and buffalo or carcasses. Such permit shall contain: the name of the owner of the shipment; the ages, sexes, brands thereon, if any; the date of transportation, the points of origin and destination of the shipment; and the person to whom it is consigned. In lieu of the permit, any person who is transporting such cattle, horses, mules,

sheep and buffalo or carcasses may make a written statement which shall contain the information described herein. Violation of this section is a Class 1 misdemeanor.

#### **40-21-5 Designation of open market for livestock -- Promulgation of rules.**

To facilitate the inspection of livestock and the enforcement of chapters 40- 18 to 40-22, inclusive, any livestock market, slaughter facility or inspection point, whether within or without the State of South Dakota, that meets the criteria established by the board may be designated by the board as an open market. The board shall establish criteria for designating an open market and for revoking open market status by rules promulgated pursuant to chapter 1-26. Criteria may include distance from the livestock ownership inspection area, the number of head inspected annually, compliance by the market with ownership inspection laws, adequacy of the facilities and economic feasibility.

#### **40-21-6 Inspections made between sunrise and sunset -- Rules regulating inspection during hours of darkness.**

All inspections provided for in this chapter or chapter 40-20 shall be made between sunrise and sunset. However, livestock may be inspected between sunset and sunrise if there is lighting sufficient to accomplish brand inspection. The board shall promulgate rules, pursuant to chapter 1-26, to regulate inspection during hours of darkness.

#### **40-21-7 Inspection fee for livestock -- Receipt -- Charge on entire consignment.**

The board may collect a fee on all livestock inspected in accordance with the provisions of s 40-18-16. The owner or seller of any livestock so inspected is responsible for the inspection fee. All fees are payable to the board and the board shall issue a receipt. The board shall deliver the original receipt to the remitter, and the duplicate receipt shall be retained by the board. No inspection clearance may be delivered until the inspection fees have been paid. If only a portion of a consignment of livestock is sold, the inspection fee required shall be charged on the entire consignment.

#### **40-21-8 Deposit of fees collected by inspecting agency -- Monthly report of fees and expenses.**

Any fees or other funds collected by an agency delegated by the state brand board under the provisions of s 40-18-10 shall be deposited in a separate bank account. The agency delegated by the board under s 40-18-10 shall prepare a monthly report of fees collected and expenses prorated for the ownership inspection program. A copy of the report shall be filed monthly with the board, the secretary of agriculture and the auditor general.

#### **40-21-9 Fees paid into livestock ownership inspection and theft prevention fund -- Purposes for which used.**

Except as provided by s 40-21-8, all fees collected by the board shall be deposited in the state treasury in a fund to be known as the South Dakota livestock ownership inspection and theft prevention fund. The moneys in the fund shall be used by the board only in the administration and enforcement of this chapter and chapter 40-20.

#### **40-21-10 Proof of ownership required for livestock not bearing seller's brand.**

If any livestock, inspected under the provisions of this chapter or chapter 40-20 bears an unrecorded brand, or a recorded brand other than the brand of the seller, and does not bear the recorded brand of such seller, then the seller shall be required to establish his ownership to such livestock, by presenting to the livestock ownership inspector a



witnessed bill of sale to such animal or by other satisfactory evidence of ownership which may include an affidavit of ownership signed by the seller and witnessed by the ownership inspector. If any livestock listed on the original bill of sale or affidavit of ownership are not sold, the inspector shall pick up the ownership documents and issue a receipt showing the number of livestock sold and the number remaining. If any livestock are unbranded, the inspector may require the shipper or seller to establish his ownership by presenting to the inspector an affidavit of ownership. Only an original bill of sale or affidavit of ownership is valid for proof of ownership. Any bill of sale or affidavit shall be notarized or signed by two witnesses.

**40-21-11 Proof of ownership required for livestock bearing two or more brands.**

If any livestock inspected under the provisions of this chapter or chapter 40-20 bears the recorded brand of the seller, and also bears a recorded brand other than the brand of the seller, then the seller may be required, at the discretion of the livestock ownership inspector, to establish ownership to such livestock by presenting to the ownership inspector satisfactory evidence of ownership.

**40-21-12 Holding or sale of livestock or proceeds on failure to establish ownership -- Financial responsibility of selling agent -- Civil suit -- Discretion of inspector -- Disposition of proceeds without board's release as misdemeanor.**

If the seller described in § 40-21-10 or 40-21-11 fails to establish ownership of any livestock, the livestock shall be held or sold. If the livestock are held, disposition by the board shall be made. If sold, the selling agent is financially responsible for the proceeds of the sale and shall hold the proceeds until the board orders the money, along with account of sale, released to the livestock owner or to the South Dakota livestock ownership inspection fund. Such financial responsibility may be enforced by civil suit brought by the board. If the inspector finds livestock carrying a recorded brand which is not the property of the consignor and is not accompanied by a proper bill of sale, affidavit of ownership, or livestock market clearance, the inspector shall designate the livestock as, Hold. The inspector may sell or hold the livestock; and if sold, the selling agency shall hold the proceeds from the sale for sixty days or until the consignor establishes evidence of ownership to the inspector, whichever comes first. All livestock holds after sixty days shall be forwarded by the inspector to the board for review and final disposition, which may include clarification, settlement, or payment related to proper ownership. If a hold has been placed on the proceeds, it is a Class 1 misdemeanor for the selling agent or selling agency to disburse the proceeds to the seller or consignor before the board has cleared the hold for release.

**40-21-14 Time allowed for establishment of ownership after sale of animal -- Sale price paid to owner.**

In the event of sale of livestock pursuant to s 40-21-12, the seller of such animal shall establish ownership within sixty days after sale thereof, by producing satisfactory proof thereof to the board. If such seller establishes ownership, the board shall order the person acting as selling agent to pay the net sale price with account of sale to the owner.

**40-21-15 Failure of seller to establish ownership -- Sale proceeds paid to board -- Account of sale.**

If the seller of an animal sold pursuant to s 40-21-12 fails to establish ownership within sixty days, the board shall order the person who acts as selling agent to pay the net sale proceeds with account of sale of such livestock over to the board. The account of sale shall be prepared by the selling agency in duplicate showing the brand on the animal, the name and address of the shipper, the point of origin and date of consignment.

**40-21-16 Separate fund for sale proceeds of undetermined ownership held by board -- Period for which held -- Payment to owner on proof of ownership.**

Any funds held by the board from the sale of livestock of undetermined ownership shall be placed into a separate interest bearing fund. Such funds shall be kept for a period of time not to exceed one year. If proof of ownership is made, satisfactory to the board within one year, all proceeds less authorized deductions shall be paid to the owner.

**40-21-17 Sale proceeds of undetermined ownership escheat to board -- Deposit in ownership inspection and theft prevention fund when ownership not established.**

If the ownership of any livestock sold pursuant to s 40-21-12 is not established within a one-year period, the net sale proceeds escheat to the board, and the board shall deposit the proceeds in the South Dakota livestock ownership inspection and theft prevention fund, provided for in s 40-21-9.

**40-21-19 Delegation of board powers to livestock inspection agency.**

The board may delegate the duties, obligations and powers provided in ss 40- 21-10 to 40-21-17, inclusive, to any agency contracted with for carrying on livestock inspection under the provisions of s 40-18-10.

**40-21-20 Enforcement of rules.**

Any rule promulgated pursuant to chapter 1-26 by the board may be enforced in a court of competent jurisdiction.

**40-21-21 Forgery, alteration or misrepresentation of inspection certificate, market clearance, bill of sale or permit as felony.**

Any person who forges, alters or misrepresents any livestock ownership inspection certificate, market clearance, bill of sale, or any permit or other authorization or proof of ownership provided for in this chapter or chapter 40- 20 with intent to defraud is guilty of a Class 5 felony.

**40-21-22.1 Removal of livestock before ownership inspection prohibited -- Violation as misdemeanor.**

It is a Class 1 misdemeanor for any person bringing livestock to a licensed livestock auction for the purpose of sale, or any person on such person's behalf, to remove the livestock from the market, if a hold has been placed on the livestock pursuant to s 40-21-12, until evidence of ownership is furnished to the inspector or arrangements suitable to the board have been made.

**40-21-23 Venue of offenses.**

The venue of any offense under s 40-21-21 is in the county where the livestock were loaded, if known, or in any county through which the livestock were transported or trailed.

**40-21-24 Reward authorized -- Funding.**

The board may authorize and pay a reward not exceeding one thousand dollars to any person who provides information leading to the conviction of any person for the crime of stealing livestock which are branded with a brand registered with the board. Such rewards may be paid out of the South Dakota livestock ownership and theft prevention fund created by s 40-21-9.

## **ADMINISTRATIVE RULES OF SOUTH DAKOTA**

### **TITLE 12. DEPARTMENT OF AGRICULTURE**

#### **ARTICLE 12:10. BRAND BOARD**

#### **CHAPTER 12:10:02. THEFT PREVENTION**

**12:10:01:12. Registration fee.**

A brand registration fee of \$25 is required for each location of the brand on each species of livestock.

**12:10:01:13. Renewal fee.**

A fee of \$10 is required for each year a brand is renewed. This section applies to new brand registrations renewed to the end of the current 5-year renewal period and to those brands which are subject to renewal for the next 5-year renewal period.

**12:10:01:14. Transfer fee.**

A fee of \$25 is required for each transfer of a registered brand.

**12:10:01:15. Duplicate certificate fee.**

A fee of \$2 is required for each duplicate of a brand registration certificate.

**12:10:02:01. Applications for open market designation.**

Licensed livestock auction markets and slaughter plants located outside the livestock ownership inspection area may apply for open market designation if they meet the following criteria:

- (1) The applicant's facilities are within 45 miles of the inspection area boundary by an all-weather road;
- (2) The applicant's facilities received at least 2,500 head of cattle from the ownership inspection area within the 12 months preceding the date of the application if the applicant is a livestock auction market;

- (3) The applicant has adequate facilities for the ownership inspection of livestock as determined by the inspector in accordance with SDCL 40-20-38 and 40-21-5;
- (4) The applicant agrees to deposit and maintain funds in an escrow account to cover expenses of providing brand inspection as required by the board or its authorized agent;
- (5) The applicant has no history of violating livestock ownership or inspection requirements; and
- (6) The applicant, if it is a slaughter plant subject to licensure, inspection, or regulation in the state where their business is located, must provide evidence of permission to operate as a custom slaughter plant in that state.

The application must be on forms provided by the board. The board shall consider whether the criteria listed in this section have been met in deciding to approve or reject the application.

Upon approval of an application, the board shall forward one signed copy to the inspection agency and one signed copy to the applicant. The original application shall be retained in the Brand Board office.

#### **12:10:02:01.01. Canceling open market designation.**

The board may cancel an open market designation if it determines that:

- (1) The owner or manager of the facilities fails to comply with ownership inspection laws or rules or bonding and licensing requirements, including the laws and rules of the Packers and Stockyards Administration;
- (2) The conditions at the facilities are inadequate or insufficient light exists for livestock ownership inspection as required by SDCL 40-20-38;
- (3) It is no longer economically feasible to maintain an inspector at the facilities; or
- (4) The livestock auction market has not received at least 2,500 head of cattle from the ownership inspection area within the preceding 12 months.

#### **12:10:02:05. Inspection fee.**

A fee of 60 cents per head shall be charged for inspection of all cattle, horses, and mules regardless of age. The inspection fee also applies to calves and colts.

#### **12:10:02:19. Authorized bill of sale.**

The bill of sale used to transfer ownership of livestock shall contain the names and addresses of the buyer and seller, the date of the transaction, the number and description of the animals being transferred, a drawing of the brand, the location where the brand appears on the animal, an affirmation signed by the seller stating the brand is registered with the State Brand Board, and the signatures of two witnesses.

#### **12:10:02:20. Distribution of copies of bill of sale.**

The original bill of sale is the purchaser's copy and shall be given to the brand inspector when the livestock are subsequently sold or transferred by the purchaser.

**12:10:02:34. Application for permission to use out-of-state brand.**

A person may apply to the board on a form provided by the board for permission to use the person's out-of-state brand.

**Amended in 1997, 1998, 1999, 2002.**

**Reviewed by AAHS in July 2001.**

**Reviewed and updated by AAHS in May 2003.**

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