Nebraska Livestock Brand Act

Compiled and issued by the

Nebraska Brand Committee

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54-170.

Act, how cited.

Sections 54-170 to 54-1,131 shall be known and may be cited as the Livestock Brand Act.

Source

- Laws 1999, LB 778, § 1;
- Laws 2000, LB 213, § 3;
- Laws 2013, LB435, § 1;
- Laws 2014, LB768, § 1;
- Laws 2014, LB884, § 1;
- Laws 2021, LB572, § 1.
- **Effective Date: August 28, 2021**

54-171.01.

Approved nonvisual identifier, defined.

Approved nonvisual identifier means a nonvisual method of livestock identification approved by the Nebraska Brand Committee such as an electronic device, a nose print, a retinal scan, a DNA match, or any other such nonvisual method of livestock identification.

Source

- Laws 2021, LB572, § 3.
- **Effective Date: August 28, 2021**

54-172.

Bill of sale, defined.

Bill of sale means a formal instrument for the conveyance or transfer of title to livestock or other goods and chattels. The bill of sale shall state the purchaser's name and address, the date of transfer, the guarantee of title, the number of livestock transferred, the sex of such livestock, the brand or brands, the location of the brand or brands or a statement to the effect that the animal is unbranded, any approved nonvisual identifiers, and the name and address of the seller. The signature of the seller shall be attested by at least one witness or acknowledged by a notary public or by some other officer authorized by state law to take acknowledgments. For any conveyance or transfer of title to cattle subject to assessment imposed pursuant to the federal Beef Promotion and Research Order, 7 C.F.R. part 1260, for which the purchaser is the collecting person pursuant to 7 C.F.R. 1260.311 for purposes of collecting and remitting such assessment,

the bill of sale shall include a notation of the amount the purchaser collected from the seller or deducted from the sale proceeds for the assessment. A properly executed bill of sale means a bill of sale that is provided by the seller and received by the purchaser.

Source

- Laws 1999, LB 778, § 3;
- Laws 2014, LB768, § 3;
- Laws 2021, LB572, § 10.
- **Effective Date: August 28, 2021**

54-173.

Brand clearance, defined.

Brand clearance means the documentary evidence of ownership that is issued and signed by a brand inspector and given to persons who have legally purchased cattle at a livestock auction or sale where a brand inspection service is provided. The brand clearance shall give the name and address of sale or auction where issued, the name of purchaser, the number and sex of cattle, any brands, the location of any brands on the cattle, and any approved nonvisual identifiers.

Source

- Laws 1999, LB 778, § 4;
- Laws 2021, LB572, § 11.
- **Effective Date: August 28, 2021**

54-174.

Brand inspection agency, defined.

Brand inspection agency means an agency of a state, or a duly organized livestock association of a state, authorized by state law and registered with the Packers and Stockyards Division of the United States Department of Agriculture to charge and collect, at designated stockyards, packing plants, sales barns, or farm and ranch loading points, a reasonable and nondiscriminatory fee for the inspection of brands, marks, and other identifying characteristics of livestock originating in or shipped from such state for the purpose of determining the ownership of such livestock.

Source

- Laws 1999, LB 778, § 5.

54-175.

Brand inspection area, defined.

Brand inspection area means that portion of the State of Nebraska designated in section 54-1,109, where brand inspection is mandatory.

Source

- Laws 1999, LB 778, § 6.

54-175.01.

Brand inspection service area, defined.

Brand inspection service area means all Nebraska counties and areas of Nebraska counties contiguous with the brand inspection area designated by section 54-1,109.

Source

- Laws 2014, LB768, § 4.

54-176.

Brand inspector, defined.

Brand inspector means a person employed by the Nebraska Brand Committee, or some other brand inspection agency, inside or outside of the State of Nebraska, for the purpose of identifying brands, marks, or other identifying characteristics of livestock or approved nonvisual identifiers to determine the existence of such brands, marks, or identifying characteristics or identifiers and from such determinations attempt to establish correct and true ownership of such livestock, and generally carry out the provisions and enforcement of all laws pertaining to brands, brand inspection, physical inspection, electronic inspection, and associated livestock laws.

Source

- Laws 1999, LB 778, § 7;
- Laws 2021, LB572, § 12.
- **Effective Date: August 28, 2021**

54-177.

Carcass, defined.

Carcass means the body, or part thereof but not less than one-fourth of a body, of any dead or slaughtered livestock.

Source

- Laws 1999, LB 778, § 8.

54-178.

Cattle, defined.

Cattle means bovine cattle only and does not relate to or include any other kind of animal.

Source

- Laws 1999, LB 778, § 9.

54-179.

Certificate of inspection, defined.

Certificate of inspection means the official document issued and signed by a brand inspector authorizing (1) movement of livestock from a point of origin within the brand inspection area to a destination either inside or outside of the brand inspection area or outside of this state, (2) slaughter of livestock as specified on such certificate, or (3) the change of ownership of livestock as specified on such certificate. A certificate of inspection shall designate, as needed, the name of the shipper, consignor, or seller of the livestock, the purchaser or consignee of the livestock, the destination of the livestock, the vehicle license number or carrier number, the miles driven by an inspector to perform inspection, the amount of inspection fees collected, the number and sex of the livestock to be moved or slaughtered, any brands on the livestock, any approved nonvisual identifiers, and the brand owner. A certificate of inspection shall be construed and is intended to be documentary evidence of ownership on all livestock covered by such document.

Source

- Laws 1999, LB 778, § 10;
- Laws 2017, LB600, § 1;
- Laws 2021, LB572, § 13.
- **Effective Date: August 28, 2021**

54-179.01.

Certified bill of sale, defined.

Certified bill of sale means a document generated by the Nebraska Brand Committee from information provided electronically by a qualified dairy when selling calves under thirty days of age for beef production purposes. Such information shall include the name and physical address of the seller, the name and physical address of the purchaser, the number of head being sold, a physical description of the calves including date of birth, the color and sex, any identifiers such as metal tags or dangle tags, and any brands and their location, the date of the transfer of ownership, and if the assessment imposed pursuant to the federal Beef Promotion and Research Order, 7 C.F.R. part 1260, has been collected.

Source

- Laws 2021, LB572, § 4.
- **Effective Date: August 28, 2021**

54-179.02.

Certified transportation permit, defined.

Certified transportation permit means a document generated by the Nebraska Brand Committee from information provided electronically by a qualified dairy when moving calves under thirty days of age out of the inspection area for beef production purposes. Such information shall include the name and physical address of the owner, the number of head being transported, a physical description of the calves including the date of birth, the color and sex, any identifiers such as metal tags or dangle tags, and any brands and their location, and the actual or intended date of transport.

Source

- Laws 2021, LB572, § 5.
- **Effective Date: August 28, 2021**

54-179.03.

Electronic inspection, defined.

Electronic inspection means a method of performing inspections of livestock enrolled with the Nebraska Brand Committee utilizing approved nonvisual identifier means of identification.

Source

- Laws 2021, LB572, § 6.
- **Effective Date: August 28, 2021**

54-179.04.

Enrollment, defined.

Enrollment means the registration of livestock identified by nonvisual identifier means of livestock identification approved by the Nebraska Brand Committee and which occurs electronically and uses only those approved identifiers for evidence of ownership.

Source

- Laws 2021, LB572, § 7.
- **Effective Date: August 28, 2021**

54-180.

Estray, defined.

Estray means any livestock found running at large upon public or private lands, either fenced or unfenced, whose owner is unknown in the area where found, any such livestock which is branded with a brand which is not on record in the office of the Nebraska Brand Committee, or any livestock for which ownership has not been established as provided in section 54-1,118.

Source

- Laws 1999, LB 778, § 11.

54-181.

Freeze brand, defined.

Freeze brand means a mark or brand that is created on a live animal in a depigmentation technique, whereby the pigment-producing cells in the skin of an animal are destroyed by the application of intense cold to the skin area.

Source

- Laws 1999, LB 778, § 12.

54-182.

Investigator, defined.

Investigator means an employee of the Nebraska Brand Committee who is also a deputy state sheriff and has the duty, responsibility, and authority to enforce all state statutes pertaining to brands, brand inspection, physical inspection, electronic inspection, and associated livestock laws. An investigator is also responsible for the investigation of all problems associated with brands, brand inspection, and associated livestock enforcement problems.

Source

- Laws 1999, LB 778, § 13;
- Laws 2021, LB572, § 14.
- **Effective Date: August 28, 2021**

Annotations

- Failure to give cautionary instruction with reference to testimony of investigator for Nebraska Brand Committee was not reversible error. State v. Nelson, 182 Neb. 31, 152 N.W.2d 10 (1967).

54-183.

Livestock, defined.

Livestock means any domestic cattle, horses, mules, donkeys, sheep, or swine.

Source

- Laws 1999, LB 778, § 14.

Annotations

- Dogs are not livestock and the care or production of dogs cannot be included in the term animal husbandry. City of Beatrice v. Goodenkauf, 219 Neb. 756, 366 N.W.2d 411 (1985).

54-184.

Mark, defined.

A mark means a physical identification that includes, but is not limited to, visible characteristics on an animal such as a natural, accidental, or manmade blemish that sets apart a particular animal from all others. Such marks include, but are not limited to, hair coloration, scars, brands, earmarks, or tattoos.

Source

- Laws 1999, LB 778, § 15.

54-185.

Market agency, defined.

Market agency means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services, meaning services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivering, shipping, weighing, or handling, in commerce, of livestock.

Source

- Laws 1999, LB 778, § 16.

54-186.

Open market, defined.

Open market means a sales barn, market agency, stockyard, packing plant, or terminal market located outside of the brand inspection area or located outside of this state where brand inspection is maintained either by employees of the Nebraska Brand Committee or by some other state under a reciprocal agreement as allowed under the federal Packers and Stockyards Act, 1921, 7 U.S.C. 181 et seq., as amended.

Source

- Laws 1999, LB 778, § 17.

54-186.01.

Out-of-state brand permit, defined.

Out-of-state brand permit means an authorization for a one-time use of a brand registered with a state other than Nebraska to brand cattle imminently being exported out of Nebraska.

Source

- Laws 2013, LB435, § 3.

54-187.

Person, defined.

Person means any individual, partnership, limited liability company, corporation, association, firm, or agents or servants of an individual or business entity.

Source

- Laws 1999, LB 778, § 18.

54-187.01.

Physical inspection, defined.

Physical inspection means an inspection for purposes of the Livestock Brand Act performed by an employee of the Nebraska Brand Committee physically present at the location of the inspected animals to verify ownership through visual observation of brands or other distinguishing markings and physical characteristics of the livestock and examination of any associated documentary or other evidence of ownership.

Source

- Laws 2021, LB572, § 8.
- **Effective Date: August 28, 2021**

54-187.02.

Qualified dairy, defined.

Qualified dairy means a milk production facility with a Grade A milk producer permit or a manufacturing grade milk producer permit pursuant to section 2-3968.

Source

- Laws 2021, LB572, § 9.
- **Effective Date: August 28, 2021**

54-188.

Registered feedlot, defined.

Registered feedlot means a feedlot registered under section 54-1,120.

Source

- Laws 1999, LB 778, § 19.

54-189.

Satisfactory evidence of ownership, defined.

Satisfactory evidence of ownership consists of the brands, tattoos, or marks on the livestock; approved nonvisual identifiers; point of origin of livestock; the physical description of the livestock; the documentary evidence, such as bills of sale, brand clearance, certificates of inspection, breed registration certificates, animal health or testing certificates, genomic testing certificates, recorded brand certificates, purchase sheets, scale tickets, disclaimers of interest, affidavits, court orders, security agreements, powers of attorney, canceled checks, bills of lading, or tags; and such other facts, statements, or circumstances that taken in whole or in part cause an inspector to believe that proof of ownership is established.

Source

- Laws 1999, LB 778, § 20;
- Laws 2017, LB600, § 2;
- Laws 2021, LB572, § 15.
- **Effective Date: August 28, 2021**

54-190.

Tattoo, defined.

Tattoo means the conspicuous curvilinear marks or patterns brought about by pricking a pigment coloration into the skin of an animal by using a needle or similar device or the act of marking, coloring, or pricking into the skin of an animal coloring matter or ink which forms an indelible mark or figure.

Source

- Laws 1999, LB 778, § 21.

54-191.

Nebraska Brand Committee; created; members; terms; vacancy; bond or insurance; expenses; purpose.

(1) The Nebraska Brand Committee is hereby created. Beginning August 28, 2007, the brand committee shall consist of five members appointed by the Governor, subject to confirmation by the Legislature. At least three appointed members shall be active cattlepersons and at least one appointed member shall be an active cattle feeder. The Secretary of State and the Director of Agriculture, or their designees, shall be nonvoting, ex officio members of the brand committee.

The appointed members shall be owners of cattle within the brand inspection area, shall reside within the brand inspection area, shall be owners of Nebraska-recorded brands, and shall be persons whose principal business and occupation is the raising or feeding of cattle within the brand inspection area.

(2) The members of the brand committee shall elect a chairperson and vice-chairperson from among its appointed members during the first meeting held after September 1 each calendar year. A member may be reelected to serve as chairperson or vice-chairperson.

(3) The terms of the members shall be four-year, staggered terms, beginning on August 28 of the year of initial appointment or reappointment and concluding on August 27 of the year of expiration. At the expiration of the term of an appointed member, the Governor shall appoint a successor, subject to confirmation by the Legislature. If there is a vacancy on the brand committee, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. Any appointment to fill a vacancy shall be subject to confirmation by the Legislature.

(4) The action of a majority of the members shall be deemed the action of the brand committee. No appointed member shall hold any elective or appointive state or federal office while serving as a member of the brand committee. Each member and each brand committee employee who collects or who is the custodian of any funds shall be bonded or insured as required under section 11-201. The appointed members of the brand committee shall be reimbursed for expenses in attending meetings of the brand committee or in performing any other duties that are prescribed in the Livestock Brand Act or section 54-415, as provided for in sections 81-1174 to 81-1177.

The purpose of the Nebraska Brand Committee is to protect Nebraska brand and livestock owners from the theft of livestock through established brand recording, brand inspection, and livestock theft investigation.

Source

- Laws 1999, LB 778, § 22;
- Laws 2004, LB 884, § 26;
- Laws 2007, LB422, § 1;
- Laws 2017, LB600, § 3;
- Laws 2020, LB381, § 48;
- Laws 2021, LB572, § 16.
- **Effective Date: August 28, 2021**

54-192.

Nebraska Brand Committee; employees; executive director; duties; chief investigator; brand recorder; grievance procedure.

(1) The Nebraska Brand Committee shall employ such employees as may be necessary to properly carry out the Livestock Brand Act and section 54-415, fix the salaries of such employees, and make such expenditures as are necessary to properly carry out such act and section. Employees of the brand committee shall receive mileage computed at the rate provided in section 81-1176. The brand committee shall select and designate a location or locations where the brand committee shall keep and maintain an office and where records of the brand inspection and investigation proceedings, transactions, communications, brand registrations, and official acts shall be kept.

(2) The brand committee shall employ an executive director who shall be the brand committee head for administrative purposes. The executive director shall keep a record of all proceedings, transactions, communications, and official acts of the brand committee, shall be custodian of all records of the brand committee, and shall perform such other duties as may be required by the brand committee. The executive director shall call a meeting at the direction of the chairperson of the brand committee, or in his or her absence the vice-chairperson, or upon the written request of two or more members of the brand committee. The executive director shall have supervisory authority to direct and control all full-time and part-time employees of the brand committee. This authority allows the executive director to hire employees as are needed on an interim basis subject to approval or confirmation by the brand committee for regular employment. The executive director may place employees on probation and may discharge an employee.

(3) The brand committee shall employ a chief investigator who shall report to the executive director. The chief investigator shall meet the qualifications of an investigator as defined in section 54-182. Under the direction of the executive director, the chief investigator shall be chief of field operations and supervise brand committee investigators and inspectors.

(4) The brand committee shall employ a brand recorder who shall be responsible for the processing of all applications for new livestock brands, the transfer of ownership of existing livestock brands, the maintenance of accurate and permanent records relating to livestock brands, and such other duties as may be required by the brand committee.

(5) If any employee of the brand committee after having been disciplined, placed on probation, or having had his or her services terminated desires to have a hearing before the entire brand committee, such a hearing shall be granted as soon as is practicable and convenient for all persons concerned. The request for such a hearing shall be made in writing by the employee alleging the grievance and shall be directed to the executive director. After hearing all testimony surrounding the grievance of such employee, the brand committee, at its discretion, may approve, rescind, nullify, or amend all actions as previously taken by the executive director.

Source

- Laws 1999, LB 778, § 23;
- Laws 2007, LB422, § 2;
- Laws 2017, LB600, § 4;
- Laws 2019, LB660, § 1.

54-193.

Nebraska Brand Committee; brand publication.

The Nebraska Brand Committee shall periodically have published in book form, electronic medium, or such other method prescribed by the committee a list of all brands recorded with the brand committee at the time of such publication. Such publication may be supplemented from time to time. The publication shall contain a facsimile of all recorded brands, together with the owner's name and post office address, and shall be arranged in convenient form for reference. The brand committee shall send, without any charge, the publication as required by section 51-413 to the Nebraska Publications Clearinghouse and shall provide the publication to each inspector of record and to the county sheriff of each county in the State of Nebraska, which shall be kept as a matter of public record. The publication may be sold to the general public for a price equal to or less than the actual cost of production.

Source

- Laws 1999, LB 778, § 24;
- Laws 2002, LB 589, § 1.

54-194.

Documents; signature and seal requirements.

The director of the Nebraska Brand Committee or the chairperson of the brand committee shall have the authority to sign all certificates and other documents that may by law require certification by signature. Such documents shall include, but not be limited to, new brand certificates, brand transfer certificates, duplicate brand certificates, and brand renewal receipts. A facsimile of the brand committee seal and the signature of the brand recorder shall also be placed on all brand certificates.

Source

- Laws 1999, LB 778, § 25;
- Laws 2007, LB422, § 3.

54-195.

Assessments and promotional materials.

(1) The Nebraska Brand Committee may contract to collect assessments made by any public, quasi-public, or private agency or organization on the sale of cattle, beef, and beef products in Nebraska by producers and importers of such cattle, beef, and beef products. The brand committee may charge such agency or organization for collection of the assessments. The charge for collection of assessments shall be used to cover administrative costs of the brand committee, but such charge shall not exceed five percent of the assessments collected.

(2) The brand committee may authorize and direct its employees to disseminate or otherwise distribute various materials promoting the cattle industry.

Source

- Laws 1999, LB 778, § 26;
- Laws 2017, LB600, § 5.

54-196.

Rules and regulations.

The Nebraska Brand Committee may adopt and promulgate rules and regulations to carry out the Livestock Brand Act and section 54-415.

Source

- Laws 1999, LB 778, § 27.

Annotations

- Delegation of power to make rules and regulations was essential to complete exercise of powers conferred. Satterfield v. State, 172 Neb. 275, 109 N.W.2d 415 (1961).

54-197.

Nebraska Brand Inspection and Theft Prevention Fund; created; use; investment.

The Nebraska Brand Inspection and Theft Prevention Fund is created. Fees and money collected pursuant to the Livestock Brand Act not otherwise provided for in the act shall be remitted to the State Treasurer for credit to the fund. The fund shall be used by the Nebraska Brand Committee in the administration and enforcement of the act and section 54-415. All expenses and salaries provided for under such act or incurred by reason thereof shall be paid out of the fund. Any money in the fund available for investment shall be invested by the state investment

officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source

- Laws 1999, LB 778, § 28.

Cross References

- **Nebraska Capital Expansion Act,** see section 72-1269.
- **Nebraska State Funds Investment Act,** see section 72-1260.

54-198.

Recorded livestock brand; requirements; in-herd identification; prohibited act.

(1) Any person may record a brand, which he or she has the exclusive right to use in this state, and it is unlawful to use any brand for branding any livestock unless the person using such brand has recorded that brand with the Nebraska Brand Committee. A brand is a mark consisting of symbols, characters, numerals, or a combination of such intended as a visual means of ownership identification when applied to the hide of an animal. Only a hot iron or freeze brand or other method approved by the brand committee shall be used to apply a brand to a live animal.

(2) A hot iron brand or freeze brand may be used for in-herd identification purposes such as for year or production records. With respect to hot iron brands used for in-herd identification, the numerals 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9 in singular or triangular position are reserved on both the right and left shoulder of all cattle, except that such shoulder location for a single-number hot iron brand may be used for year branding for in-herd identification purposes, and an alphabetical letter may be substituted for one of the numerals used in a triangular configuration for in-herd identification purposes. Hot iron brands used for in-herd identification shall be used in conjunction with the recorded hot iron brand and shall be on the same side of the animal as the recorded hot iron brand. Freeze branding for in-herd identification may be applied in any location and any configuration with any combination of numerals or alphabetical letters.

(3) It shall be unlawful to knowingly maintain a herd containing one or more animals which the possessor has branded, or caused to be branded, in violation of this section or any other provision of the Livestock Brand Act.

Source

- Laws 1999, LB 778, § 29;
- Laws 2000, LB 213, § 4;
- Laws 2002, LB 589, § 2;

- Laws 2017, LB600, § 6;
- Laws 2021, LB572, § 17.
- **Effective Date: August 28, 2021**

54-199.

Livestock brand; application; fees; requirements; issuance.

(1) To record a brand, a person shall forward to the Nebraska Brand Committee a facsimile or description of the brand desired to be recorded, a written application, and a recording fee and research fee established by the brand committee. Such recording fee may vary according to the number of locations and methods of brand requested but shall not be more than one hundred fifty dollars per application. Such research fee shall be charged on all applications and shall not be more than fifty dollars per application.

(2) For recording of visual brands, upon receipt of a facsimile of the brand, an application, and the required fee, the brand committee shall determine compliance with the following requirements:

(a) The brand shall be an identification mark that is applied to the hide of a live animal by hot iron branding or by either hot iron branding or freeze branding. The brand shall be on either side of the animal in any one of three locations, the shoulder, ribs, or hip;

(b) The brand is not recorded under the name of any other person and does not conflict with or closely resemble a prior recorded brand;

(c) The brand application specifies the left or right side of the animal and the location on that side of the animal where the brand is to be placed;

(d) The brand is not recorded as a trade name nor as the name of any profit or nonprofit corporation, unless such trade name or corporation is of record, in current good standing, with the Secretary of State; and

(e) The brand is, in the judgment of the brand committee, legible, adequate, and of such a nature that the brand when applied can be properly read and identified by employees of the brand committee.

(3) All visual brands shall be recorded as a hot iron brand only unless a co-recording as a freeze brand or other approved method of branding is requested by the applicant. The brand committee shall approve co-recording a brand as a freeze brand unless the brand would not be distinguishable from in-herd identification applied by freeze branding.

(4) If the facsimile, the description, or the application does not comply with the requirements of this section, the brand committee shall not record such brand as requested but shall return the

recording fee to the forwarding person. The power of examination and rejection is vested in the brand committee, and if the brand committee determines that the application for a visual brand falls within the category set out in subdivision (2)(e) of this section, it shall decide whether or not a recorded brand shall be issued. The brand committee shall make such examination as promptly as possible. If the brand is recorded, the ownership vests from the date of filing of the application.

(5) The brand committee may by rule and regulation provide for the use of approved nonvisual identifiers for purposes of enrolling cattle identified by such method of livestock identification. Such method of livestock identification shall be approved only if it functions as satisfactory evidence of ownership for the purpose of enrollment of cattle and for electronic inspection authorized under section 54-1,108. Before approving any nonvisual identifier, the brand committee shall consider the degree to which such method may be susceptible to error, failure, or fraudulent alteration. Any rule or regulation shall be adopted and promulgated only after public hearing conducted in compliance with the Administrative Procedure Act.

Source

- Laws 1999, LB 778, § 30;
- Laws 2000, LB 213, § 5;
- Laws 2002, LB 589, § 3;
- Laws 2005, LB 441, § 1;
- Laws 2021, LB572, § 18.
- **Effective Date: August 28, 2021**

Cross References

- **Administrative Procedure Act,** see section 84-920.

Annotations

- Brand on livestock is presumptive evidence of ownership. Whiteside v. Whiteside, 159 Neb. 362, 67 N.W.2d 141 (1954).

54-1,100.

Recorded brand; transfer; lien or security interest; notice; effect; fee; effect; lease of brand; fee.

(1) A recorded brand is the property of the person causing such record to be made and is subject to sale, assignment, transfer, devise, and descent as personal property. Any instrument of writing evidencing the sale, assignment, or transfer of a recorded brand shall be effective upon its recording with the Nebraska Brand Committee. No such instrument shall be accepted for recording if the brand committee has been duly notified of the existence of a lien or security interest against livestock owned or thereafter acquired by the owner of such brand by the holder of such lien or security interest. Written notification from the holder of such lien or

security interest that the lien or security interest has been satisfied or consent from the holder of such lien or security interest shall be required in order for the brand committee to accept for recording an instrument selling, assigning, or transferring such recorded brand. Except as provided in subsection (2) of this section, the fee for recording such an instrument shall be established by the brand committee and shall not be more than forty dollars. Such instrument shall give notice to all third persons of the matter recorded in the instrument and shall be acknowledged by a notary public or any other officer qualified under law to administer oaths.

(2) The owner of a recorded brand may lease the brand to another person upon compliance with this subsection and subject to the approval of the brand committee. The lessee shall pay a filing fee established by the brand committee not to exceed one hundred dollars. The leased recorded brand may expire as agreed in the lease, but in no event shall such leased recorded brand exceed the original expiration date.

Source

- Laws 1999, LB 778, § 31;
- Laws 2002, LB 589, § 4;
- Laws 2009, LB142, § 1;
- Laws 2017, LB600, § 7.

54-1,101.

Recorded brand; owner; copies of record.

The owner of a recorded brand is entitled to one certified copy of the record of such brand from the Nebraska Brand Committee without charge. Additional certified copies of the record may be obtained by anyone upon the payment of one dollar for each copy.

Copies of any other document of the brand committee may be requested, and a fee of one dollar shall be collected for each page copied. Only personnel authorized by the brand committee shall make copies and collect such fees. The party requesting the copies is responsible for payment of the fee and shall reimburse the brand committee for the research time necessary to furnish the requested documents at a rate of not less than twenty nor more than forty dollars per hour of research time. The rate shall be reviewed and set annually by the brand committee.

Source

- Laws 1999, LB 778, § 32;
- Laws 2021, LB572, § 19.
- **Effective Date: August 28, 2021**

54-1,102.

Recorded brand; use; expiration date; renewal fee; expired brand; reinstated.

(1) A recorded brand may be applied by its owner until its expiration date.

(2) On and after January 1, 1994, the expiration date of a recorded brand is the last day of the calendar quarter of the renewal year as designated by the Nebraska Brand Committee in the records of the brand committee.

(3) The brand committee shall notify every owner of a recorded brand of its expiration date at least sixty days prior to the expiration date, and the owner of the recorded brand shall pay a renewal fee established by the brand committee which shall not be more than two hundred dollars and furnish such other information as may be required by the brand committee. The renewal fee is due and payable on or before the expiration date and renews a recorded brand for a period of four years regardless of the number of locations on one side of an animal on which the brand is recorded. If any owner fails, refuses, or neglects to pay the renewal fee by the expiration date, the brand shall expire and be forfeited.

(4) The brand committee has the authority to hold an expired brand for one year following the date of expiration. An expired brand may be reinstated by the same owner during such one-year period upon return of a brand application form and payment of the recording fee and research fee for such brand established by the brand committee under section 54-199 plus a penalty of five dollars for each month or part of a month which has passed since the date of expiration. A properly reinstated brand may be transferred to another person during such one-year period upon completion of a transfer form, with a notarized bill of sale signed by the prior owner attached to such transfer form.

Source

- Laws 1999, LB 778, § 33;
- Laws 2002, LB 589, § 5;
- Laws 2021, LB572, § 20.
- **Effective Date: August 28, 2021**

54-1,103.

Reserved brands; use.

(1) Cattle brands consisting of alphabetical letters A through Z, and numbers 1, 2, 3, 4, 5, 6, 7, 8, and 9 on the left or right jaw are reserved for assignment by the brand recorder, as designated by the Nebraska Brand Committee. The brand recorder shall not assign such brands to any person in the State of Nebraska unless authorized by the brand committee, and it shall be unlawful for any person to use such brands except as provided in subsection (2) of this section.

(2) Every person when spaying heifers, upon request of the owner thereof, shall brand such heifers with the alphabetical letter O on the left jaw and furnish the owner with a certificate that all heifers so branded have been properly spayed by a licensed veterinarian. Permission may be granted by the brand committee to state and federal animal disease control agencies to require the use of the letters F, V, B, S, and T and an open-end spade on either the right or left jaw of cattle in a manner consistent with animal disease control laws.

Source

- Laws 1999, LB 778, § 34.

54-1,104.

Brand assigned to committee.

There is a recorded brand consisting of the alphabetical letter N on the entire right and left sides which is assigned to the Nebraska Brand Committee to be used only by authorized personnel of the brand committee to permanently identify livestock which are suspected of having been stolen and may be used as evidence in any court proceeding. It shall in no way signify that the brand committee (1) is the owner of livestock so branded or (2) claims ownership in any livestock carrying such brand. It shall only be construed and intended that livestock so branded are evidence or portions of evidence seized relative to an alleged theft of livestock.

Source

- Laws 1999, LB 778, § 35.

54-1,105.

Brands; distinction requirements.

(1) Cattle branded with a Nebraska-recorded visual brand shall be branded so that the recorded brand of the owner shows distinctly.

(2) If the owners of recorded brands which conflict with or closely resemble each other maintain their herds in close proximity to each other, the Nebraska Brand Committee has the authority to decide, after hearing as to which at least ten days' written notice has been given, any dispute arising therefrom and to direct such change or changes in the position or positions where such recorded brand or brands are to be placed as will remove any confusion that might result from such conflict or close resemblance.

Source

- Laws 1999, LB 778, § 36;
- Laws 2002, LB 589, § 6;
- Laws 2017, LB600, § 8.

54-1,106.

Grazing livestock; requirements.

A person who brings livestock into any county of this state for grazing purposes which are already branded shall provide the Nebraska Brand Committee with a statement of the brands of such livestock. Failure to comply with this section renders the violating person liable for all damages resulting from such failure.

Source

- Laws 1999, LB 778, § 37.

54-1,107.

Recorded brand; evidentiary effect.

A recorded brand is prima facie evidence of ownership of livestock and is admissible into evidence in any court in this state if the brand meets the requirements of and is recorded as provided in section 54-199. Other documentary evidence such as bills of sale or certificates of brand clearance transferring title from an owner to another party may also be introduced as evidence of livestock ownership in any court in this state. The recording of instruments of writing evidencing the sale, assignment, or transfer of a recorded brand gives notice to all third persons of the matter recorded, and certified copies are admissible in evidence without further foundation. In all suits at law or in equity, in any criminal proceedings, or when determining the ownership of estrays wherein the title to livestock is an issue, the certified copy of the record of a recorded brand or instrument of writing evidencing sale, assignment, or transfer of a recorded brand is prima facie evidence of the ownership of such livestock by the person possessing such livestock.

Source

- Laws 1999, LB 778, § 38.

Annotations

- "Prima facie evidence of ownership" means that in the absence of other evidence, proof of ownership of the brand is sufficient to constitute a prima facie case which

will withstand a motion for a directed verdict on that issue. Broken Bow Prod. Credit Assn. v. Western Iowa Farms, 232 Neb. 357, 440 N.W.2d 480 (1989).

- Ownership of brand is prima facie evidence of ownership of animal. Bush v. Kramer, 185 Neb. 1, 173 N.W.2d 367 (1969).
- Brand upon cattle is prima facie evidence of title. Coomes v. Drinkwalter, 181 Neb. 450, 149 N.W.2d 60 (1967).
- Registration of brand in decedent's name raised prima facie presumption of ownership of branded cattle. Whiteside v. Whiteside, 159 Neb. 362, 67 N.W.2d 141 (1954).
- Brand on livestock is only prima facie evidence of ownership which may be rebutted. Bendfeldt v. Lewis, 149 Neb. 107, 30 N.W.2d 293 (1948).

54-1,108.

Physical inspections; when required; surcharge; fees; mileage; electronic inspection; when permitted; fees; procedures; report; reinspection; when.

(1)(a) All physical inspections for brands provided for in the Livestock Brand Act or section 54-415 shall be from sunrise to sundown or during such other hours and under such conditions as the Nebraska Brand Committee determines. The brand committee shall assess a fifty-dollar late notice surcharge if a request for a physical inspection is made less than forty-eight hours prior to the date of inspection.

(b) A physical inspection shall be required when brands applied by hot iron or freeze branding methods are the exclusive means of ownership identification and in all other cases that do not qualify for electronic inspection as provided in subsection (2) of this section.

(c) Beginning October 1, 2021, a physical inspection fee of eighty-five cents per head until June 30, 2023, and beginning July 1, 2023, a fee established by the Nebraska Brand Committee, of not more than one dollar and ten cents per head shall be charged for all cattle inspected in accordance with the Livestock Brand Act or section 54-415, inspected within the brand inspection area or brand inspection service area by court order, inspected at the request of any bank, credit agency, or lending institution with a legal or financial interest in such cattle, or inspected at the request of a neighboring livestock owner with missing cattle. The inspection fee for court-ordered inspections shall be paid from the proceeds of the sale of such cattle if ordered by the court or by either party as the court directs. For other inspections, the person requesting the inspection of such cattle is responsible for the inspection fee. Brand inspections requested by either a purchaser or seller of cattle located within the brand inspection service area shall be provided upon the same terms and charges as brand inspections performed within the brand inspection area. If estray cattle are identified as a result of the inspection, such cattle shall be processed in the manner provided by section 54-415.

(d) The actual mileage incurred by the inspector to perform a physical inspection shall be paid by the party requesting inspection and paid at the rate established by the Department of Administrative Services pursuant to section 81-1176.

(e) For physical inspections performed outside of the brand inspection area that are not provided for in subdivision (c) of this subsection, the fee shall be the inspection fee established in such subdivision plus a fee to cover the actual expense of performing the inspection, including mileage at the rate established by the Department of Administrative Services and an hourly rate, not to exceed thirty dollars per hour, for the travel and inspection time incurred by the brand committee to perform such inspection. The brand committee shall charge and collect the actual expense fee. Such fee shall apply to inspections performed outside the brand inspection area as part of an investigation into known or alleged violations of the Livestock Brand Act and shall be charged against the person committing the violation.

(2)(a) The brand committee may provide for electronic inspection of enrolled cattle identified by approved nonvisual identifiers pursuant to subsection (5) of section 54-199. The brand committee shall establish procedures for enrollment of such cattle with the brand committee which shall include providing acceptable certification or evidence of ownership. Electronic inspection shall not require agency employees to be present, except that random audits shall occur.

(b) Beginning October 1, 2021, an electronic inspection fee not to exceed eighty-five cents per head until June 30, 2023, and beginning July 1, 2023, a fee established by the brand committee of not more than one dollar and ten cents per head shall be charged for all cattle subjected to electronic inspection in accordance with the Livestock Brand Act or section 54-415.

(c) A certified bill of sale for sale of calves shall be provided to qualified dairies once the required information is electronically transferred to the brand committee on calves under thirty days of age. The fee shall be the same as for an electronic inspection under subdivision (2)(b) of this section.

(d) A certified transportation permit shall be provided to qualified dairies after the required information is electronically transferred to the brand committee on calves under thirty days of age which are moved out of the inspection area. The fee shall be the same as for an electronic inspection under subdivision (2)(b) of this section.

(e) On or before December 1, 2021, the brand committee shall report to the Legislature any actions taken or necessary for implementing electronic inspection authorized by this subsection, including personnel and other resources utilized to support electronic inspection, how the brand committee's information technology capabilities are utilized to support electronic inspection, a listing of approved nonvisual identifiers, the requirements for enrolling cattle identified by approved nonvisual identifiers, current and anticipated utilization of electronic inspection by the livestock industry, and the fees required to recover costs of performing electronic inspection.

(3) Any person who has reason to believe that cattle were shipped erroneously due to an inspection error during a brand inspection may request a reinspection. The person making such request shall be responsible for the expenses incurred as a result of the reinspection unless the results of the reinspection substantiate the claim of inspection error, in which case the brand committee shall be responsible for the reinspection expenses.

Source

- Laws 1999, LB 778, § 39;
- Laws 2002, LB 589, § 7;
- Laws 2005, LB 441, § 2;
- Laws 2011, LB181, § 1;
- Laws 2014, LB768, § 5;
- Laws 2015, LB85, § 1;
- Laws 2021, LB572, § 21.
- **Effective Date: August 28, 2021**

54-1,109.

Brand inspection area; designation.

The brand inspection area of Nebraska consists of the following land area of counties and parts thereof: Arthur, Banner, Blaine, Box Butte, Boyd, Brown, Buffalo, Chase, Cherry, Cheyenne, Custer, Dawes, Dawson, Deuel, Dundy, Franklin, Frontier, part of the south half of section 1, township 3 north, range 21, on railroad right-of-way in the west part of Oxford Town called Burlington addition in Furnas, Garden, Garfield, Gosper, Grant, Greeley, all of lots 1, 7, and 8 in block 48 in original town of Grand Island, and all of the southeast quarter lying south of the Union Pacific Railroad Company's right-of-way in section 24, township 11 north, range 10, in Hall, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Kearney, Keith, Keya Paha, Kimball, all of Knox except Eastern, Dolphin, Dowling, Columbia, Morton, Peoria, Addison, Herrick, Frankfort, and Lincoln townships, Lincoln, Logan, Loup, McPherson, Morrill, Perkins, Phelps, Red Willow, Rock, Scotts Bluff, Sheridan, Sherman, Sioux, Thomas, Valley, the existing livestock auction markets in Blue Hill, all of lots 1 to 6, and lots 7 and 8, except twenty-two feet of the east side of lot 8, all in block 6, original town of Blue Hill, and Red Cloud, part of lot A, Roats subdivision to Red Cloud, lots 1 and 2 and the south one-half of block 32 in original town of Red Cloud, and all of annex lot 21, Red Cloud, in Webster, and all of Wheeler.

Source

- Laws 1999, LB 778, § 40.

54-1,110.

Brand inspection area; brand inspection requirements; violation; penalty.

(1) Except as provided in subsections (2) and (3) of this section, no person shall move, in any manner, cattle from a point within the brand inspection area to a point outside the brand inspection area unless such cattle first have a brand inspection by the Nebraska Brand Committee and a certificate of inspection is issued. A copy of such certificate shall accompany the cattle and shall be retained by all persons moving such cattle as a permanent record.

(2) Cattle in a registered feedlot registered under sections 54-1,120 to 54-1,122 are not subject to the brand inspection of subsection (1) of this section. Possession by the shipper or trucker of a shipping certificate from the registered feedlot constitutes compliance if the cattle being shipped are as represented on such shipping certificate.

(3) If the line designating the brand inspection area divides a farm or ranch or lies between noncontiguous parcels of land which are owned or operated by the same cattle owner or owners, a permit may be issued, at the discretion of the Nebraska Brand Committee, to the owner or owners of cattle on such farm, ranch, or parcels of land to move the cattle in and out of the brand inspection area without inspection. If the line designating the brand inspection area lies between a farm or ranch and nearby veterinary medical facilities, a permit may be issued, at the discretion of the brand committee, to the owner or owners of cattle on such farm or ranch to move the cattle in and out of the brand inspection area without inspection to obtain care from the veterinary medical facilities. The brand committee shall issue initial permits only after receiving an application which includes an application fee established by the brand committee which shall not be more than fifteen dollars. The brand committee shall mail all current permitholders an annual renewal notice, for January 1 renewal, which requires a renewal fee established by the brand committee which shall not be more than fifty dollars. If the permit conditions still exist, the cattle owner or owners may renew the permit.

(4) No person shall sell any cattle knowing that the cattle are to be moved, in any manner, in violation of this section. Proof of shipment or removal of the cattle from the brand inspection area by the purchaser or his or her agent is prima facie proof of knowledge that sale was had for removal from the brand inspection area.

(5) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county of origin of the cattle or any other county through which the cattle were moved from the brand inspection area.

Source

- Laws 1999, LB 778, § 41;
- Laws 2000, LB 213, § 6;
- Laws 2002, LB 589, § 8;
- Laws 2014, LB768, § 6;
- Laws 2017, LB600, § 9;
- Laws 2021, LB572, § 22.
- **Effective Date: August 28, 2021**

Annotations

- Brand Inspection Act is not special legislation and is constitutional. Satterfield v. State, 172 Neb. 275, 109 N.W.2d 415 (1961).

54-1,111.

Brand inspection area; sale or trade of cattle; requirements; violation; penalty.

(1) Except as provided in subsection (2) of this section, no person shall sell or trade any cattle located within the brand inspection area, nor shall any person buy or purchase any such cattle unless the cattle have been inspected for evidence of ownership and a certificate of inspection or brand clearance has been issued by the Nebraska Brand Committee. Any person selling such cattle shall present to the brand inspector a properly executed bill of sale, brand clearance, or other satisfactory evidence of ownership which shall be filed with the original certificate of inspection in the records of the brand committee. Any time a brand inspection is required by law, a brand investigator or brand inspector may transfer evidence of ownership of such cattle from a seller to a purchaser by issuing a certificate of inspection.

(2) A brand inspection is not required:

(a) For cattle of a registered feedlot registered under sections 54-1,120 to 54-1,122 shipped for direct slaughter or sale on any terminal market;

(b) For cattle that are:

(i) Transferred to a family corporation when all the shares of capital stock of the corporation are owned by the husband, wife, children, or grandchildren of the transferor and there is no consideration for the transfer other than the issuance of stock of the corporation to such family members; or

(ii) Transferred to a limited liability company in which membership is limited to the husband, wife, children, or grandchildren of the transferor and there is no consideration paid for the transfer other than a membership interest in the limited liability company;

(c) When the change of ownership of cattle is a change in form only and the surviving interests are in the exact proportion as the original interests of ownership. When there is a change of ownership described in subdivision (2)(b) or (c) of this section, an affidavit, on a form prescribed by the Nebraska Brand Committee, signed by the transferor and stating the nature of the transfer and the number of cattle involved and the brands presently on the cattle, shall be filed with the brand committee.

(d) For cattle sold or purchased for educational or exhibition purposes or other recognized youth activities if a properly executed bill of sale is exchanged and presented upon demand. Educational or exhibition purpose means cattle sold or purchased for the purpose of being fed, bred, managed, or tended in a program designed to demonstrate or instruct in the use of various feed rations, the selection of individuals of certain physical conformation or breeds, the measurement and recording of rate of gain in weight or fat content of meat or milk produced, or the preparation of cattle for the purpose of exhibition or for judging as to quality and conformation;

(e) For calves under the age of thirty days sold or purchased at private treaty if a bill of sale is exchanged and presented upon demand; and

(f) For seedstock cattle raised by the seller and individually registered with an organized breed association if a properly executed bill of sale is exchanged and presented upon demand.

(3) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county in which the offense occurred.

Source

- Laws 1999, LB 778, § 42;
- Laws 2000, LB 213, § 7;
- Laws 2014, LB768, § 7;
- Laws 2017, LB600, § 10;
- Laws 2021, LB572, § 23.
- **Effective Date: August 28, 2021**

54-1,112.

Brand inspection area; slaughter and hide records; violation; penalty.

(1) Any person located within the brand inspection area who slaughters or has cattle slaughtered for sale or distribution shall keep, in a book for that purpose, a true and faithful record of all cattle purchased and slaughtered. Such record shall also contain a description of the marks, brands, age, weight, and color of all cattle slaughtered. Such record shall contain the

date when the cattle were slaughtered and a notation which sets forth by whom the cattle were raised or from whom purchased.

(2) All persons who purchase hides shall keep a record of all hides of cattle purchased by them, which record shall state the name or names of the person or persons from whom purchased, their place of residence, the date of purchase, and all marks and brands on the hide, and the record shall at all times be open for inspection by any peace officer.

(3) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county in which the offense occurred.

Source

- Laws 1999, LB 778, § 43;
- Laws 2021, LB572, § 24.
- **Effective Date: August 28, 2021**

54-1,113.

Sale, trade, use, or consumption of beef or veal; requirements; violation; penalty.

(1)(a) Inside of the brand inspection area, no person shall sell or trade or offer for sale or trade the carcass of a beef or veal, or any portion thereof, including the hide of such carcass, unless a certificate of inspection is secured from a brand inspector. Such person shall exhibit the certificate of inspection upon the demand of any person.

(b) Outside of the brand inspection area, no person shall sell or offer for sale, except as a butcher bonded under section 54-1,114, the carcass of a beef or veal, or any portion thereof, without first exhibiting the intact hide of the same and exposing the brand upon the hide, if any, to the purchaser. A person selling or offering for sale any such carcass of beef or veal shall preserve the hide of the same for a period of fifteen days unless a certificate of inspection is secured from a brand inspector, and such person shall exhibit the certificate of inspection upon the demand of any person.

(2) No person shall kill for his, her, or its own use and consumption any cattle for beef or veal without preserving the hide of such animal intact with a complete unskinned tail attached thereto for a period of not less than fifteen days unless a certificate of inspection is secured from a brand inspector, and such hide shall be presented for inspection upon demand of any person.

(3) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this

section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county in which the offense occurred.

Source

- Laws 1999, LB 778, § 44;
- Laws 2021, LB572, § 25.
- **Effective Date: August 28, 2021**

54-1,114.

Slaughter of cattle; brand inspection requirements; violation; penalty.

(1) Except as provided in subsections (2) and (3) of this section, no butcher, packer, or vendor engaged in the slaughter of cattle within the brand inspection area shall kill or otherwise dispose of any cattle until a brand inspection is performed by the Nebraska Brand Committee on the premises where such slaughter is to take place and until a certificate of inspection from the brand committee is filed and is made a part of such operator's permanent records. All such certificates of inspection shall, upon demand, be displayed to any peace officer or to the brand committee at any time.

(2) If cattle requiring inspection under this section are to be slaughtered and are purchased by such butcher, packer, or vendor at a regularly brand-inspected sales barn and are destined for direct slaughter upon reaching their destination, the brand inspector at such sales barn shall be advised that such cattle are destined for direct slaughter. The brand inspector shall then issue a certificate of inspection for the cattle, such certificate to indicate that the cattle are to go to direct slaughter and that the cattle are not to be retained by such butcher, packer, or vendor for longer than ninety-six hours prior to slaughter. Cattle inspected at the point of origin by a brand inspector shall not require an additional brand inspection upon reaching a destination within the state if the certificate of inspection designates that the cattle are to go directly for slaughter and not to be retained by such butcher, packer, or vendor longer than ninety-six hours prior to slaughter.

(3) If cattle required to be inspected under this section are offered for slaughter and satisfactory evidence of ownership has not been provided, the butcher, packer, or vendor may, with the approval of the brand inspector, slaughter the cattle and hold the meat until such time as satisfactory evidence of ownership is provided to the brand committee. The brand inspector shall provide the butcher, packer, or vendor with an official notice advising the operator not to release the meat until authorized by the brand committee. The brand committee may provide for a cash bond to be posted with the executive director of the brand committee so that the meat may be released prior to the establishment of satisfactory evidence of ownership. The amount of the bond shall be set at the approximate value of the cattle. When satisfactory evidence of ownership has been provided by the person offering the cattle for slaughter, the executive director shall authorize the release of the meat or the return of the bond.

(4) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county in which the offense occurred.

Source

- Laws 1999, LB 778, § 45;
- Laws 2021, LB572, § 26.
- **Effective Date: August 28, 2021**

54-1,115.

Livestock transportation authority form; requirements; violation; penalty.

(1) Any person, other than the owner or the owner's employee, using a motor vehicle or trailer to transport livestock or carcasses over any land within the State of Nebraska not owned or rented by such person or who is so transporting such livestock upon a highway, public street, or thoroughfare within the State of Nebraska shall have in his or her possession a livestock transportation authority form, certificate of inspection, or shipping certificate from a registered feedlot, authorizing such movement as to each head of livestock transported by such vehicle.

(2) A livestock transportation authority form shall be in writing and shall state the name of the owner of the livestock, the owner's post office address, the place from which the livestock are being moved, including the name of the ranch, if any, the destination, the name and address of the carrier, the license number and make of motor vehicle to which consigned, together with the number of livestock and a description thereof including kind, sex, breed, color, and marks, if any, and in the case of livestock shipments originating within the brand inspection area, the brands, if there are any. The authority form shall be signed by the owner of the livestock or the owner's authorized agent.

(3) Any peace officer, based upon probable cause to question the ownership of the livestock being transported, may stop a motor vehicle or motor vehicle and trailer and request exhibition of any authority form or certificate required by this section.

(4) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county in which the offense occurred.

Source

- Laws 1999, LB 778, § 46;
- Laws 2000, LB 213, § 8;

- Laws 2017, LB600, § 11;
- Laws 2021, LB572, § 27.
- **Effective Date: August 28, 2021**

Cross References

- **Duty to care for livestock,** violation, penalty, see section 54-7,104.

54-1,116.

Satisfactory evidence of ownership; violation; penalty.

(1) All livestock sold or otherwise disposed of shall be accompanied by a properly executed bill of sale in writing or, for cattle, a certificate of inspection. All owners of or persons possessing livestock have a duty to exhibit, upon request of any person, the bill of sale or other satisfactory evidence of ownership of the livestock.

(2) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county in which the offense occurred.

Source

- Laws 1999, LB 778, § 47;
- Laws 2021, LB572, § 28.
- **Effective Date: August 28, 2021**

54-1,117.

Brand inspection area; intermingling of livestock; effect.

No consignment of livestock within, entering into, or passing through the brand inspection area, after having been inspected by a brand inspector, shall be permitted to intermingle with any other livestock located within the brand inspection area. If, at any time after brand inspection has been performed or a certificate of inspection has been issued on any shipment of livestock, the livestock become intermingled with other livestock located within the brand inspection area, the original brand inspection is void and before further movement of the livestock out of the brand inspection area may be made, reinspection for identification of brands is required. A brand inspector may require reinspection if he or she has reason to believe a consignment of livestock has become intermingled.

Source

- Laws 1999, LB 778, § 48.

54-1,118.

Livestock; questions of ownership; procedure.

If any livestock inspected under the Livestock Brand Act or section 54-415 is unbranded or bears a brand or brands in addition to, or other than, the recorded brand or brands of the shipper or seller, then the shipper or seller may be required to establish his or her ownership of such livestock by exhibiting to the Nebraska Brand Committee a bill of sale to such livestock or by other satisfactory evidence of ownership. If ownership of the livestock is not established, the livestock may be sold, and the selling agent who sells such livestock shall hold the proceeds of the sale. If any shipper or seller who has offered such livestock for sale refuses to accept the bids offered, ownership must be established, or a cash bond posted with the selling agent in an amount equal to the approximate value of the livestock and payable to the brand committee, before such livestock may be removed from the premises. When ownership has been established the cash bond shall be returned to the person who or which posted it.

The shipper or seller of the livestock is required to establish ownership of such livestock within sixty days after its sale. If such shipper or seller establishes ownership of such livestock, the Nebraska Brand Committee shall order the selling agent of such livestock to pay the proceeds of sale to the shipper or seller. If such shipper or seller fails to establish ownership within the sixty days, such livestock shall be considered an estray and the Nebraska Brand Committee shall order the selling agent to pay the proceeds of sale over to the brand committee. All funds that the brand committee receives from the sale of any estray shall be placed in a separate custodial fund known as the estray fund. The brand committee shall determine the ownership of estrays that originate within the brand inspection area. Such funds shall be disposed of in the manner provided in section 54-415.

Source

- Laws 1999, LB 778, § 49.

Annotations

- Shipper may be required to establish ownership. Coomes v. Drinkwalter, 181 Neb. 450, 149 N.W.2d 60 (1967).

54-1,119.

Open market; designation; brand inspection requirements.

(1) Any livestock market, whether within or outside of the state, or any meat packing plant which maintains brand inspection under the supervision of the Nebraska Brand Committee and under such rules and regulations as are specified by the United States Department of Agriculture, may be designated by the brand committee as an open market.

(2) When cattle originating from within the brand inspection area are consigned for sale to any commission company at any open market designated as such by the Nebraska Brand Committee where brand inspection is maintained, no brand inspection is required at the point of origin but is required at the point of destination unless the point of origin is a registered feedlot. If cattle are consigned to a commission company at an open market, the carrier transporting the cattle shall not allow the owner, shipper, or party in charge to change the billing to any point other than the commission company at the open market designated on the original billing, unless the carrier secures from the brand committee a certificate of inspection on the cattle so consigned. Any cattle originating in a registered feedlot consigned to a commission company at any terminal market destined for direct slaughter may be shipped in accordance with rules and regulations governing registered feedlots.

(3) Until the cattle are inspected for brands on the premises by the Nebraska Brand Committee, no person shall sell or cause to be sold or offer for sale (a) any cattle at a livestock auction market located within the brand inspection area or at a farm or ranch sale located within the brand inspection area or (b) any cattle originating within the brand inspection area consigned to an open market.

Source

- Laws 1999, LB 778, § 50;
- Laws 2000, LB 213, § 9;
- Laws 2017, LB600, § 12.

54-1,120.

Registered feedlot; application; requirements; fees; inspections; records.

(1) Any person who operates a cattle feeding operation located within the brand inspection area may make application to the Nebraska Brand Committee for registration as a registered feedlot. The application form shall be prescribed by the brand committee and shall be made available by the executive director of the brand committee for this purpose upon written request. If the applicant is an individual, the application shall include the applicant's social security number. After the brand committee has received a properly completed application, an agent of the brand committee shall within thirty days make an investigation to determine if the following requirements are satisfied:

(a) The operator's feedlot must be permanently fenced; and

(b) The operator must commonly practice feeding cattle to finish for slaughter.

If the application is satisfactory, and upon payment of an initial registration fee by the applicant, the brand committee shall issue a registration number and registration certificate valid for one year unless rescinded for cause. If the registration is rescinded for cause, any registration fee

shall be forfeited by the applicant. The initial fee for a registered feedlot shall be an amount for a registered feedlot having one thousand head or less capacity and an equal amount for each additional one thousand head capacity, or part thereof, of such registered feedlot. For each subsequent year, the renewal fee for a registered feedlot shall be an amount for the first one thousand head or portion thereof of average annual inventory of cattle on feed of the registered feedlot and an equal amount for each additional one thousand head or portion thereof of average annual inventory of cattle on feed of the registered feedlot. The brand committee shall set the fee per one thousand head capacity or average annual inventory so as to correspond with the inspection fee provided under section 54-1,108. The registration fee shall be paid on an annual basis.

(2) The brand committee may adopt and promulgate rules and regulations for the operation of registered feedlots to assure that brand laws are complied with, that registered feedlot shipping certificates are available, and that proper records are maintained. Violation of sections 54-1,120 to 54-1,122 subjects the operator to revocation or suspension of the feedlot registration issued. Sections 54-1,120 to 54-1,122 shall not be construed as prohibiting the operation of nonregistered feedlots.

(3) Registered feedlots are subject to inspection at any reasonable time at the discretion of the brand committee and its authorized agents, and the operator shall show cattle purchase records or certificates of inspection to cover all cattle in his or her feedlot. Cattle having originated from such registered feedlots may from time to time, at the discretion of the committee, be subject to a spot-check inspection and audit at destination to enable the brand committee to assure satisfactory compliance with the brand laws by the registered feedlot operator.

(4) The operator of a registered feedlot shall keep cattle inventory records. A form for such purpose shall be prescribed by the brand committee. The brand committee and its employees may from time to time make spot checks and audits of the registered feedlots and the records of cattle on feed in such feedlots.

(5) The brand committee may rescind the registration of any registered feedlot operator who fails to cooperate or violates the laws or rules and regulations of the brand committee covering registered feedlots.

Source

- Laws 1999, LB 778, § 51;
- Laws 2014, LB768, § 8;
- Laws 2021, LB572, § 29.
- **Effective Date: August 28, 2021**

54-1,121.

Registered feedlot; cattle shipment; requirements.

Cattle sold or shipped from a registered feedlot, for purposes other than direct slaughter or sale on any terminal market, are subject to the brand inspection under sections 54-1,110 to 54-1,119, and the seller or shipper shall bear the cost of such inspection at the regular fee.

Any other cattle shipped from a registered feedlot are not subject to brand inspection at origin or destination, but the shipper must have a shipping certificate from the registered feedlot. The shipping certificate form shall be prescribed by the Nebraska Brand Committee and shall show the registered feedlot operator's name and registration number, date shipped, destination, agency receiving the cattle, number of head in the shipment, and sex of the cattle. The shipping certificate shall be completed in triplicate by the registered feedlot operator at the time of shipment. One copy thereof shall be delivered to the brand inspector at the market along with shipment, if applicable, one copy shall be sent to the brand committee by the tenth day of the following month, and one copy shall be retained by the registered feedlot operator. If a shipping certificate does not accompany a shipment of cattle from a registered feedlot to any destination where brand inspection is maintained by the brand committee, all such cattle shall be subject to a brand inspection and the inspection fees and surcharge provided under section 54-1,108 shall be charged for the service.

Source

- Laws 1999, LB 778, § 52;
- Laws 2000, LB 213, § 10;
- Laws 2011, LB181, § 2.

54-1,122.

Registered feedlot; cattle received; requirements.

Any cattle originating in a state that has a brand inspection agency and which are accompanied by a certificate of inspection or brand clearance issued by such agency may be moved directly from the point of origin into a registered feedlot. Any cattle not accompanied by such a certificate of inspection or brand clearance or by satisfactory evidence of ownership from states or portions of states not having brand inspection shall be subjected to physical inspection for brands by the Nebraska Brand Committee or, if applicable, subjected to electronic inspection, within a reasonable time after arrival at a registered feedlot, and the inspection fee and mileage charge, if applicable, provided under section 54-1,108 shall be collected by the brand inspector at the time the inspection is performed.

Source

- Laws 1999, LB 778, § 53;
- Laws 2011, LB181, § 3;
- Laws 2021, LB572, § 30.
- **Effective Date: August 28, 2021**

54-1,123.

Prohibited sale; violation; penalty.

No person, other than the owner of the livestock, shall sell or offer for sale or trade or otherwise dispose of any livestock unless the person so offering has the bill of sale, a power of attorney from the owner of such livestock authorizing such sale, or other satisfactory evidence of ownership. A violation of this section is a Class III felony.

Source

- Laws 1999, LB 778, § 54.

Annotations

- Bill of sale of cattle must state the statutory details required. Coomes v. Drinkwalter, 181 Neb. 450, 149 N.W.2d 60 (1967).
- Trade of livestock is not limited by this section. Bendfeldt v. Lewis, 149 Neb. 107, 30 N.W.2d 293 (1948).

54-1,124.

Prohibited brand; violation; penalty.

If any person willfully and knowingly brands, marks, or causes to be branded or marked, livestock owned by another with the intent to deprive such owner of the livestock or willfully and knowingly effaces, defaces, or obliterates any mark upon any livestock owned by another with the intent to deprive such owner of the livestock, such person is guilty of a Class III felony.

Source

- Laws 1999, LB 778, § 55.

Annotations

- Failure to instruct upon effect of this section was prejudicial error. Coomes v. Drinkwalter, 181 Neb. 450, 149 N.W.2d 60 (1967).

54-1,124.01.

Acts prohibited; penalty.

A person commits a Class III felony if:

(1) Such person willfully and knowingly performs or causes to be performed any act to:

(a) Apply, remove, damage, or alter an approved nonvisual identifier; or

(b) Expunge, alter, render inaccessible, or otherwise corrupt information recorded or embedded on or in an approved nonvisual identifier; and

(2) Such conduct is done with the intent to deprive an owner of livestock or falsely assert ownership of livestock.

Source

- Laws 2021, LB572, § 31.
- **Effective Date: August 28, 2021**

54-1,125.

False documents; violation; penalty.

(1) Any person who offers as evidence of ownership for any livestock sold, traded, or otherwise disposed of as provided in the Livestock Brand Act or section 54-415, any forged, altered, or otherwise falsely prepared document or form, knowing the same to be forged, altered, or otherwise falsely prepared, is guilty of the Class IV felony of criminal possession of a forged instrument as defined in section 28-604.

(2) Any person who forges, alters, or otherwise changes in any manner any of the forms or documents which are satisfactory evidence of ownership or any other form or document required by or provided for in the Livestock Brand Act or section 54-415, is guilty of second degree forgery as defined in section 28-603, and shall be punished in accordance with such section.

(3) Any person who knowingly misrepresents or misuses any certificate of inspection or other satisfactory evidence of ownership is guilty of a Class II misdemeanor.

Source

- Laws 1999, LB 778, § 56.

54-1,126.

General penalty.

Any person who violates any provision of the Livestock Brand Act is guilty of a Class II misdemeanor unless another penalty is specifically provided for such violation.

Source

- Laws 1999, LB 778, § 57.

54-1,127.

Violations; arresting peace officer; powers.

Whenever any person is arrested for a violation of the Livestock Brand Act or section 54-415 punishable as a misdemeanor, the arresting peace officer shall, except as otherwise provided in this section, take the name and address of such person and the license number of his or her motor vehicle. The peace officer shall issue a summons or otherwise notify him or her in writing to appear at a time and place to be specified in such summons or notice. Such time shall be at least five days after such arrest, unless the person arrested demands an earlier hearing. Such person, if he or she so desires, has a right to an immediate hearing or a hearing within twenty-four hours at a convenient hour, such hearing to be before a magistrate within the county where such offense was committed. The peace officer shall thereupon, and upon the giving by such person of his or her written promise to appear at such time and place, forthwith release him or her from custody. Any person refusing to give such written promise to appear shall be taken immediately by the arresting peace officer before the nearest or most accessible magistrate.

Source

- Laws 1999, LB 778, § 58.

54-1,128.

Brand with brand recorded or registered in another state; application for out-of-state brand permit; contents; fee; violation; penalty.

(1) An owner may brand cattle with a brand recorded or registered in another state when:

(a) Cattle are purchased at a livestock auction market licensed under the Livestock Auction Market Act or congregated at another location approved by the Nebraska Brand Committee;

(b) The cattle will be imminently exported from Nebraska;

(c) The cattle are branded at the livestock auction market or other approved location; and

(d) An out-of-state brand permit has been obtained prior to branding the cattle.

(2) An application for an out-of-state brand permit shall be made to a brand inspector and shall include a description of the brand, a written application, and a fee not to exceed fifty dollars as determined by the Nebraska Brand Committee. A brand inspector shall evaluate and may approve an out-of-state brand permit within a reasonable period of time.

(3) Cattle branded under an out-of-state brand permit shall remain subject to all other brand inspection requirements under the Livestock Brand Act.

(4) A violation of this section is an infraction. A peace officer shall have the authority to write a citation, which shall be waivable, to offenders in violation of this section. A fine under this section shall not exceed two hundred dollars per head for each offense. Violations shall be charged in the county in which the offense occurred.

Source

- Laws 2013, LB435, § 4;
- Laws 2021, LB572, § 32.
- **Effective Date: August 28, 2021**

Cross References

- **Livestock Auction Market Act,** see section 54-1156.

54-1,129.

Livestock auction market or packing plant; brand inspection; election to provide.

The owner or operator of any livestock auction market, as defined in section 54-1158, or packing plant located in any county outside the brand inspection area may voluntarily elect to provide brand inspection for all cattle brought to such livestock auction market or packing plant from within the brand inspection area upon compliance with sections 54-1,129 to 54-1,131.

Source

- Laws 1963, c. 319, § 28, p. 972;
- Laws 1987, LB 450, § 9;
- Laws 1999, LB 778, § 76;
- R.S.1943, (2010), § 54-1183;
- Laws 2014, LB884, § 2.

54-1,130.

Livestock auction market or packing plant; election; how made.

The election provided for by section 54-1,129 shall be made by (1) filing with the Secretary of State, in form to be prescribed by the secretary, a written notice of such election and agreement to be bound by section 54-1,131 and (2) posting conspicuously on the premises a notice of the fact that brand inspection is provided at such livestock auction market or packing plant.

Source

- Laws 1963, c. 319, § 29, p. 973;
- Laws 1987, LB 450, § 10;
- R.S.1943, (2010), § 54-1184;
- Laws 2014, LB884, § 3.

54-1,131.

Livestock auction market or packing plant; brand inspection; how conducted; fees; guarantee.

Inspection provided for in sections 54-1,129 to 54-1,131 shall be conducted in the manner established by the Livestock Brand Act. The owner or operator making such election may be required to guarantee to the Nebraska Brand Committee that inspection fees derived from such livestock auction market or packing plant will be sufficient, in each twelve-month period, to pay the per diem and mileage of the inspectors required and that he or she will reimburse the committee for any deficit incurred in any such twelve-month period. Such guarantee shall be secured by a corporate surety bond, to be approved by the Secretary of State, in a penal sum to be established by the Nebraska Brand Committee.

Source

- Laws 1963, c. 319, § 30, p. 973;
- Laws 1987, LB 450, § 11;
- Laws 1999, LB 778, § 77;
- Laws 2000, LB 213, § 11;
- R.S.1943, (2010), § 54-1185;
- Laws 2014, LB884, § 4.

54-415.

Estrays; report; sale; procedure; disposition of proceeds; violations; penalty.

Any person taking up an estray within the brand inspection area or brand inspection service area shall report the same within seven days thereafter to the Nebraska Brand Committee. Any person taking up an estray in any other area of the state shall report the same to the county

sheriff of the county where the estray was taken. If the animal is determined to be an estray by a representative of the Nebraska Brand Committee or the county sheriff, as the case may be, such animal shall, as promptly as may be practicable, be sold through the most convenient livestock auction market. The proceeds of such sale, after deducting the selling expenses, shall be paid over to the Nebraska Brand Committee to be placed in the estray fund identified in section 54-1,118, if such estray was taken up within the brand inspection area or brand inspection service area, and otherwise to the treasurer of the county in which such estray was taken up. During the time such proceeds are impounded, any person taking up such estray may file claim with the Nebraska Brand Committee or the county treasurer, as the case may be, for the expense of feeding and keeping such estray while in his or her possession. When such claim is filed it shall be the duty of the Nebraska Brand Committee or the county board, as the case may be, to decide on the validity of the claim so filed and allow the claim for such amount as may be deemed equitable. When the estray is taken up within the brand inspection area or brand inspection service area, such proceeds shall be impounded for one year, unless ownership is determined sooner by the Nebraska Brand Committee, and if ownership is not determined within such one-year period, the proceeds shall be paid into the permanent school fund, less the actual expenses incurred in the investigation and processing of the estray fund. Any amount deducted as actual expenses incurred shall be deposited in the Nebraska Brand Inspection and Theft Prevention Fund. When the estray is taken up outside the brand inspection area or brand inspection service area and ownership cannot be determined by the county board, the county board shall then order payment of the balance of the sale proceeds less expenses, to the permanent school fund. If the brand committee or the county board determines ownership of an estray sold in accordance with this section by means of evidence of ownership other than the owner's recorded Nebraska brand, an amount not to exceed the actual investigative costs or expenses may be deducted from the proceeds of the sale. Any person who violates this section is guilty of a Class II misdemeanor. The definitions found in sections 54-171.01 to 54-190 apply to this section.

Source

- R.S.1866, p. 154;
- R.S.1913, § 123;
- C.S.1922, § 131;
- C.S.1929, § 54-415;
- R.S.1943, § 54-415;
- Laws 1965, c. 333, § 1, p. 953;
- Laws 1967, c. 344, § 1, p. 920;
- Laws 1977, LB 39, § 19;
- Laws 1979, LB 564, § 19;
- Laws 1980, LB 797, § 23;
- Laws 1983, LB 536, § 5;
- Laws 1999, LB 778, § 61;
- Laws 2014, LB768, § 10;

- Laws 2021, LB572, § 33.
- **Effective Date: August 28, 2021**

Associated Statutes

28-204.

Accessory to felony, defined; penalties.

(1) A person is guilty of being an accessory to felony if with intent to interfere with, hinder, delay, or prevent the discovery, apprehension, prosecution, conviction, or punishment of another for an offense, he or she:

(a) Harbors or conceals the other;

(b) Provides or aids in providing a weapon, transportation, disguise, or other means of effecting escape or avoiding discovery or apprehension;

(c) Conceals or destroys evidence of the crime or tampers with a witness, informant, document, or other source of information, regardless of its admissibility in evidence;

(d) Warns the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law;

(e) Volunteers false information to a peace officer; or

(f) By force, intimidation, or deception, obstructs anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person.

(2)(a) Accessory to felony is a Class IIA felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class I, IA, IB, IC, or ID felony.

(b) Accessory to felony is a Class IIIA felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class II or IIA felony.

(c) Accessory to felony is a Class IV felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class III or Class IIIA felony.

(d) Accessory to felony is a Class I misdemeanor if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class IV felony.

(e) Accessory to felony is a Class IV felony if the actor violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a felony of any class other than a Class IV felony.

(f) Accessory to felony is a Class I misdemeanor if the actor violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class IV felony.

Source

- Laws 1977, LB 38, § 13;
- Laws 1999, LB 40, § 1;
- Laws 2015, LB605, § 9;
- Laws 2016, LB1094, § 5.

Annotations

- The crime of being an accessory to a felony, as defined in this section, is not a lesser-included offense of the crime of robbery. State v. Arthaloney, 230 Neb. 819, 433 N.W.2d 545 (1989).
- When a jury is the fact finder in a case involving accessory to a felony charges, the jury should be instructed so as to ensure that the underlying offense of the principal is specifically determined. State v. Romo, 12 Neb. App. 472, 676 N.W.2d 737 (2004).
- A person must have reliable knowledge of the principal's identity to be guilty as an accessory under this section. Merely reporting false information about a crime without knowledge of the principal's identity constitutes the misdemeanor of false reporting, as defined by section 28-907. State v. Anderson, 10 Neb. App. 163, 626 N.W.2d 627 (2001).

28-511.

Theft by unlawful taking or disposition.

(1) A person is guilty of theft if he or she takes, or exercises control over, movable property of another with the intent to deprive him or her thereof.

(2) A person is guilty of theft if he or she transfers immovable property of another or any interest therein with the intent to benefit himself or herself or another not entitled thereto.

(3) Except as provided in subsection (4) of this section, it shall be presumed that a lessee's failure to return leased or rented movable property to the lessor after the expiration of a written lease or written rental agreement is done with intent to deprive if such lessee has been mailed notice by certified mail that such lease or rental agreement has expired and he or she has failed within ten days after such notice to return such property.

(4) A person is guilty of theft if he or she (a) rents or leases a motor vehicle under a written lease or rental agreement specifying the time and place for the return of the vehicle and fails to return the vehicle within seventy-two hours of written demand for return of the vehicle made upon him or her by certified mail to the address given by him or her for such purpose or (b) uses a fraudulent or stolen credit card to rent or lease a vehicle. Nothing in this subsection shall apply to any person who (i) through inadvertence, mistake, act of God, or other natural occurrence has unintentionally failed to return a rented motor vehicle or to inform the owner of the location of the vehicle or (ii) has had a rented motor vehicle stolen or otherwise converted from his or her possession and has filed the appropriate report with law enforcement authorities.

Source

- Laws 1977, LB 38, § 110;
- Laws 1980, LB 696, § 4;
- Laws 1988, LB 606, § 1.

Annotations

- Read in conjunction with section 28-510, theft by unlawful taking under this section is the same offense as theft by receiving stolen property under section 28-517. State v. Miner, 273 Neb. 837, 733 N.W.2d 891 (2007).
- The Nebraska Legislature has unambiguously defined theft as a single offense which can be committed in several different ways. State v. Miner, 273 Neb. 837, 733 N.W.2d 891 (2007).
- Sufficient evidence was presented to support a conviction of theft by unlawful taking or disposition where the defendant, who was contractually obligated to place money in escrow, did not place the money in escrow and subsequently lost the money through an investment. State v. Jonusas, 269 Neb. 644, 694 N.W.2d 651 (2005).
- Subsection (1) of this section proscribes or condemns only that conduct in which criminal intent is present, distinguishing theft from activity which is otherwise permissible as noncriminal conduct. Consent is a valid defense to a charge of theft by taking. State v. Fahlk, 246 Neb. 834, 524 N.W.2d 39 (1994).
- A series of separate acts, each of which is a theft proscribed by subsection (2) of this section, does not constitute one criminal act or a continuing offense of theft. State v. Schaaf, 234 Neb. 144, 449 N.W.2d 762 (1989).
- Neither the value of the property stolen nor the time at which it was appropriated are essential elements of the crime of theft. State v. Schaaf, 234 Neb. 144, 449 N.W.2d 762 (1989).
- Under subsection (2) of this section, the elements of theft by unlawful disposition are (1) a person's unauthorized transfer of another's immovable property (2) with the intent to benefit himself, herself, or another not entitled to the property or any interest in the property. State v. Schaaf, 234 Neb. 144, 449 N.W.2d 762 (1989).

- The value of the property stolen is no longer an element of the crime and is important only in determining the penalty. State v. Culver, 233 Neb. 228, 444 N.W.2d 662 (1989).
- When a person found guilty of a substantive crime as well as being a habitual criminal is improperly sentenced, both sentences must be set aside and the case remanded for proper sentencing. State v. Rolling, 209 Neb. 243, 307 N.W.2d 123 (1981).

28-512.

Theft by deception.

A person commits theft if he obtains property of another by deception. A person deceives if he intentionally:

(1) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(2) Prevents another from acquiring information which would affect his judgment of a transaction; or

(3) Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) Uses a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (a) where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized, or (b) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument.

The word deceive does not include falsity as to matters having no pecuniary significance, or statements unlikely to deceive ordinary persons in the group addressed.

Source

- Laws 1977, LB 38, § 111.

Annotations

- Under subsection (1) of this section, the offense of theft by deception may take place over a period of time. State v. Grell, 233 Neb. 314, 444 N.W.2d 911 (1989).

- It is the required element of guilty knowledge, criminal intent, which distinguishes a civil breach of contract from theft by deception—a person's knowingly creating a false impression in order to obtain another's property. State v. Ladehoff, 228 Neb. 812, 424 N.W.2d 361 (1988).
- Subsection (2) of this section is constitutional. State v. Scott, 225 Neb. 146, 403 N.W.2d 351 (1987).
- Another's property is obtained by deception if an actor, by a statement or conduct, creates or reinforces a false impression in that person with the result that such false impression, alone or with other influences, effectively induces another to part with his or her property. State v. Fleming, 223 Neb. 169, 388 N.W.2d 497 (1986).
- Subsection (1) of this section is not unconstitutionally vague. State v. Sailors, 217 Neb. 693, 352 N.W.2d 860 (1984).

28-514.

Theft of property lost, mislaid, or delivered by mistake; penalty.

(1) A person who comes into control of property of another that he or she knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient commits theft if, with intent to deprive the owner thereof, he or she fails to take reasonable measures to restore the property to a person entitled to have it.

(2) Any person convicted of violating subsection (1) of this section shall be punished by the penalty prescribed in the next lower classification below the value of the item lost, mislaid, or delivered under a mistake pursuant to section 28-518.

(3) Any person convicted of violating subsection (1) of this section when the value of the property is five hundred dollars or less shall be guilty of a Class III misdemeanor for the first conviction, a Class II misdemeanor for the second conviction, and a Class I misdemeanor for the third or subsequent conviction.

Source

- Laws 1977, LB 38, § 113;
- Laws 1989, LB 200, § 1;
- Laws 1992, LB 111, § 1;
- Laws 2015, LB605, § 29;
- Laws 2016, LB1094, § 7.

Annotations

- This section prohibits a person from taking control of lost or mislaid property and doing nothing to restore the property to its owner. State v. Beyer, 260 Neb. 670, 619 N.W.2d 213 (2000).

28-517.

Theft by receiving stolen property.

A person commits theft if he receives, retains, or disposes of stolen movable property of another knowing that it has been stolen, or believing that it has been stolen, unless the property is received, retained, or disposed with intention to restore it to the owner.

Source

- Laws 1977, LB 38, § 116.

Annotations

- In a prosecution for receiving stolen property, the court must instruct the jury on the subjective standard of "knowing . . . or believing" as it is used in this section. State v. Almasaudi, 282 Neb. 162, 802 N.W.2d 110 (2011).
- This section imposes a subjective standard of knowledge or belief. State v. Almasaudi, 282 Neb. 162, 802 N.W.2d 110 (2011).
- Read in conjunction with section 28-510, theft by receiving stolen property under this section is the same offense as theft by unlawful taking under section 28-511. State v. Miner, 273 Neb. 837, 733 N.W.2d 891 (2007).
- The Nebraska Legislature has unambiguously defined theft as a single offense which can be committed in several different ways. State v. Miner, 273 Neb. 837, 733 N.W.2d 891 (2007).
- The Nebraska Legislature has not made the offense of "theft by receiving" a continuous offense. State v. Nuss, 235 Neb. 107, 454 N.W.2d 482 (1990).
- Applying subsection (8) of section 25-518, value is an essential element of the crime of theft by receiving stolen property. In re Interest of Shea B., 3 Neb. App. 750, 532 N.W.2d 52 (1995).

28-518.

Grading of theft offenses; aggregation allowed; when.

(1) Theft constitutes a Class IIA felony when the value of the thing involved is five thousand dollars or more.

(2) Theft constitutes a Class IV felony when the value of the thing involved is one thousand five hundred dollars or more but less than five thousand dollars.

(3) Theft constitutes a Class I misdemeanor when the value of the thing involved is more than five hundred dollars but less than one thousand five hundred dollars.

(4) Theft constitutes a Class II misdemeanor when the value of the thing involved is five hundred dollars or less.

(5) For any second or subsequent conviction under subsection (3) of this section, any person so offending shall be guilty of a Class IV felony.

(6) For any second conviction under subsection (4) of this section, any person so offending shall be guilty of a Class I misdemeanor, and for any third or subsequent conviction under subsection (4) of this section, the person so offending shall be guilty of a Class IV felony.

(7) Amounts taken pursuant to one scheme or course of conduct from one or more persons may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(8) In any prosecution for theft under sections 28-509 to 28-518, value shall be an essential element of the offense that must be proved beyond a reasonable doubt.

Source

- Laws 1977, LB 38, § 117;
- Laws 1978, LB 748, § 7;
- Laws 1982, LB 347, § 8;
- Laws 1992, LB 111, § 2;
- Laws 2009, LB155, § 7;
- Laws 2015, LB605, § 30.

Annotations

- **1. Value**
- **2. Aggregation**
- **3. Miscellaneous**
- **1. Value**
- Subsection (8) of this section requires only that some value be proved as an element of a theft offense, not that a particular threshold value be proved as an element of the offense. State v. Almasaudi, 282 Neb. 162, 802 N.W.2d 110 (2011).
- While subsection (8) of this section now requires that intrinsic value be proved beyond a reasonable doubt as an element of the offense, proof of a specific value at the time of the theft is necessary only for gradation of the offense. State v. Gartner, 263 Neb. 153, 638 N.W.2d 849 (2002).
- The degree of the crime for grading purposes of this section must be measured by the value of the thing involved as obtained by defendant through deception, and the value of the thing involved as to the victim is immaterial. State v. Roche, Inc., 246 Neb. 568, 520 N.W.2d 539 (1994).

- The greater the value of the property involved in a theft, the more severe the punishment which may be imposed on conviction for the theft; and the determination of value is a question for the fact finder, whose finding will not be set aside unless clearly erroneous. State v. Garza, 241 Neb. 256, 487 N.W.2d 551 (1992).
- In a theft charge, the value of the thing involved is an element of the charge against defendant and must be proved by the State beyond a reasonable doubt and must be established by the jury. State v. Scott, 225 Neb. 146, 403 N.W.2d 351 (1987).
- In reference to the crime of theft, value is established by evidence concerning the price at which property identical or reasonably similar to the property stolen is offered for sale and sold in proximity to the site of the theft. State v. Connor, 16 Neb. App. 871, 754 N.W.2d 774 (2008).
- Pursuant to subsection (8) of this section, value is an essential element of the crime of theft by receiving stolen property. In re Interest of Shea B., 3 Neb. App. 750, 532 N.W.2d 52 (1995).
- 2. Aggregation
- When items are stolen simultaneously from the same location, only one theft has occurred and the value of the items should be aggregated to determine the grade of the offense. State v. Sierra, 305 Neb. 249, 939 N.W.2d 808 (2020).
- Where a jury found that the defendant unlawfully took multiple items, the jury's finding that the defendant did not take the items "pursuant to one scheme or course of conduct" did not require that the defendant be found not guilty. State v. Duncan, 294 Neb. 162, 882 N.W.2d 650 (2016).
- Whether the theft of multiple items was "taken pursuant to one scheme or course of conduct" is not an essential element of a theft offense; instead, whether the items were "taken pursuant to one scheme or course of conduct" is relevant to the determination of whether the value of the items taken could be aggregated for purposes of grading the offense. State v. Duncan, 294 Neb. 162, 882 N.W.2d 650 (2016).
- Subsection (7) of this section permits the value of all items of property taken pursuant to one scheme or course of conduct from one person to be aggregated in order to determine the classification of the theft offense, but specifically prohibits aggregation of individual values into more than one offense. State v. Miner, 273 Neb. 837, 733 N.W.2d 891 (2007).
- An act of theft involving multiple items of property stolen simultaneously at the same place constitutes one offense, in which the value of the individual stolen items may be considered collectively for the aggregate or total value of the property stolen to determine the grade of the offense under this section. State v. Garza, 241 Neb. 256, 487 N.W.2d 551 (1992).
- 3. Miscellaneous
- For enhancement as a third or subsequent offense under subsection (4), this section requires only that a person have at least two prior valid convictions of theft

under subsection (4); it does not require that a person be progressively convicted from first offense to second offense before he or she can be found guilty of an enhanced third or subsequent offense. State v. McCarthy, 284 Neb. 572, 822 N.W.2d 386 (2012).

- The defendant's prior two convictions for theft by shoplifting could be used to enhance his third conviction for theft by shoplifting, although the prior two convictions occurred before subsection (4) of this section was amended by 2015 Neb. Laws, L.B. 605, to increase the maximum value of the thing involved, since the defendant's third conviction would have been classified under subsection (4) under either the old or the new version of this subsection. State v. Sack, 24 Neb. App. 721, 897 N.W.2d 317 (2017).
- A conviction under subsection (2) or (3) of this section does not include a conviction of a lesser offense under subsection (4) of this section for purposes of enhancement. State v. Long, 4 Neb. App. 126, 539 N.W.2d 443 (1995).

28-519.

Criminal mischief; penalty.

(1) A person commits criminal mischief if he or she:

(a) Damages property of another intentionally or recklessly; or

(b) Intentionally tampers with property of another so as to endanger person or property; or

(c) Intentionally or maliciously causes another to suffer pecuniary loss by deception or threat.

(2) Criminal mischief is a Class IV felony if the actor intentionally or maliciously causes pecuniary loss of five thousand dollars or more, or a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public service.

(3) Criminal mischief is a Class I misdemeanor if the actor intentionally or maliciously causes pecuniary loss of one thousand five hundred dollars or more but less than five thousand dollars.

(4) Criminal mischief is a Class II misdemeanor if the actor intentionally or maliciously causes pecuniary loss of five hundred dollars or more but less than one thousand five hundred dollars.

(5) Criminal mischief is a Class III misdemeanor if the actor intentionally, maliciously, or recklessly causes pecuniary loss in an amount of less than five hundred dollars, or if his or her action results in no pecuniary loss.

Source

- Laws 1977, LB 38, § 118;

- Laws 1982, LB 347, § 9;
- Laws 2002, LB 82, § 4;
- Laws 2015, LB605, § 31.

Cross References

- **Unlawful interference with utility poles and wires,** penalty, see section 76-2325.01.

Annotations

- Ownership of property is not an essential element of criminal mischief and is immaterial except to identify property as not that of the accused. State v. Flye, 245 Neb. 495, 513 N.W.2d 526 (1994).
- Regarding the grades of criminal mischief, existence and amount of pecuniary loss are questions for the fact finder. A specific monetary amount, alleged in conjunction with "pecuniary loss" resulting from criminal mischief informs the court and the defendant the grade of offense charged and the potential punishment on conviction. "Pecuniary loss" as used in this section means monetary loss suffered by another as the result of the defendant's conduct which constitutes criminal mischief. State v. Pierce, 231 Neb. 966, 439 N.W.2d 435 (1989).
- A violation of subsection (4) of this section is a petty offense for which a defendant has a statutory, but not constitutional, right to a jury trial. State v. Lafler, 224 Neb. 613, 399 N.W.2d 808 (1987).
- A factual basis existed for the finding that property alleged to have been feloniously destroyed exceeded three hundred dollars in value when, in the presentence report, damage caused by the defendant was estimated to total in excess of two thousand two hundred dollars. State v. Richter, 220 Neb. 551, 371 N.W.2d 125 (1985).

28-602.

Forgery, first degree; penalty.

(1) A person commits forgery in the first degree if, with intent to deceive or harm, he falsely makes, completes, endorses, alters, or utters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

(a) Part of an issue of money, stamps, securities, or other valuable instruments issued by a government or governmental agency; or

(b) Part of an issue of stock, bonds, bank notes, or other instruments representing interests in or claims against a corporate or other organization or its property.

(2) Forgery in the first degree is a Class III felony.

Source

- Laws 1977, LB 38, § 124.

28-603.

Forgery, second degree; penalty; aggregation allowed; when.

(1) Whoever, with intent to deceive or harm, falsely makes, completes, endorses, alters, or utters any written instrument which is or purports to be, or which is calculated to become or to represent if completed, a written instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status, commits forgery in the second degree.

(2) Forgery in the second degree is a Class IIA felony when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is five thousand dollars or more.

(3) Forgery in the second degree is a Class IV felony when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is one thousand five hundred dollars or more but is less than five thousand dollars.

(4) Forgery in the second degree is a Class I misdemeanor when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is five hundred dollars or more but is less than one thousand five hundred dollars.

(5) Forgery in the second degree is a Class II misdemeanor when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is less than five hundred dollars.

(6) For the purpose of determining the class of penalty for forgery in the second degree, the face values, or purported face values, or the amounts of any proceeds wrongfully procured or intended to be procured by the use of more than one such instrument, may be aggregated in the indictment or information if such instruments were part of the same scheme or course of conduct which took place within a sixty-day period and within one county. Such values or amounts shall not be aggregated into more than one offense.

Source

- Laws 1977, LB 38, § 125;
- Laws 2003, LB 17, § 7;
- Laws 2009, LB155, § 13;

- Laws 2015, LB605, § 32.

Annotations

- To sustain a conviction for forgery, it is not sufficient for the State to show that a signature is not that of the party whose name is used, but it must also affirmatively be shown that the signing was made without his or her authority. State v. Castor, 262 Neb. 423, 632 N.W.2d 298 (2001).
- The elements of the crime of uttering a forged instrument are (1) the offering of a forged instrument with the representation by words or acts that it is true or genuine, (2) the knowledge that same is false, forged, or counterfeited, and (3) the intent to defraud. State v. Tate, 222 Neb. 586, 385 N.W.2d 456 (1986).

28-604.

Criminal possession of a forged instrument; penalty; aggregation allowed; when.

(1) Whoever, with knowledge that it is forged and with intent to deceive or harm, possesses any forged instrument covered by section 28-602 or 28-603 commits criminal possession of a forged instrument.

(2) Criminal possession of a forged instrument prohibited by section 28-602 is a Class IV felony.

(3) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is five thousand dollars or more, is a Class IV felony.

(4) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is one thousand five hundred dollars or more but less than five thousand dollars, is a Class I misdemeanor.

(5) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is five hundred dollars or more but less than one thousand five hundred dollars, is a Class II misdemeanor.

(6) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is less than five hundred dollars, is a Class III misdemeanor.

(7) For the purpose of determining the class of penalty for criminal possession of a forged instrument prohibited by section 28-603, the amounts or values of more than one such forged instrument may be aggregated in the indictment or information if such forged instruments were part of the same scheme or course of conduct which took place within a sixty-day period and within one county. Such amounts or values shall not be aggregated into more than one offense.

Source

- Laws 1977, LB 38, § 126;
- Laws 2003, LB 17, § 8;
- Laws 2009, LB155, § 14;
- Laws 2015, LB605, § 33.

Annotations

- Where the evidence offered no rational basis for convicting defendant of what he claimed to be the "lesser-included" offense of criminal possession of forged instrument, trial court did not err in refusing requested instruction. State v. Ebert, 212 Neb. 629, 324 N.W.2d 812 (1982).

28-901.

Obstructing government operations; penalty.

(1) A person commits the offense of obstructing government operations if he intentionally obstructs, impairs, or perverts the administration of law or other governmental functions by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

(2) Obstructing government operations is a Class I misdemeanor.

Source

- Laws 1977, LB 38, § 186.

Annotations

- A police chief's failure to forward, in accordance with section 29-424, to the county attorney a citation charging a city employee with a crime in order to prevent the city employee's employment from being terminated was obstructing government operations as set forth in subsection (1) of this section. The police chief obstructed or impaired a governmental function by failing to forward the citation to the county attorney, as required by section 29-424, because the action of failing to forward the citation impaired the county attorney's performance of its prosecutorial functions. The police chief did not have discretion to remove the citation of the city employee from the packet of citations to be sent to the county attorney such to conclude that he did not breach section 29-424. State v. Wilkinson, 293 Neb. 876, 881 N.W.2d 850 (2016).
- A defendant may not be convicted of obstructing government operations by a physical act unless the public servant was engaged in a specific authorized act at

the time of the physical interference. State v. Stolen, 276 Neb. 548, 755 N.W.2d 596 (2008).

- The physical act component of this section consists of disjunctive, or independent, elements; force or violence is not required in all circumstances involving obstruction of government operations by physical act, partially overruling State v. Fahlk, 246 Neb. 834, 524 N.W.2d 39 (1994). State v. Stolen, 276 Neb. 548, 755 N.W.2d 596 (2008).
- This section proscribes three separate means of committing obstruction of government operations; the physical act component must consist of some physical interference, force, violence, or obstacle. State v. Stolen, 276 Neb. 548, 755 N.W.2d 596 (2008).
- Failure to volunteer information is not a physical act that violates this section. Nor are mere words, even those words deliberately intended to frustrate law enforcement, physical acts. State v. Fahlk, 246 Neb. 834, 524 N.W.2d 39 (1994).
- The offense must consist of physical interference or some unlawful act. State v. Douglas, 217 Neb. 199, 349 N.W.2d 870 (1984).
- The defendant's cleaning of a campsite and removal of alcohol containers were physical acts contemplated by the plain language of this section. State v. Stolen, 16 Neb. App. 121, 741 N.W.2d 168 (2007).

28-904.

Resisting arrest; penalty; affirmative defense.

(1) A person commits the offense of resisting arrest if, while intentionally preventing or attempting to prevent a peace officer, acting under color of his or her official authority, from effecting an arrest of the actor or another, he or she:

(a) Uses or threatens to use physical force or violence against the peace officer or another; or

(b) Uses any other means which creates a substantial risk of causing physical injury to the peace officer or another; or

(c) Employs means requiring substantial force to overcome resistance to effecting the arrest.

(2) It is an affirmative defense to prosecution under this section if the peace officer involved was out of uniform and did not identify himself or herself as a peace officer by showing his or her credentials to the person whose arrest is attempted.

(3) Resisting arrest is (a) a Class I misdemeanor for the first such offense and (b) a Class IIIA felony for any second or subsequent such offense.

(4) Resisting arrest through the use of a deadly or dangerous weapon is a Class IIIA felony.

Source

- Laws 1977, LB 38, § 189;
- Laws 1982, LB 465, § 2;
- Laws 1997, LB 364, § 10.

Annotations

- In prosecutions for assaulting a peace officer, obstructing a peace officer, or resisting arrest, a trial court must instruct the jury on the issue of self-defense when there is any evidence adduced which raises a legally cognizable claim that the peace officer used unreasonable force in making the arrest. State v. Yeutter, 252 Neb. 857, 566 N.W.2d 387 (1997).
- This is a serious offense for which a jury trial is constitutionally required unless knowingly and intelligently waived by the defendant. State v. Bishop, 224 Neb. 522, 399 N.W.2d 271 (1987).
- It is an affirmative defense to prosecution under this section if the peace officer involved was out of uniform and did not identify himself as a peace officer by showing his credentials to the person whose arrest is attempted. State v. Daniels, 220 Neb. 480, 370 N.W.2d 179 (1985).
- Where there was evidence that the arrester communicated his intention to arrest the arrestee, the arrestee understood the intention, and the arrester had the apparent ability to control the arrestee, a jury instruction on resisting arrest was not necessary. State v. White, 209 Neb. 218, 306 N.W.2d 906 (1981).

28-906.

Obstructing a peace officer; penalty.

(1) A person commits the offense of obstructing a peace officer, when, by using or threatening to use violence, force, physical interference, or obstacle, he or she intentionally obstructs, impairs, or hinders (a) the enforcement of the penal law or the preservation of the peace by a peace officer or judge acting under color of his or her official authority or (b) a police animal assisting a peace officer acting pursuant to the peace officer's official authority.

(2) For purposes of this section, police animal means a horse or dog owned or controlled by the State of Nebraska or any county, city, or village for the purpose of assisting a peace officer acting pursuant to his or her official authority.

(3) Obstructing a peace officer is a Class I misdemeanor.

Source

- Laws 1977, LB 38, § 191;
- Laws 1995, LB 283, § 1;

- Laws 2012, LB721, § 1.

Annotations

- "Interference" means the action or fact of interfering or intermeddling (with a person, et cetera, or in some action). State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020).
- It is not necessary under this section for a defendant to engage in some sort of physical act. State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020).
- "Obstacle" means something that stands in the way or that obstructs progress (literal and figurative); a hindrance, impediment, or obstruction. State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020).
- To show a violation of this section, the State must prove that (1) the defendant intentionally obstructed, impaired, or hindered either a peace officer, a judge, or a police animal assisting a peace officer; (2) at the time the defendant did so, the peace officer or judge was acting under color of his or her official authority to enforce the penal law or preserve the peace; and (3) the defendant did so by using or threatening to use either violence, force, physical interference, or obstacle. State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020).
- In prosecutions for assaulting a peace officer, obstructing a peace officer, or resisting arrest, a trial court must instruct the jury on the issue of self-defense when there is any evidence adduced which raises a legally cognizable claim that the peace officer used unreasonable force in making the arrest. State v. Yeutter, 252 Neb. 857, 566 N.W.2d 387 (1997).
- The mere verbal refusal to provide information to an officer does not constitute an obstacle to the enforcement of the penal laws as contemplated by this section. State v. Yeutter, 252 Neb. 857, 566 N.W.2d 387 (1997).
- "Preservation of the peace," as used in this statute, means maintaining the tranquillity enjoyed by members of a community where good order reigns. In re Interest of Richter, 226 Neb. 874, 415 N.W.2d 476 (1987).
- The act of running away from an officer does obstruct, impair, or hinder the officer's efforts to preserve the peace. In re Interest of Richter, 226 Neb. 874, 415 N.W.2d 476 (1987).
- Words "violence, force, physical interference, or obstacle" are of common usage and understandable by those of ordinary intelligence and, thus, not unconstitutionally vague. State v. Lynch, 223 Neb. 849, 394 N.W.2d 651 (1986).
- The evidence was sufficient to convict the defendant under subsection (1) of this section where the defendant fled in his vehicle because he feared being arrested after he had been questioned by an officer, ordered to exit his vehicle, and approached by two officers and where the defendant disobeyed the officers' orders to get on the ground after the ensuing chase through a residential area. State v. Ellingson, 13 Neb. App. 931, 703 N.W.2d 273 (2005).

- There must be some sort of affirmative physical act, or threat thereof, for a violation of this section to occur. State v. Owen, 7 Neb. App. 153, 580 N.W.2d 566 (1998).

28-907.

False reporting; penalty.

(1) A person commits the offense of false reporting if he or she:

(a) Furnishes material information he or she knows to be false to any peace officer or other official with the intent to instigate an investigation of an alleged criminal matter or to impede the investigation of an actual criminal matter;

(b) Furnishes information he or she knows to be false alleging the existence of the need for the assistance of an emergency medical service or emergency care provider or an emergency in which human life or property are in jeopardy to any hospital, emergency medical service, or other person or governmental agency;

(c) Furnishes any information, or causes such information to be furnished or conveyed by electric, electronic, telephonic, or mechanical means, knowing the same to be false concerning the need for assistance of a fire department or any personnel or equipment of such department;

(d) Furnishes any information he or she knows to be false concerning the location of any explosive in any building or other property to any person; or

(e) Furnishes material information he or she knows to be false to any governmental department or agency with the intent to instigate an investigation or to impede an ongoing investigation and which actually results in causing or impeding such investigation.

(2)(a) False reporting pursuant to subdivisions (1)(a) through (d) of this section is a Class I misdemeanor.

(b) False reporting pursuant to subdivision (1)(e) of this section is an infraction.

Source

- Laws 1977, LB 38, § 192;
- Laws 1982, LB 347, § 12;
- Laws 1994, LB 907, § 1;
- Laws 1997, LB 138, § 36;
- Laws 2020, LB1002, § 4.

Annotations

- 1. Elements
- 2. Miscellaneous
- 1. Elements
- Subsection (1)(a) of this section includes other officials besides police officers who have the authority to investigate actual criminal matters. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).
- Subsection (1)(a) of this section prohibits a person from furnishing material information he or she knows to be false to any peace officer or other official with the intent to impede the investigation of an actual criminal matter. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).
- To commit the crime of false reporting one need not actually impede a police investigation, but must furnish false information with the intent to impede the investigation of a criminal matter. State v. Gonzales, 224 Neb. 659, 399 N.W.2d 832 (1987).
- "To impede the investigation of an actual criminal matter" includes the impeding of the gathering of information as to the identity of a defendant named in an arrest warrant. State v. Nissen, 224 Neb. 60, 395 N.W.2d 560 (1986).
- The phrase "the investigation of an actual criminal matter" requires that there be a legitimate and valid investigation of facts which could constitute a predicate criminal offense. State v. Ewing, 221 Neb. 462, 378 N.W.2d 158 (1985).
- The defendant's allegedly false statements to the 911 emergency dispatch service concerning crimes being committed at a certain address were made to a peace officer for purposes of the criminal statute prohibiting false reporting of a criminal matter; although the 911 emergency dispatch service was not a branch of law enforcement, it acted as an intermediary used by the general public to reach peace officers, and statements made to the emergency dispatch service were made with the intent to summon a law enforcement officer to that address. State v. Halligan, 20 Neb. App. 87, 818 N.W.2d 650 (2012).
- 2. Miscellaneous
- The purpose of subsection (1)(a) of this section is to prevent the public from willfully furnishing erroneous information to law enforcement officers and thus interfering with the performance of their duties. Interference with an officer's duties includes false statements that impede an officer's gathering of information. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).
- Evidence was sufficient for juvenile court to find beyond a reasonable doubt that defendant had violated provisions of this section. In re Interest of McManaman, 222 Neb. 263, 383 N.W.2d 45 (1986).
- Purpose of statute is to prevent wasted time and efforts of law enforcement personnel by discouraging public from willfully furnishing erroneous information to law enforcement officers which may interfere with performance of their duties. In re Interest of McManaman, 222 Neb. 263, 383 N.W.2d 45 (1986).

- A local ordinance which did not explicitly require that the false statement be material or be given with the intent to instigate or impede a criminal investigation is not inconsistent with this section where the ordinance does not restrict anything expressly permitted by this section and the provisions are able to coexist. In re Interest of Genevieve C., 13 Neb. App. 665, 698 N.W.2d 462 (2005).
- A person must have reliable knowledge of the principal's identity to be guilty as an accessory under section 28-204. Merely reporting false information about a crime without knowledge of the principal's identity constitutes the misdemeanor of false reporting, as defined by this section. State v. Anderson, 10 Neb. App. 163, 626 N.W.2d 627 (2001).

28-919.

Tampering with witness or informant; jury tampering; penalty.

(1) A person commits the offense of tampering with a witness or informant if, believing that an official proceeding or investigation of a criminal or civil matter is pending or about to be instituted, he or she attempts to induce or otherwise cause a witness or informant to:

(a) Testify or inform falsely;

(b) Withhold any testimony, information, document, or thing;

(c) Elude legal process summoning him or her to testify or supply evidence; or

(d) Absent himself or herself from any proceeding or investigation to which he or she has been legally summoned.

(2) A person commits the offense of jury tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, he or she attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case.

(3) Tampering with witnesses or informants is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified:

(a) As a Class II misdemeanor or a lower classification or a violation of a city or village ordinance, the offense is a Class I misdemeanor; or

(b) As a Class II felony or a higher classification, the offense is a Class II felony.

(4) Jury tampering is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified as a Class II felony or a higher classification, the offense is a Class II felony.

Source

- Laws 1977, LB 38, § 204;
- Laws 1994, LB 906, § 1;
- Laws 2019, LB496, § 2.

Annotations

- A defendant's reasons for attempting to induce a witness to commit any of the acts enumerated in this section are not relevant. State v. Benson, 305 Neb. 949, 943 N.W.2d 426 (2020).
- Evidence was sufficient to support a conviction for tampering with a witness, where after the victim reported that she was sexually assaulted, the defendant relayed a message asking the victim to drop the charges; by doing so, the defendant essentially asked the victim to inform falsely or to withhold information. State v. Guzman, 305 Neb. 376, 940 N.W.2d 552 (2020).
- Sufficient evidence was presented from which a jury could conclude beyond a reasonable doubt that the defendant intended to persuade the victim, who is also the witness, to withhold any further information concerning the rape she had reported. State v. Nissen, 252 Neb. 51, 560 N.W.2d 157 (1997).
- A person who has knowledge of a relevant fact or occurrence sufficient to testify in respect to it is a witness for the purpose of this section, even if such knowledge is not firsthand. State v. Cisneros, 248 Neb. 372, 535 N.W.2d 703 (1995).
- A witness, for purposes of this provision, is one who has knowledge of a relevant fact or occurrence sufficient to testify in respect to it. State v. McCoy, 227 Neb. 494, 418 N.W.2d 250 (1988).

28-922.

Tampering with physical evidence; penalty; physical evidence, defined.

(1) A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding; or

(b) Knowingly makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.

(2) Physical evidence, as used in this section, shall mean any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified:

(a) As a Class II misdemeanor or a lower classification or a violation of a city or village ordinance, the offense is a Class I misdemeanor; or

(b) As a Class II felony or a higher classification, the offense is a Class II felony.

Source

- Laws 1977, LB 38, § 207;
- Laws 2019, LB496, § 3.

Annotations

- The crime of tampering with physical evidence, as defined by subdivision (1)(a) of this section, does not include mere abandonment of physical evidence in the presence of law enforcement. State v. Lasu, 278 Neb. 180, 768 N.W.2d 447 (2009).
- To conceal or remove physical evidence, within the meaning of subdivision (1)(a) of this section, is to act in a way that will prevent it from being disclosed or recognized. State v. Lasu, 278 Neb. 180, 768 N.W.2d 447 (2009).

28-1008.

Terms, defined.

For purposes of sections 28-1008 to 28-1017, 28-1019, and 28-1020:

(1) Abandon means to leave any animal in one's care, whether as owner or custodian, for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health;

(2) Animal means any vertebrate member of the animal kingdom. Animal does not include an uncaptured wild creature or a livestock animal as defined in section 54-902;

(3) Cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal;

(4) Cruelly neglect means to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health;

(5) Humane killing means the destruction of an animal by a method which causes the animal a minimum of pain and suffering;

(6) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances. Law enforcement officer also includes a special investigator appointed as a deputy state sheriff as authorized pursuant to section 81-201 while acting within the authority of the Director of Agriculture under the Commercial Dog and Cat Operator Inspection Act;

(7) Mutilation means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an animal. Mutilation does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices;

(8) Owner or custodian means any person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on or about any premises owned or occupied by such person;

(9) Police animal means a horse or dog owned or controlled by the State of Nebraska or any county, city, or village for the purpose of assisting a law enforcement officer in the performance of his or her official enforcement duties;

(10) Repeated beating means intentional successive strikes to an animal by a person resulting in serious bodily injury or death to the animal;

(11) Serious injury or illness includes any injury or illness to any animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ; and

(12) Torture means intentionally subjecting an animal to extreme pain, suffering, or agony. Torture does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

Source

- Laws 1990, LB 50, § 1;
- Laws 1995, LB 283, § 2;
- Laws 2003, LB 273, § 4;
- Laws 2006, LB 856, § 11;
- Laws 2007, LB227, § 1;
- Laws 2008, LB764, § 2;
- Laws 2008, LB1055, § 2;
- Laws 2009, LB494, § 1;
- Laws 2010, LB865, § 13;
- Laws 2012, LB721, § 2;
- Laws 2015, LB360, § 2.

Cross References

- **Commercial Dog and Cat Operator Inspection Act,** see section 54-625.

28-1009.

Abandonment; cruel neglect; harassment of a police animal; penalty.

(1) A person who intentionally, knowingly, or recklessly abandons or cruelly neglects an animal is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the animal, in which case it is a Class IV felony.

(2)(a) Except as provided in subdivision (b) of this subsection, a person who cruelly mistreats an animal is guilty of a Class I misdemeanor for the first offense and a Class IIIA felony for any subsequent offense.

(b) A person who cruelly mistreats an animal is guilty of a Class IIIA felony if such cruel mistreatment involves the knowing and intentional torture, repeated beating, or mutilation of the animal.

(3) A person commits harassment of a police animal if he or she knowingly and intentionally teases or harasses a police animal in order to distract, agitate, or harm the police animal for the purpose of preventing such animal from performing its legitimate official duties. Harassment of a police animal is a Class IV misdemeanor unless the harassment is the proximate cause of the death of the police animal, in which case it is a Class IIIA felony.

(4) A person convicted of a Class I misdemeanor under this section may also be subject to section 28-1019. A person convicted of a Class IIIA felony under this section shall also be subject to section 28-1019.

Source

- Laws 1990, LB 50, § 2;
- Laws 1995, LB 283, § 3;
- Laws 2002, LB 82, § 6;
- Laws 2003, LB 273, § 5;
- Laws 2007, LB227, § 2;
- Laws 2013, LB329, § 3;
- Laws 2014, LB674, § 1;
- Laws 2015, LB605, § 49.

Annotations

- Under section 28-1019, if a person is convicted of a Class IV felony under this section, the sentencing court shall order such person not to own, possess, or

reside with any animal for at least 5 years and no more than 15 years after the date of conviction. State v. Meduna, 18 Neb. App. 818, 794 N.W.2d 160 (2011).

- Under subsection (1) of this section, a person who intentionally, knowingly, or recklessly abandons or cruelly neglects an animal is guilty of a Class I misdemeanor, unless the abandonment or cruel neglect results in serious injury or illness or death of the animal, in which case it is a Class IV felony. State v. Meduna, 18 Neb. App. 818, 794 N.W.2d 160 (2011).

28-1011.

Violations; liability for expenses.

(1) In addition to any other sentence given for a violation of section 28-1009 or 28-1010, the sentencing court may order the defendant to reimburse a public or private agency for any unreimbursed expenses incurred in conjunction with the care, impoundment, seizure, or disposal of an animal involved in the violation of such section. Whenever the court believes that such reimbursement may be a proper sentence or the prosecuting attorney requests, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the expenses incurred. The court may order that reimbursement be made immediately, in specified installments, or within a specified period of time, not to exceed five years after the date of judgment.
(2) Even if reimbursement for expenses is not ordered under subsection (1) of this section, the defendant shall be liable for all unreimbursed expenses incurred by a public or private agency in conjunction with the care, impoundment, seizure, or disposal of an animal. The expenses shall be a lien upon the animal.

Source

- Laws 1990, LB 50, § 5;
- Laws 1997, LB 551, § 2;
- Laws 2015, LB360, § 3.

28-1012.

Law enforcement officer; powers; immunity; seizure; court powers.

(1) A law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the animal.
(2) A law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner or custodian as prescribed in sections 29-422 to 29-429.
(3) Any equipment, device, or other property or things involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct. Any animal involved in a violation of section 28-1009 or 28-

1010 shall be subject to seizure. Distribution or disposition shall be made under section 28-1012.01 as the court may direct.
(4) Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

Source

- Laws 1990, LB 50, § 4;
- Laws 1997, LB 551, § 3;
- Laws 2002, LB 82, § 7;
- Laws 2010, LB712, § 12;
- Laws 2015, LB360, § 4.

28-1012.01.

Animal seized; court powers; county attorney; duties; hearing; notice; animal abandoned or cruelly neglected or mistreated; bond or other security; appeal; section, how construed.

(1) Any animal seized under a search warrant or validly seized without a warrant may be kept on the property of the owner or custodian by the law enforcement officer seizing the animal. When a criminal complaint has been filed in connection with a seized animal, the court in which such complaint was filed shall have exclusive jurisdiction for disposition of the animal and to determine any rights therein, including questions respecting the title, possession, control, and disposition thereof as provided in this section.

(2) Within seven days after the date an animal has been seized pursuant to section 28-1006 or 28-1012, the county attorney of the county where the animal was seized shall file an application with the court having appropriate jurisdiction for a hearing to determine the disposition and the cost for the care of the animal. Notice of such hearing shall be given to the owner or custodian from whom such animal was seized and to any holder of a lien or security interest of record in such animal specifying the date, time, and place of such hearing. Such notice shall be served by personal or residential service or by certified mail. If such notice cannot be served by such methods, service may be made by publication in the county where such animal was seized. Such publication shall be made after application and order of the court. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court.

(3) If the court finds that probable cause exists that an animal has been abandoned or cruelly neglected or mistreated, the court may:

(a) Order immediate forfeiture of the animal to the agency that took custody of the animal and authorize appropriate disposition of the animal including adoption, donation to a suitable shelter, humane destruction, or any other manner of disposition approved by the court. The court may consider adoption alternatives through humane societies or comparable institutions and the protection of such animal's welfare. For a humane society or comparable institution to

be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year;

(b) Issue an order to the owner or custodian setting forth the conditions under which custody of the animal shall be returned to the owner or custodian from whom the animal was seized or to any other person claiming an interest in the animal. Such order may include any management actions deemed necessary and prudent by the court, including reducing the number of animals harbored or owned by the owner or custodian by humane destruction or forfeiture and securing necessary care, including veterinary care, sufficient for the maintenance of any remaining animals; or

(c) Order the owner or custodian from whom the animal was seized to post a bond or other security or to otherwise order payment in an amount that is sufficient to reimburse all reasonable expenses, as determined by the court, for the care of the animal including veterinary care incurred by the agency from the date of seizure and necessitated by the possession of the animal. Payments shall be for a succeeding thirty-day period with the first payment due on or before the tenth day following the hearing. Payments for each subsequent thirty-day period, if any, shall be due on or before the tenth day of such period. The bond or security shall be placed with, or payments ordered under this subdivision shall be paid to, the agency that took custody of the animal. The agency shall provide an accounting of expenses to the court when the animal is no longer in the custody of the agency or upon request by the court. The county attorney of the county where the animal was seized may apply to the court for a subsequent hearing under this section at any time. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court. When all expenses covered by the bond or security are exhausted and subsequent bond or security has not been posted, or if a person becomes delinquent in his or her payments for the expenses of the animal, the animal shall be forfeited to the agency.

(4) If custody of an animal is returned to the owner or custodian prior to seizure, any proceeds of a bond or security or any payment or portion of payment ordered under this section not used for the care of the animal during the time the animal was held by the agency shall be returned to the owner or custodian.

(5) Nothing in this section shall prevent the humane destruction of a seized animal at any time as determined necessary by a licensed veterinarian or as authorized by court order.

(6) An appeal may be filed within ten days after a hearing held under this section. Any person filing an appeal shall post a bond or security sufficient to pay reasonable costs of care of the animal for thirty days. Such bond or surety shall be required for each succeeding thirty-day period until the appeal is final.

(7) If the owner or custodian from whom the animal was seized is found not guilty in an associated criminal proceeding, all funds paid for the expenses of the animal remaining after the actual expenses incurred by the agency have been paid shall be returned to the owner or custodian.

(8) This section shall not preempt any ordinance of a city of the metropolitan or primary class.

Source

- Laws 2015, LB360, § 5.

Cross References

- **Commercial Dog and Cat Operator Inspection Act,** see section 54-625.

28-1013.

Sections; exemptions.

Sections 28-1008 to 28-1017 and 28-1019 shall not apply to:

(1) Care or treatment of an animal or other conduct by a veterinarian or veterinary technician licensed under the Veterinary Medicine and Surgery Practice Act that occurs within the scope of his or her employment, that occurs while acting in his or her professional capacity, or that conforms to commonly accepted veterinary practices;

(2) Commonly accepted care or treatment of a police animal by a law enforcement officer in the normal course of his or her duties;

(3) Research activity carried on by any research facility currently meeting the standards of the federal Animal Welfare Act, 7 U.S.C. 2131 et seq., as such act existed on January 1, 2010;

(4) Commonly accepted practices of hunting, fishing, or trapping;

(5) Humane killing of an animal by the owner or by his or her agent or a veterinarian upon the owner's request;

(6) Use of reasonable force against an animal, other than a police animal, which is working, including killing, capture, or restraint, if the animal is outside the owned or rented property of its owner or custodian and is injuring or posing an immediate threat to any person or other animal;

(7) Killing of house or garden pests; and

(8) Commonly accepted animal training practices.

Source

- Laws 1990, LB 50, § 6;
- Laws 1995, LB 283, § 4;
- Laws 2003, LB 273, § 6;
- Laws 2007, LB463, § 1127;
- Laws 2008, LB764, § 5;
- Laws 2008, LB1055, § 4;
- Laws 2009, LB494, § 2;
- Laws 2010, LB865, § 14;
- Laws 2015, LB360, § 6.

Cross References

- **Veterinary Medicine and Surgery Practice Act,** see section 38-3301.

28-1019.

Conviction; order prohibiting ownership, possession, or residing with animal; duration; violation; penalty; seizure of animal.

(1)(a) If a person is convicted of a Class IV felony under section 28-1005 or 28-1009, the sentencing court shall order such person not to own, possess, or reside with any animal for at least five years after the date of conviction, but such time restriction shall not exceed fifteen years. Any person violating such court order shall be guilty of a Class I misdemeanor.

(b) If a person is convicted of a Class I misdemeanor under section 28-1005.01 or 28-1009 or a Class III misdemeanor under section 28-1010, the sentencing court may order such person not to own, possess, or reside with any animal after the date of conviction, but such time restriction, if any, shall not exceed five years. Any person violating such court order shall be guilty of a Class IV misdemeanor.

(c) Any animal involved in a violation of a court order under subdivision (a) or (b) of this subsection shall be subject to seizure by law enforcement. Distribution or disposition shall be made under section 28-1012.01.

(2) This section shall not apply to any person convicted under section 28-1005, 28-1005.01, or 28-1009 if a licensed physician confirms in writing that ownership or possession of or residence with an animal is essential to the health of such person.

Source

- Laws 2008, LB1055, § 3;
- Laws 2010, LB252, § 5;

- Laws 2010, LB712, § 13;
- Laws 2014, LB674, § 2;
- Laws 2015, LB360, § 10.

Annotations

- If a person is convicted of a Class IV felony under section 28-1009, the sentencing court shall order such person not to own, possess, or reside with any animal for at least 5 years and no more than 15 years after the date of conviction. State v. Meduna, 18 Neb. App. 818, 794 N.W.2d 160 (2011).

29-1301.

Venue; change; when allowed.

All criminal cases shall be tried in the county where the offense was committed, except as otherwise provided in section 25-412.03 or sections 29-1301.01 to 29-1301.04, or unless it shall appear to the court by affidavits that a fair and impartial trial cannot be had therein. In such case the court, upon motion of the defendant, shall transfer the proceeding to any other district or county in the state as determined by the court.

Source

- G.S.1873, c. 58, § 455, p. 823;
- R.S.1913, § 9024;
- C.S.1922, § 10048;
- C.S.1929, § 29-1301;
- R.S.1943, § 29-1301;
- Laws 1957, c. 103, § 1, p. 363;
- Laws 1975, LB 97, § 7;
- Laws 1978, LB 562, § 1;
- Laws 2021, LB500, § 1.
- **Effective Date: August 28, 2021**

Cross References

- **Change of venue,** criminal case pending in county with population of four thousand or less without adequate facilities for jury trials, see section 25-412.01.
- **Trial,** agreements under Interlocal Cooperation Act, see section 25-412.03.

Annotations

- **1. Venue of offense**
- **2. Change of venue**
- **3. Miscellaneous**

- 1. Venue of offense
- A criminal defendant has a right to be tried in the county in which the criminal offense is alleged to have been committed. In re Interest of Leo L. II, 258 Neb. 877, 606 N.W.2d 783 (2000).
- The right to be tried in the county in which the criminal offense is alleged to have been committed is secured by statute rather than by the federal or state constitution. When a criminal defendant does not object at trial to holding the trial in a county other than the county in which the criminal offense is alleged to have been committed, the defendant waives his or her objection to the statutorily designated trial provision in this section. State v. Meers, 257 Neb. 398, 598 N.W.2d 435 (1999).
- Venue may be proven like any fact, by testimony or by conclusion reached as the only logical inference under the facts. State v. Liberator, 197 Neb. 857, 251 N.W.2d 709 (1977).
- Where defendant resisted officer in execution of his office on county line road, prosecution could be in either of the counties divided by the road. State v. Lindsey, 193 Neb. 442, 227 N.W.2d 599 (1975).
- Trial of offense of failing to support child was properly held in county where child resided. State ex rel. Brito v. Warrick, 176 Neb. 211, 125 N.W.2d 545 (1964).
- Criminal cases must be tried in county where crime was committed, or in county to which change of venue is taken. State v. Furstenau, 167 Neb. 439, 93 N.W.2d 384 (1958).
- Venue of an offense may be proven like any other fact. Gates v. State, 160 Neb. 722, 71 N.W.2d 460 (1955).
- Where defendant had entered a plea of guilty, he could not on error proceedings retry issue of fact as to venue of offense. Clark v. State, 150 Neb. 494, 34 N.W.2d 877 (1948).
- Where an offense consists of a series of acts, prosecution may be had in any county where any one of the acts took place. Yost v. State, 149 Neb. 584, 31 N.W.2d 538 (1948).
- Where a person in one county procures the commission of a crime in another through the agency of an innocent person, he is subject to prosecution in the county where the acts were done by the agent. Robeen v. State, 144 Neb. 910, 15 N.W.2d 69 (1944).
- Conviction was sustained as not violative of this section. Forney v. State, 123 Neb. 179, 242 N.W. 441 (1932).
- County in which matrimonial domicile of husband and wife is located fixes venue in action for abandonment. Preston v. State, 106 Neb. 848, 184 N.W. 925 (1921).
- 2. Change of venue
- A change of venue is mandated when a defendant cannot receive a fair and impartial trial in the county where the offense was committed. State v. Edwards, 284 Neb. 382, 821 N.W.2d 680 (2012).

- An appellate court evaluates a court's change of venue ruling under eight factors unless the defendant claims that the pretrial publicity was so pervasive and prejudicial that the appellate court should presume the unconstitutional partiality of the prospective jurors. State v. Edwards, 284 Neb. 382, 821 N.W.2d 680 (2012).
- The Nebraska Supreme Court has recognized two circumstances when the prospective jurors- claims of impartiality can be presumptively unreliable: (1) pervasive pretrial publicity that is sufficiently inflammatory can create a presumption of prejudice in a community and require a change of venue to a location untainted by the publicity, and (2) if most of the prospective jurors admit to a disqualifying prejudice, the reliability of the others- claims of impartiality is called into question. State v. Edwards, 284 Neb. 382, 821 N.W.2d 680 (2012).
- A court must evaluate several factors in determining whether a defendant has met the burden of showing that pretrial publicity has made it impossible to secure a fair trial and impartial jury. These factors include (1) the nature of the publicity, (2) the degree to which the publicity has circulated throughout the community, (3) the degree to which the venue could be changed, (4) the length of time between the dissemination of the publicity complained of and the date of the trial, (5) the care exercised and ease encountered in the selection of the jury, (6) the number of challenges exercised during voir dire, (7) the severity of the offenses charged, and (8) the size of the area from which the venire was drawn. State v. Rodriguez, 272 Neb. 930, 726 N.W.2d 157 (2007).
- Pretrial publicity regarding a retrial after a conviction may in some cases present more difficult venue issues than those of an initial trial, but a determination of whether a change in venue is necessary remains within the discretion of the trial court. State v. McHenry, 250 Neb. 614, 550 N.W.2d 364 (1996).
- Trial court does not abuse its discretion in denying defendant's motion for change of venue when there is no evidence that jury could not be fair and impartial after viewing news reports which reference a polygraph examination. State v. McHenry, 247 Neb. 167, 525 N.W.2d 620 (1995).
- A party seeking change of venue must show that publicity has made it impossible to secure a fair and impartial jury. The factors to be evaluated in determining whether a change of venue is required due to pretrial publicity include the nature of the publicity, the degree to which the publicity has circulated throughout the community, the degree to which the publicity circulated in areas to which venue could be changed, the length of time between the dissemination of the publicity complained of and the date of trial, the care exercised and ease encountered in the selection of the jury, the number of challenges exercised during voir dire, the severity of the offenses charged, and the size of the area from which the venire was drawn. State v. Phelps, 241 Neb. 707, 490 N.W.2d 676 (1992).
- The factors to be considered in determining whether this section authorizes a change in venue due to pretrial publicity include the nature of the publicity, the degree to which the publicity has circulated in the areas to which venue could be changed, the length of time between the dissemination of the publicity

complained of and the date of trial, the care exercised and ease encountered in selection of the jury, the number of challenges exercised during voir dire, the severity of the offenses charged, and the size of the area from which the venire is drawn. A trial court's ruling on a motion for a change of venue under this section will not be disturbed on appeal absent an abuse of discretion. State v. Williams, 239 Neb. 985, 480 N.W.2d 390 (1992).

- The factors to be evaluated in determining whether a change of venue is required due to pretrial publicity include the nature of the publicity, the degree to which the publicity has circulated throughout the community, the degree to which the publicity has circulated in areas to which venue could be changed, the length of time between the dissemination of the publicity complained of and the date of trial, the care exercised and ease encountered in the selection of the jury, the number of challenges exercised during voir dire, the severity of the offenses charged, and the size of the area from which the venire is drawn. State v. Jacobs, 226 Neb. 184, 410 N.W.2d 468 (1987).
- Showing made was insufficient to require change of venue. Onstott v. State, 156 Neb. 55, 54 N.W.2d 380 (1952); Medley v. State, 156 Neb. 25, 54 N.W.2d 233 (1952).
- Motion for change of venue was properly denied in first degree murder case. Sundahl v. State, 154 Neb. 550, 48 N.W.2d 689 (1951).
- Application for change of venue is addressed to sound discretion of trial court; ruling will not be disturbed unless abuse of discretion is shown. Simmons v. State, 111 Neb. 644, 197 N.W. 398 (1924); Clarence v. State, 89 Neb. 762, 132 N.W. 395 (1911); Sweet v. State, 75 Neb. 263, 106 N.W. 31 (1905); Jahnke v. State, 68 Neb. 154, 94 N.W. 158 (1903), reversed on rehearing 68 Neb. 181, 104 N.W. 154 (1905).
- Change of venue on application of accused is waiver of his right to trial in county where crime is charged. Kennison v. State, 83 Neb. 391, 119 N.W. 768 (1909).
- Ruling of district court upon motion supported by affidavits will not be disturbed unless clearly without support of sufficient evidence. Lindsay v. State, 46 Neb. 177, 64 N.W. 716 (1895).
- Change can only be granted by court of county where offense was committed. Gandy v. State, 27 Neb. 707, 43 N.W. 747, 44 N.W. 108 (1889).
- Party seeking change of venue must show by best evidence that can be obtained bias and prejudice against him. Simmerman v. State, 16 Neb. 615, 21 N.W. 387 (1884).
- On showing made, change of venue should have been granted. Richmond v. State, 16 Neb. 388, 20 N.W. 282 (1884).
- Motion for change to particular county is bad, and may be overruled. Olive v. State, 11 Neb. 1, 7 N.W. 444 (1880).
- Requirements of this section have no application to receiving plea of guilty and imposing sentence in chambers. Canada v. Jones, 170 F.2d 606 (8th Cir. 1948).
- 3. Miscellaneous

- The State has the burden to prove proper venue beyond a reasonable doubt in the absence of defendant's waiver. State v. Phelps, 241 Neb. 707, 490 N.W.2d 676 (1992).
- Voir dire examination provides the best opportunity to determine whether venue should be changed. Mere jury exposure to news accounts of a crime does not presumptively deprive a criminal defendant of due process; rather, to warrant a change of venue, a defendant must show the existence of pervasive misleading pretrial publicity. State v. Phelps, 241 Neb. 707, 490 N.W.2d 676 (1992).
- Voir dire examination is the better, more probative forum for ascertaining the existence of community and individual prejudice or hostility toward the accused than is a public opinion poll. State v. Bradley, 236 Neb. 371, 461 N.W.2d 524 (1990).
- A defendant may waive the issue of statutorily designated venue by requesting a change of venue in accordance with this section, but does not waive the venue issue by failing to raise venue before or during trial. State v. Vejvoda, 231 Neb. 668, 438 N.W.2d 461 (1989).
- A motion to change venue under this provision is addressed to the discretion of the trial judge, whose ruling will not be disturbed absent an abuse thereof. An abuse occurs where a defendant establishes that local conditions and pretrial publicity make it impossible to secure a fair trial. State v. Jacobs, 226 Neb. 184, 410 N.W.2d 468 (1987).
- Under facts in this case it was not error to deny motions grounded on pretrial publicity for change of venue and continuance, sequestration of jury during voir dire and trial, and for admission of a photograph which merely illustrated testimony received without objection. State v. Ell, 196 Neb. 800, 246 N.W.2d 594 (1976).
- Section considered in reviewing order restricting publication of certain information before trial of murder case. State v. Simants, 194 Neb. 783, 236 N.W.2d 794 (1975).
- Appeal by a county in criminal case from order allowing attorney's fees is not authorized as the district court merely determines the reasonable charges for which claim may be filed with the county board. State v. Berry, 192 Neb. 826, 224 N.W.2d 767 (1975).
- Where state and local purposes are commingled, the crucial issue turns upon a determination of whether the controlling purposes are state or local. Counties may be required to pay attorney's fees for one appointed to defend an indigent defendant. Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975).

29-1301.01.

Venue; crime committed in different counties.

If any person shall commit an offense against the person of another, such accused person may be tried in the county in which the offense is committed, or in any county into or out of which the person upon whom the offense was committed may, in the prosecution of the offense, have

been brought, or in which an act is done by the accused in instigating, procuring, promoting, or aiding in the commission of the offense, or in aiding, abetting, or procuring another to commit such offense.

Source

- Laws 1957, c. 103, § 2, p. 364.

Annotations

- Two jury instructions read in conjunction with one another correctly instructed the jury that the offenses must have been "committed in this state." Taken as a whole, the instructions as to venue did not relieve the State of its burden to prove the acts were committed in Nebraska, and the defendant was not prejudiced as to necessitate a reversal on these grounds. State v. Lee, 304 Neb. 252, 934 N.W.2d 145 (2019).
- Although another county was the situs of the felonious sexual assault and where victim's clothing was found, venue was proper where sufficient circumstantial evidence existed from which a fact finder could reasonably conclude that the victim was originally abducted in county where trial was held. State v. Phelps, 241 Neb. 707, 490 N.W.2d 676 (1992).
- A motion for change of venue filed pursuant to this statute is addressed to the sound discretion of the trial court, whose ruling will not be disturbed on appeal absent a clear abuse of that discretion. State v. Kern, 224 Neb. 177, 397 N.W.2d 23 (1986).
- Where defendant resisted officer in execution of his office on county line road, prosecution could be in either of the counties divided by the road. State v. Lindsey, 193 Neb. 442, 227 N.W.2d 599 (1975).
- This section permits trial either in county where offense was committed or in any county into or out of which the person upon whom the offense was committed may, in the prosecution of the offense, have been brought, or in which an act is done by accused in instigating, procuring, promoting, or aiding in the commission of the offense. State v. Garza, 191 Neb. 118, 214 N.W.2d 30 (1974).
- District court for Douglas County had jurisdiction of rape case where prisoner allegedly committed acts in county in furtherance of offense and prosecutrix was brought back into county after alleged rape. Garza v. Wolff, 528 F.2d 208 (8th Cir. 1975).

29-1301.02.

Venue; crime committed on moving means of transportation.

When an offense is committed in this state, on board a vessel navigating a river, bay, slough, lake, or canal, or lying therein, in the prosecution of its voyage, or on a railroad train, or car,

motor vehicle, common carrier transporting passengers, or on an aircraft prosecuting its trip, the accused may be tried in any county through, on, or over which the vessel, train, car, motor vehicle, common carrier, or aircraft passes in the course of its voyage or trip, or in the county in which the voyage or trip terminates.

Source

- Laws 1957, c. 103, § 3, p. 364.

Annotations

- Two jury instructions read in conjunction with one another correctly instructed the jury that the offenses must have been "committed in this state." Taken as a whole, the instructions as to venue did not relieve the State of its burden to prove the acts were committed in Nebraska, and the defendant was not prejudiced as to necessitate a reversal on these grounds. State v. Lee, 304 Neb. 252, 934 N.W.2d 145 (2019).
- Venue confirmed in county where auto trip originated and ended, during which sexual assault occurred. State v. Tiff, 199 Neb. 519, 260 N.W.2d 296 (1977).

29-1301.03.

Venue; jurisdiction in two or more counties; effect of conviction or acquittal.

Where an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another.

Source

- Laws 1957, c. 103, § 4, p. 364.

29-1301.04.

Venue; crime committed using an electronic communication device.

(1) If a person uses an electronic communication device to commit any element of an offense, such person may be tried in the county where the electronic communication was initiated or where the electronic communication was received.
(2) For purposes of this section:
(a) Electronic communication has the same meaning as in section 28-1310; and
(b) Electronic communication device has the same meaning as in section 28-833.

Source

- Laws 2021, LB500, § 2.
- Effective Date: August 28, 2021

29-1305.

Venue; crime committed on county line.

When an offense shall be committed on a county line, the trial may be in either county divided by such line; and where any offense shall be committed against the person of another, and the person committing the offense shall be in one county, and the person receiving the injury shall be in another county, the trial may be had in either of such counties.

Source

- G.S.1873, c. 58, § 424, p. 819;
- R.S.1913, § 9028;
- C.S.1922, § 10052;
- C.S.1929, § 29-1305;
- R.S.1943, § 29-1305.

Annotations

- Where an offense is committed on a county line, prosecution may be in either of the counties divided by such line. State v. Lindsey, 193 Neb. 442, 227 N.W.2d 599 (1975).

29-1307.

Venue; receiver of stolen property.

Whenever any person shall be liable to prosecution as the receiver of any personal property that shall have been feloniously stolen, taken or embezzled, he may be indicted in any county where he received or had such property, notwithstanding the theft was committed in another county.

Source

- G.S.1873, c. 58, § 423, p. 819;
- R.S.1913, § 9030;
- C.S.1922, § 10054;
- C.S.1929, § 29-1307;
- R.S.1943, § 29-1307.

Annotations

- If person has stolen property in the county, proof of act of receiving is not necessary to establish proper venue. State v. McKee, 183 Neb. 754, 163 N.W.2d 434 (1969).

- This section does not authorize prosecution for burglary in another county than where the crime was committed. State v. Furstenau, 167 Neb. 439, 93 N.W.2d 384 (1958).

34-102.

Division fence; adjoining landowners; construct and maintain just proportion of fence.

(1) When there are two or more adjoining landowners, each of them shall construct and maintain a just proportion of the division fence between them. Just proportion means an equitable allocation of the portion of the fenceline to be physically constructed and maintained by each landowner or, in lieu thereof, an equitable contribution to the costs to construct and maintain the division fence to be made by either landowner. Unless otherwise specified in statute or by agreement of the parties, such equitable allocation shall be one which results in an equal burden of construction and maintenance of the division fence. This section shall not be construed to compel the erection and maintenance of a division fence if neither of the adjoining landowners desires such division fence.

(2) Unless the adjoining landowners have agreed otherwise, such fence shall be a wire fence as defined in subdivision (5) of section 34-115.

Source

- R.S.1866, c. 1, § 13, p. 8;
- R.S.1913, § 476;
- Laws 1919, c. 94, § 2, p. 237;
- C.S.1922, § 2418;
- C.S.1929, § 34-102;
- R.S.1943, § 34-102;
- Laws 2007, LB108, § 3;
- Laws 2010, LB667, § 2.

Cross References

- **Game and Parks Commission,** division fence responsibilities, see section 37-1012.

Annotations

- Failure of plaintiff to maintain just proportion of division fence did not justify or excuse trespass by defendant's cattle; this article provides remedy for defendant to compel plaintiff to maintain proportion of fence. Fiene v. Robertson, 184 Neb. 668, 171 N.W.2d 179 (1969).
- A cause of action for contribution does not arise from the erection of a partition fence, in the absence of any agreement, unless the method provided by statute is followed. Burr v. Hamer, 12 Neb. 483, 11 N.W. 741 (1882).

34-103.

Maintenance; private nuisance.

Every person liable to contribute to the construction and maintenance of a division fence or any portion thereof shall maintain his or her portion in good repair, including the necessary removal or trimming of trees and woody growth within or encroaching upon the fenceline to repair or avoid damage to, or dislocation of, the division fence. The occurrence of trees and woody growth within or encroaching upon a division fence that causes damage to, or dislocation of, the fence shall constitute a private nuisance to the adjacent landowner's possessory interests in his or her land.

Source

- Laws 2011, LB108, § 1.

34-112.

Division fence; injury or destruction; repair.

Whenever a division fence is injured or destroyed by fire, floods, or other casualty, the person bound to construct and maintain such fence, or any part thereof, shall make repairs to the same, or his or her just proportion thereof, as provided in section 34-102.

Source

- R.S.1866, c. 1, § 23, p. 9;
- R.S.1913, § 2486;
- C.S.1922, § 2426;
- C.S.1929, § 34-110;
- R.S.1943, § 34-112;
- Laws 2007, LB108, § 4.

34-112.01.

Division fence; entry upon land authorized.

An owner of land may enter upon adjacent land owned by another person to construct, maintain, or repair a division fence pursuant to sections 34-102 and 34-112, but such access shall be allowed only to the extent reasonably necessary to construct, maintain, or repair the division fence. This section does not authorize any alterations to adjacent land owned by another person, including the removal of trees, buildings, or other obstacles, without the consent of the adjacent landowner or a court order or the removal of any items of personal property lying thereon without the consent of the adjacent landowner or a court order.

Source

- Laws 2007, LB108, § 5.

34-112.02.

Division fence; construction, maintenance, or repair; notice; court action authorized; hearing; mediation; costs.

(1) Whenever a landowner desires to construct a division fence or perform maintenance or repairs to an existing division fence, such landowner shall give written notice of such intention to any person who is liable for the construction, maintenance, or repair of the division fence. Such notice may be served upon any nonresident by delivering the written notice to the occupant of the land or the landowner's agent in charge of the land. The written notice shall request that the person liable for the construction, maintenance, or repair satisfy his or her obligation by performance or by other manner of contribution. After giving written notice, a landowner may commence construction of a division fence, or commence maintenance or repair upon an existing division fence, in which cases any cause of action under this section and sections 34-102, 34-112, and 34-112.01 shall be an action for contribution.

(2) If notice is given prior to commencing construction, maintenance, or repair of a division fence and the person so notified either fails to respond to such request or refuses such request, the landowner sending notice may commence an action in the county court of the county where the land is located. If the landowners cannot agree what proportion of a division fence each shall construct, maintain, or repair, whether by performance or by contribution, either landowner may commence an action, without further written notice, in the county court of the county where the land is located. An action shall be commenced by filing a fence dispute complaint on a form prescribed by the State Court Administrator and provided to the plaintiff by the clerk of the county court. The complaint shall be executed by the plaintiff in the presence of a judge, a clerk or deputy or assistant clerk of a county court, or a notary public or other person authorized by law to take acknowledgments and be accompanied by the fee provided in section 33-123. A party shall not commence an action under this subsection until thirty days after giving notice under subsection (1) of this section and shall commence the action within one year after giving such notice.

(3) Upon filing of a fence dispute complaint, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she fails to appear, judgment will be entered against him or her. Notice shall be served in the manner provided for service of a summons in a civil action. If the notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment awarded to the plaintiff.

(4) In any proceeding under this section, subsequent to the initial filing, the parties shall receive from the clerk of the court information regarding availability of mediation through the farm mediation service of the Department of Agriculture or the state mediation centers as established through the Office of Dispute Resolution. Development of the informational materials and the implementation of this subsection shall be accomplished through the State Court Administrator. With the consent of both parties, a court may refer a case to mediation and may state a date for the case to return to court, but such date shall be no longer than ninety days from the date the order is signed unless the court grants an extension. If the parties consent to mediate and if a mediation agreement is reached, the court shall enter the agreement as the judgment in the action. The costs of mediation shall be shared by the parties according to the schedule of fees established by the mediation service and collected directly by the mediation service.

(5) If the case is not referred to mediation or if mediation is terminated or fails to reach an agreement between the parties, the action shall proceed as a civil action subject to the rules of civil procedure.

Source

- Laws 2007, LB108, § 6;
- Laws 2018, LB766, § 1.

Annotations

- Although Nebraska's "fence law" explicitly confers jurisdiction over contribution cases related to division fences to the county courts, it cannot deprive the district court of its subject matter jurisdiction over common-law causes of action. Kotrous v. Zerbe, 287 Neb. 1033, 846 N.W.2d 122 (2014).

34-112.03.

Division fence; changes made by Laws 2007, LB 108; applicability.

The changes made to sections 34-102, 34-112, and 37-1012 by Laws 2007, LB 108, sections 34-112.01 and 34-112.02, and the repeal of sections 34-101, 34-103 to 34-111, and 34-113 by Laws 2007, LB 108, apply commencing on March 8, 2007, except that prior law applies to any division fence dispute commenced prior to such date.

Source

- Laws 2007, LB108, § 7.

54-201.

Agister's lien; domestic and foreign; perfection; financing statement; filing; enforcement; fee.

(1) When any person, firm, corporation, partnership, or limited liability company not provided for in subsection (2) of this section procures, contracts with, or hires any other person, firm, corporation, partnership, or limited liability company to feed and take care of any kind of livestock, the person, firm, corporation, partnership, or limited liability company so procured, contracted with, or hired shall have a first, paramount, and prior lien upon such livestock for the feed and care furnished for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of such feed and care, as long as the holders of any prior liens shall have agreed in writing to the contract for the feed and care of the livestock involved. A lien created under this subsection shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this subsection shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed prior to removal of such livestock from the premises of the person, firm, corporation, partnership, or limited liability company entitled to a lien and shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the person, firm, corporation, partnership, or limited liability company claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished, (c) a description of the livestock fed and furnished care, and (d) the amount justly due for the feeding and care. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(2) When any person, firm, corporation, partnership, or limited liability company whose residence or principal place of business is located outside the State of Nebraska procures, contracts with, or hires any other person, firm, corporation, partnership, or limited liability company within the State of Nebraska to feed and take care of any kind of livestock, the person, firm, corporation, partnership, or limited liability company so procured, contracted with, or hired shall have a first, paramount, and prior lien upon such livestock for the feed and care furnished for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of such feed and care. A lien created under this subsection shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this subsection shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed prior to removal of such livestock from the premises of the person, firm, corporation, partnership, or limited liability company entitled to a lien and shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the person, firm, corporation, partnership, or limited liability company claiming the lien, (b) the name and address and the social security number or federal tax

identification number, if known, of the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished, (c) a description of the livestock fed and furnished care, and (d) the amount justly due for the feeding and care. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(3) Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

Source

- Terr. Laws 1867, § 1, p. 12;
- Laws 1889, c. 31, § 1, p. 378;
- R.S.1913, § 89;
- C.S.1922, § 97;
- C.S.1929, § 54-201;
- Laws 1935, c. 118, § 1, p. 433;
- C.S.Supp.,1941, § 54-201;
- R.S.1943, § 54-201;
- Laws 1982, LB 962, § 2;
- Laws 1984, LB 808, § 7;
- Laws 1988, LB 943, § 18;
- Laws 1993, LB 121, § 335;
- Laws 1998, LB 1321, § 96;
- Laws 1999, LB 550, § 36;
- Laws 2001, LB 54, § 25;
- Laws 2014, LB750, § 16.

Annotations

- **1. Nature of lien**
- **2. Priority of lien**
- **3. Miscellaneous**
- **1. Nature of lien**
- This section provides the agister with a lien upon the stock for the agister's keeping, and the owner cannot lawfully obtain possession of the stock until the owner has paid or tendered to the agister the amount due for the feed and care. Graff v. Burnett, 226 Neb. 710, 414 N.W.2d 271 (1987).
- Priority, as used in this section and UCC section 9-310, means first in time. Washington County Bank v. Red Socks Stables, 221 Neb. 300, 376 N.W.2d 782 (1985).

- Subsection (1) of this section gives Nebraska agisters a first lien for services rendered to a Nebraska livestock owner if the holders of any prior liens on that livestock agree in writing to the contract for the care and feeding of that livestock. Washington County Bank v. Red Socks Stables, 221 Neb. 300, 376 N.W.2d 782 (1985).
- Subsection (2) of this section gives Nebraska agisters a lien prior to any other liens without a written agreement to the contract for care and feeding of the livestock, if the party contracting for the agister's services is a nonresident of Nebraska. Washington County Bank v. Red Socks Stables, 221 Neb. 300, 376 N.W.2d 782 (1985).
- This section creates a statutory agister's lien within the meaning of UCC section 9-310. Washington County Bank v. Red Socks Stables, 221 Neb. 300, 376 N.W.2d 782 (1985).
- Caretaker has lien for care of livestock. Stickell v. Hagerty, 158 Neb. 34, 62 N.W.2d 107 (1954).
- One who receives animals under an agreement to share in increase has an agister's lien. Schrandt v. Young, 62 Neb. 254, 86 N.W. 1085 (1901).
- Lien arises only by contract. Hale v. Wigton, 20 Neb. 83, 29 N.W. 177 (1886).
- 2. Priority of lien
- Agister's lien under feeding contract is superior to subsequent chattel mortgage. Hoerler v. Prey, 125 Neb. 822, 252 N.W. 327 (1934).
- Lien is superior to mortgage executed after it has attached and while property is in possession of agister. Becker v. Brown, 65 Neb. 264, 91 N.W. 178 (1902).
- Under this section, a prior recorded chattel mortgage is superior to claim of agister for keeping animals. State Bank of Nebraska v. Lowe, 22 Neb. 68, 33 N.W. 482 (1887).
- Lien of liveryman failing to maintain possession of horses is inferior to mortgage executed after possession is relinquished. Marseilles Mfg. Co. v. Morgan, 12 Neb. 66, 10 N.W. 462 (1881).
- 3. Miscellaneous
- Once it is determined a person is protected by the statutory lien granted an agister, the statute will be liberally construed so its object will be effectuated. Mousel v. Daringer, 190 Neb. 77, 206 N.W.2d 579 (1973).
- It is not necessary for agister to follow statute in foreclosure if consent of bailor is had, and under circumstances not tending to injure third parties. Dale v. Council Bluffs Savings Bank, 65 Neb. 692, 91 N.W. 526 (1902); reversed on rehearing, 65 Neb. 694, 94 N.W. 983 (1903).
- The taking by the owner of livestock from the possession of agister without his consent does not divest his lien, and subsequent purchaser is charged with notice of the lien. Weber Bros. v. Whetstone, 53 Neb. 371, 73 N.W. 695 (1898).
- One who cares for livestock under contract with owner has agister's lien, and owner cannot obtain possession by legal process until he has paid or tendered the full amount due. Kroll v. Ernst, 34 Neb. 482, 51 N.W. 1032 (1892).

- Person furnishing feed and care to livestock can hold stock against owner who contracted for care until amount due is paid, but cannot hold where contract was not made with owner. Gates v. Parrott, 31 Neb. 581, 48 N.W. 387 (1891).

54-201.01.

Legislative intent.

The Legislature hereby recognizes and declares that the livestock industry is an integral component in the economy of this state and that the continued viability of such industry is essential to the prosperity and well-being of all citizens of this state. The Legislature further recognizes that the livestock industry of this state provides food for the state, the nation, and the world, and that the benefits of a financially sound industry are far reaching. It is hereby declared to be the purpose of sections 54-201 and 54-201.01 to afford protection to those persons involved in the care and feeding of livestock in this state by providing some security of compensation for services rendered.

Source

- Laws 1982, LB 962, § 1.

54-401.

Estrays, trespassing animals; damages; liability.

The owners of cattle, horses, mules, swine, sheep, and goats in this state are liable for all damages done by such stock upon the lands of another in this state as provided by section 54-402 if the damages to the lands are not the result of negligent or willful damage to the division fence by the person claiming damages to the land.

Source

- Laws 1871, § 1, p. 120;
- R.S.1913, § 109;
- C.S.1922, § 117;
- C.S.1929, § 54-401;
- R.S.1943, § 54-401;
- Laws 1983, LB 149, § 1;
- Laws 1996, LB 1174, § 5;
- Laws 2008, LB925, § 1.

Annotations

- **1. Persons liable**
- **2. Lien**
- **3. Remedies**

- 4. Miscellaneous
- 1. Persons liable
- Joint owners of herd are liable jointly. Wilson v. White, 77 Neb. 351, 109 N.W. 367 (1906).
- Mortgagee, without possession, is not owner within meaning of statute. Goff v. Byers Bros. & Co., 70 Neb. 1, 96 N.W. 1037 (1903).
- The term owners is construed to include depasturer. Laflin v. Svoboda, 37 Neb. 368, 55 N.W. 1049 (1893).
- 2. Lien
- Owner of land damaged by trespassing stock has lien thereon for damages done and for care and feed while impounded. Angus Cattle Co. v. McLeod, 98 Neb. 108, 152 N.W. 322 (1915).
- 3. Remedies
- Negligence of plaintiff in maintenance of division fence immaterial in action for damages by livestock upon cultivated lands. Fiene v. Robertson, 184 Neb. 668, 171 N.W.2d 179 (1969).
- Action for damages by stock ranging at large upon uncultivated land will not lie, but driving of animals thereon is actionable wrong. Meyers v. Menter, 63 Neb. 427, 88 N.W. 662 (1902).
- Remedy herein is not exclusive, and common-law liability is not abrogated. Lorance v. Hillyer, 57 Neb. 266, 77 N.W. 755 (1898).
- Injunction will lie to restrain threatened trespass of stock. State Bank of Nebraska of Seward v. Rohren, 55 Neb. 223, 75 N.W. 543 (1898).
- Where owner drives his stock upon unenclosed and uncultivated lands of another he is liable for trespass. Delaney v. Errickson, 11 Neb. 533, 10 N.W. 451 (1881).
- 4. Miscellaneous
- The herd laws pertain to damage to property and do not alter the common law liability for personal injuries caused by trespassing bulls. Foland v. Malander, 222 Neb. 1, 381 N.W.2d 914 (1986).
- A fenced pasture planted to wheat grass and not surrounded by a plowed strip constitutes "cultivated lands" for purposes of this statute. Fuchser v. Jacobson, 205 Neb. 786, 290 N.W.2d 449 (1980).
- Section is not applicable to uncultivated, unenclosed wild prairie lands of state. Delaney v. Errickson, 10 Neb. 492, 6 N.W. 600 (1880).

54-403.

Trespassing animals; distraint; notice.

When any such stock is found upon the lands of another, it is lawful for the owner or person in possession of such lands to impound such stock. If the owner of the stock can be found, and is known to the distrainor, it is the duty of the distrainor to notify the owner by leaving a written notice at his or her usual place of residence with some member of the family over the age of fourteen or, in the absence of such person, by posting on the door of such residence a copy of

the notice of the distraint of the stock, describing it, and stating the amount of damages claimed and the name of the arbitrator. The notice shall also require the owner within forty-eight hours after receiving such notice to take the stock away, after making full payment of all damages and costs to the satisfaction of the distrainor of trespassing animals. The notice may be in the following form:

You are hereby notified that on this ..... day of ..... 20...., your stock, of which I now have in my possession ..... (here describe the animal or animals) did trespass upon my land, and damage it to the amount of ..... . You are required to pay the above charges within forty-eight hours from the delivery of this notice or the stock will be sold as provided by law. I have appointed ..... to act as arbitrator should you not feel satisfied with the amount of damages claimed in the within notice.

No claim for damages shall be maintained by the distrainor without the notice contemplated in this section having been given when the owner is known by the distrainor of such stock.

Source

- Laws 1871, § 3, p. 120;
- R.S.1913, § 111;
- C.S.1922, § 119;
- C.S.1929, § 54-403;
- R.S.1943, § 54-403;
- Laws 1996, LB 1174, § 6;
- Laws 2004, LB 813, § 25.

Annotations

- **1. Constitutionality**
- **2. Notice**
- **3. Award**
- **4. Miscellaneous**
- **1. Constitutionality**
- The herd law provides a reasonable method of procedure in the nature of an action in rem against trespassing stock and is constitutional. Randall v. Gross, 67 Neb. 255, 93 N.W. 223 (1903).
- **2. Notice**
- Mortgagee is not bound unless notified. Goff v. Byers Bros. & Co., 70 Neb. 1, 96 N.W. 1037 (1903).
- Lienholder must comply with statute, and reasonableness of notice is a question of fact. Sloan v. Bain, 47 Neb. 914, 66 N.W. 1013 (1896).
- Owner has forty-eight hours after receipt of notice in which to pay damages and take stock away, and no greater damages than amount specified in notice can be claimed. Allen v. Van Ostrand, 19 Neb. 578, 27 N.W. 642 (1886).

- Notice and substantial compliance with statute necessary for right to enforce lien. Bucher v. Wagoner, 13 Neb. 424, 14 N.W. 160 (1882).
- Notice must be given within reasonable time as determined by circumstances. Haggard v. Wallen, 6 Neb. 271 (1877).
- Notice and demand must conform to statute. McAllister v. Wrede, 5 Neb. Unof. 82, 97 N.W. 318 (1903).
- **3. Award**
- Arbitrators' award is not a bar to action for negligence. Richardson v. Halstead, 44 Neb. 606, 62 N.W. 1077 (1895).
- **4. Miscellaneous**
- Act is superior to city ordinances. Lingonner v. Ambler, 44 Neb. 316, 62 N.W. 486 (1895).
- Taker-up must comply substantially with requirements of statute or he will acquire no lien. Hanscom v. Burmood, 35 Neb. 504, 53 N.W. 371 (1892).
- If person taking up stock does not comply with statute by refusing to select arbitrator, he acquires no lien and loses right to possession. Deirks v. Wielage, 18 Neb. 176, 24 N.W. 728 (1885).
- Owner may replevin upon tender of damages. Shroaf v. Allen, 12 Neb. 109, 10 N.W. 551 (1881).
- Owner must tender full amount. McAllister v. Wrede, 5 Neb. Unof. 82, 97 N.W. 318 (1903).

54-404.

Trespassing animals; distraint; damages; owner's failure to pay; sale.

If the owner of such stock shall refuse, within forty-eight hours after having been notified in writing, to pay the damages claimed or appoint an arbitrator to represent his interests, the animal or animals shall be sold upon execution as required by law, when the amount of damages and costs have been filed with the county court of the county within which the damages have been sustained.

Source

- Laws 1871, § 4, p. 121;
- R.S.1913, § 112;
- C.S.1922, § 120;
- C.S.1929, § 54-404;
- R.S.1943, § 54-404;
- Laws 1972, LB 1032, § 259.

Cross References

- **Uniform Arbitration Act,** applicability, see section 25-2602.01.

Annotations

- Essentials of jurisdiction of justice of peace are stated. Randall v. Gross, 67 Neb. 255, 93 N.W. 223 (1903).
- Issuance and service of summons are not necessary to give justice jurisdiction to issue execution, nor does void judgment destroy jurisdiction. Holmes v. Irwin, 17 Neb. 99, 22 N.W. 124 (1885), 22 N.W. 347 (1885).
- Object of law is to afford speedy and inexpensive mode of ascertaining damages. Haggard v. Wallen, 6 Neb. 271 (1877).

54-405.

Distraint; arbitrators; number; powers.

In case the parties interested cannot agree as to the amount of damages and costs sustained, each party may choose a man, and, in case the two men chosen cannot agree, they shall choose a third man, and, after being duly sworn for the purpose herein named, the three shall proceed to assess the damages, possessing for that purpose the general power of arbitrators.

Source

- Laws 1871, § 5, p. 121;
- R.S.1913, § 113;
- C.S.1922, § 121;
- C.S.1929, § 54-405;
- R.S.1943, § 54-405.

Cross References

- **Uniform Arbitration Act,** applicability, see section 25-2602.01.

Annotations

- Provisions of this section are not compulsory upon either party. Randall v. Gross, 67 Neb. 255, 93 N.W. 223 (1903).
- Arbitrators' award is not a bar to action for negligence of distrainor. Richardson v. Halstead, 44 Neb. 606, 62 N.W. 1077 (1895).
- Purpose of law is that taker-up of stock shall have a lien for only such damages as could be ascertained by arbitrators to be immediately appointed. Deirks v. Wielage, 18 Neb. 176, 24 N.W. 728 (1885).

54-406.

Distraint; arbitration award; enforcement; appeal.

The arbitrators shall make an award in writing, which, if not paid within five days after the award has been made, may be filed with the county court and shall operate as a judgment, which judgment shall be a lien upon the stock so distrained, and execution may issue upon such stock for the collection of such damages and costs as in other cases; *Provided,* either party may have an appeal from the judgment as in other cases in county court. The arbitrators shall be allowed two dollars each for their services.

Source

- Laws 1871, § 6, p. 121;
- R.S.1913, § 114;
- C.S.1922, § 122;
- C.S.1929, § 54-406;
- R.S.1943, § 54-406;
- Laws 1972, LB 1032, § 260.

Cross References

- **Uniform Arbitration Act,** applicability, see section 25-2602.01.

Annotations

- Owner of stock, after tendering the proper amount of damages sustained, may replevin the stock. Randall v. Gross, 67 Neb. 255, 93 N.W. 223 (1903).
- Authority of arbitrators is merely to appraise damages and costs sustained by landowner. Richardson v. Halstead, 44 Neb. 606, 62 N.W. 1077 (1895).
- Judgment on award may be appealed from. Sections of civil code relating to arbitration are not applicable. Holub v. Mitchell, 42 Neb. 389, 60 N.W. 596 (1894).

54-407.

Estrays; owner unknown; procedure.

In case the owner of such stock is not known or found in the county, the distrainor of the stock so trespassing upon lands shall proceed as provided by law regulating estrays and the stock shall be held liable for all damages and costs.

Source

- Laws 1871, § 7, p. 121;
- R.S.1913, § 115;
- C.S.1922, § 123;
- C.S.1929, § 54-407;
- R.S.1943, § 54-407;
- Laws 1996, LB 1174, § 7.

60-1308.

Failure to stop at weighing station or portable scale; violation; penalty.

The driver of any motor truck, truck-tractor, semitrailer, trailer, or towed vehicle who fails to obey any sign, message board, or in-cab signal from any state weighing station or portable scale or who knowingly passes or bypasses any state weighing station or portable scale, when the station or scale is open and being operated by an officer of the Nebraska State Patrol, is guilty of a Class III misdemeanor.

Source

- Laws 1955, c. 145, § 8, p. 408;
- Laws 1959, c. 302, § 1, p. 1130;
- Laws 1963, c. 373, § 8, p. 1199;
- Laws 1977, LB 39, § 91;
- Laws 1985, LB 395, § 9;
- Laws 2003, LB 481, § 1.

60-6,304.

Load; contents; requirements; vehicle that contained livestock; spill prohibited; violation; penalty.

(1)(a) Except as provided in subsection (2) of this section for a vehicle that contained livestock, but still contains the manure or urine of such livestock, no vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping from the vehicle.
(b) Except as provided in subsection (2) of this section for a vehicle that contained livestock, but still contains the manure or urine of such livestock, no person shall transport any sand, gravel, rock less than two inches in diameter, or refuse in any vehicle on any hard-surfaced state highway if such material protrudes above the sides of that part of the vehicle in which it is being transported unless such material is enclosed or completely covered with canvas or similar covering.
(c) Except as provided in subsection (3) of this section for commercial motor vehicles and commercial trailers, no person shall drive or move a motor vehicle, trailer, or semitrailer upon any highway unless the cargo or contents carried by the motor vehicle, trailer, or semitrailer are properly distributed and adequately secured to prevent the falling of cargo or contents from the vehicle. The tailgate, doors, tarpaulins, and any other equipment used in the operation of the motor vehicle, trailer, or semitrailer or in the distributing or securing of the cargo or contents carried by the motor vehicle, trailer, or semitrailer shall be secured to prevent cargo or contents falling from the vehicle. The means of securement to the motor vehicle, trailer, or semitrailer must be either tiedowns and tiedown assemblies of adequate strength or sides, sideboards, or stakes and a rear endgate, endboard, or stakes strong enough and high enough to assure that cargo or contents will not fall from the vehicle.
(d) Any person who violates any provision of this subsection is guilty of a Class IV misdemeanor.

(2)(a) No person operating any vehicle that contained livestock, but still contains the manure or urine of livestock, on any highway located within the corporate limits of a city of the metropolitan class, shall spill manure or urine from the vehicle.
(b) Any person who violates this subsection is guilty of a Class IV misdemeanor and shall be assessed a minimum fine of at least two hundred fifty dollars.
(3)(a) No person shall drive or move a commercial motor vehicle or commercial trailer upon any highway unless the cargo or contents carried by the commercial motor vehicle or commercial trailer are properly distributed and adequately secured to prevent the falling of cargo or contents from the vehicle. The tailgate, doors, tarpaulins, and any other equipment used in the operation of the commercial motor vehicle or commercial trailer or in the distributing or securing of the cargo or contents carried by the commercial motor vehicle or commercial trailer shall be secured to prevent cargo or contents falling from the vehicle. The structures, systems, parts, and components used to secure the cargo or contents shall be in proper working order with no damaged or weakened components that affect performance so as to cause the cargo or contents to fall from the commercial motor vehicle or commercial trailer. The means of securement to the commercial motor vehicle or commercial trailer shall be either tiedowns and tiedown assemblies of adequate strength or sides, sideboards, or stakes and a rear endgate, endboard, or stakes strong enough and high enough to ensure that cargo or contents will not fall from the commercial motor vehicle or commercial trailer.
(b)(i) Violation of this subsection is an infraction, and the person driving or moving a commercial motor vehicle or commercial trailer in violation of this subsection shall be fined two hundred dollars for the first offense and five hundred dollars for a second or subsequent offense.
(ii) In addition to the issuance of a citation to an operator under subdivision (b)(i) of this subsection, the Superintendent of Law Enforcement and Public Safety may assess the owner of the vehicle a civil penalty for each violation of this subsection of one thousand dollars. The superintendent shall issue an order imposing a penalty under this subdivision in the same manner as an order issued under section 75-369.04 and any rules and regulations adopted and promulgated under section 75-368 and any applicable federal rules and regulations.
(c) For purposes of this subsection:
(i) Commercial motor vehicle has the same meaning as in section 60-316; and
(ii) Commercial trailer has the same meaning as in section 60-317.

Source

- Laws 1969, c. 304, § 1, p. 1095;
- R.S.Supp.,1972, § 39-735.02;
- Laws 1974, LB 593, § 7;
- Laws 1977, LB 41, § 21;
- R.S.1943, (1988), § 39-6,129;
- Laws 1993, LB 370, § 400;
- Laws 1993, LB 575, § 28;
- Laws 2002, LB 1105, § 463;
- Laws 2007, LB147, § 1;
- Laws 2014, LB174, § 2;

- Laws 2019, LB698, § 1.

69-109.

Security interest; personal property; sale or transfer without consent; penalty.

Any person who, after having created any security interest in any article of personal property, either presently owned or after-acquired, for the benefit of another, shall, during the existence of the security interest, sell, transfer, or in any manner dispose of the said personal property, or any part thereof so given as security, to any person or body corporate, without first procuring the consent, in writing, of the owner and holder of the security interest, to any such sale, transfer or disposal, shall be deemed guilty of a Class IV felony.

Source

- Laws 1867, § 9, p. 11;
- Laws 1877, § 1, p. 5;
- Laws 1889, c. 35, § 1, p. 386;
- R.S.1913, § 534;
- C.S.1922, § 425;
- C.S.1929, § 69-109;
- R.S.1943, § 69-109;
- Laws 1969, c. 543, § 1, p. 2194;
- Laws 1971, LB 961, § 1;
- Laws 1977, LB 39, § 128.

Annotations

- **1. Constitutionality**
- **2. Sale with consent of mortgagee**
- **3. Sale without consent of mortgagee**
- **4. Criminal responsibility**
- **1. Constitutionality**
- Section is not in conflict with Article I, section 9, Constitution of Nebraska. State v. Heldenbrand, 62 Neb. 136, 87 N.W. 25 (1901).
- **2. Sale with consent of mortgagee**
- In a prosecution for the unlawful sale of mortgaged property without the written consent of the mortgagee, oral consent of the mortgagee to the sale, coupled with payment of the value of the property, is a defense. Mullins v. State, 146 Neb. 521, 20 N.W.2d 385 (1945).
- Sale by mortgagor under agreement with mortgagee for application of proceeds on mortgage debt is equitable assignment of proceeds. Lathrop v. Schlauger, 113 Neb. 14, 201 N.W. 654 (1924).

- Where sale is made with consent of mortgagee, mortgagor is agent of mortgagee. State ex rel. Davis v. Brown County Bank of Long Pine, 112 Neb. 642, 200 N.W. 866 (1924); Farmers State Bank of Petersburg v. Anderson, 112 Neb. 413, 199 N.W. 728 (1924); Farmers State Bank of Stella v. Home State Bank of Humboldt, 106 Neb. 711, 184 N.W. 170 (1921).
- Mortgagee waives his lien where sale is made with his consent by mortgagor. Warrick v. Rasmussen, 112 Neb. 299, 199 N.W. 544 (1924); Seymour v. Standard Live Stock Comm. Co., 110 Neb. 185, 192 N.W. 398 (1923); Gosnell v. Webster, 70 Neb. 705, 97 N.W. 1060 (1904); Drexel v. Murphy, 59 Neb. 210, 80 N.W. 813 (1899).
- Mortgagor may contract for future sale and disposition of property. Morris v. Persing, 76 Neb. 80, 107 N.W. 218 (1906).
- 3. Sale without consent of mortgagee
- Mortgagee may recover payment of one who sells property subject to mortgage without notice. Caproon v. Mitchell, 77 Neb. 562, 110 N.W. 378 (1906).
- Mortgagee, without knowledge of unauthorized sale, does not ratify by accepting proceeds. Gosnell v. Webster, 70 Neb. 705, 97 N.W. 1060 (1904).
- A mortgagee of chattels will be held to have ratified an unauthorized sale of the property by knowingly receiving and retaining the proceeds of sale. Ayers v. McConahey, 65 Neb. 588, 91 N.W. 494 (1902).
- Mortgagee may either disavow the sale and retake property or ratify it and recover proceeds of sale. Burke v. First Nat. Bank of Pender, 61 Neb. 20, 84 N.W. 408 (1900).
- 4. Criminal responsibility
- Although section does not expressly require fraud, judicial construction of the section has established that proof of fraud is required for a conviction thereunder. It is presumed that when a statute has been construed by the Supreme Court, and the same is substantially reenacted, the Legislature gave to the language the significance previously accorded it by the Supreme Court. State v. Hocutt, 207 Neb. 689, 300 N.W.2d 198 (1981).
- Conviction of disposing of mortgaged personal property sustained. Pulliam v. State, 169 Neb. 661, 100 N.W.2d 704 (1960).
- Law was enacted to prevent fraudulent transfer of mortgaged chattel property. Pulliam v. State, 167 Neb. 614, 94 N.W.2d 51 (1959).
- Information is not fatally defective because it fails to allege name of person or body corporate to whom sale or transfer was made. Hunt v. State, 143 Neb. 871, 11 N.W.2d 533 (1943).
- In prosecution hereunder accused may show as defense (1) that full value of mortgaged chattel has been turned over to mortgagee or (2) that the mortgage debt has been paid. Fiehn v. State, 124 Neb. 16, 245 N.W. 6 (1932).
- Wrongdoer cannot be convicted in Nebraska on sole charge of selling mortgaged property when actual sale occurred in Iowa. Forney v. State, 123 Neb. 179, 242 N.W. 441 (1932).

- Mortgage upon unplanted crop is invalid as basis of conviction of tenant in case he sells crops not planted at time the mortgage in lease was executed. Nelson v. State, 121 Neb. 658, 238 N.W. 110 (1931).
- Lien on properly identified crop extends to harvested crop unless otherwise provided, and it is a crime to sell same. Eigbrett v. State, 111 Neb. 388, 196 N.W. 700 (1923).
- Statute contains all the elements of the crime for which it is sought to provide punishment, and criminal intent is not an essential ingredient of the offense. State v. Butcher, 104 Neb. 380, 177 N.W. 184 (1920).
- Section applies to sale to partnerships. State v. Stapel, 103 Neb. 135, 170 N.W. 665 (1919).
- Sale of mortgaged property without mortgagee's consent is punishable. Wilson v. State, 43 Neb. 745, 62 N.W. 209 (1895).
- To constitute offense, the sale of the property must have been made by the mortgagor during the existence of the mortgage lien without the written consent of the owner and holder of the debt secured by the mortgage. State v. Hughes, 38 Neb. 366, 56 N.W. 982 (1893).
- Information need not allege intent. State v. Hurds, 19 Neb. 316, 27 N.W. 139 (1886).

FEDERAL REGULATIONS

201.39

Payment to be made to consignor or shipper by market agencies; exceptions.

(a) No market agency shall, except as provided in paragraph (b) of this section, pay the net proceeds or any part thereof, arising from the sale of livestock consigned to it for sale, to any person other than the consignor or shipper of such livestock except upon an order from the Secretary or a court of competent jurisdiction, unless (1) such market agency has reason to believe that such person is the owner of the livestock, (2) such person holds a valid, unsatisfied mortgage or lien upon the particular livestock, or (3) such person holds a written order authorizing such payment executed by the owner at the time of or immediately following the consignment of such livestock: *Provided,* That this paragraph shall not apply to deductions made from sales proceeds for the purpose of financing promotion and research activities, including educational activities, relating to livestock, meat, and other products covered by the Act, carried out by producer-sponsored organizations.

(b) The net proceeds arising from the sale of livestock, the ownership of which has been questioned by a market agency duly authorized to inspect brands, marks, and other identifying characteristics of livestock may be paid in accordance with the directions of such brand inspection agency if the laws of the State from which such livestock originated or was shipped to market make provision for payment of the proceeds in the manner directed by the brand inspection agency and if the market agency to which the livestock was consigned, and the consignor or consignors concerned, are unable to establish the ownership of the livestock within a reasonable period of time, not to exceed 60 days after sale.

(7 U.S.C. 181 *et seq.*)
[19 FR 4528, July 22, 1954, as amended at 28 FR 7218, July 13, 1963; 44 FR 45361, Aug. 2, 1979]

201.43

Payment and accounting for livestock and live poultry.

(a) ***Market agencies to make prompt accounting and transmittal of net proceeds.*** Each market agency shall, before the close of the next business day following the sale of any livestock consigned to it for sale, transmit or deliver to the consignor or shipper of the livestock, or the duly authorized agent, in the absence of any knowledge that any other person, or persons, has any interest in the livestock, the net proceeds received from the sale and a true written account of such sale, showing the number, weight, and price of each kind of animal sold, the date of sale, the commission, yardage, and other lawful charges, and such other facts as may be necessary to complete the account and show fully the true nature of the transaction.

(b) ***Prompt payment for livestock and live poultry - terms and conditions.***

(1) No packer, market agency, or dealer shall purchase livestock for which payment is made by a draft which is not a check, unless the seller expressly agrees in writing before the transaction that payment may be made by such a draft. (In cases of packers whose average annual purchases exceed $500,000, and market agencies and dealers acting as agents for such packers, see also § 201.200).

(2)

(i) No packer, market agency, or dealer purchasing livestock for cash and not on credit, whether for slaughter or not for slaughter, shall mail a check in payment for the livestock unless the check is placed in an envelope with proper first class postage prepaid and properly addressed to the seller or such person as he may direct, in a post office, letter box, or other receptacle regularly used for the deposit of mail for delivery, from which such envelope is scheduled to be collected (A) before the close of the next business day following the purchase of livestock and transfer of possession thereof, or (B) in the case of a purchase on a "carcass" or "grade and yield" basis, before the close of the first business day following determination of the purchase price.

(ii) No packer, market agency, or dealer purchasing livestock for slaughter, shall mail a check in payment for the livestock unless (A) the check is made available for actual delivery and the seller or his duly authorized representative is not present to receive payment, at the point of transfer of possession of such livestock, on or before the close of the next business day following the purchase of the livestock and transfer of possession thereof, or, in the case of a purchase on a "carcass" or "grade and yield" basis, on or before the close of the first business day following determination of the purchase price; or unless (B) the seller expressly agrees in writing before the transaction that payment may be made by such mailing of a check.

(3) Any agreement referred to in paragraph (b) (1) or (2) of this section shall be disclosed in the records of any market agency or dealer selling such livestock, and in the records of the packer, market agency, or dealer purchasing such livestock, and retained by such person for such time as is required by any law, or by written notice served on such person by the Administrator, but not less than two calendar years from the date of expiration thereof.

(4) No packer, live poultry dealer, market agency, or livestock dealer shall as a condition to its purchase of livestock or poultry, impose, demand, compel or dictate the terms or manner of payment, or attempt to obtain a payment agreement from a seller through any threat of retaliation or other form of intimidation.

(c) ***Purchaser to promptly reimburse agents.*** Each packer, market agency, or dealer who utilizes or employs an agent to purchase livestock for him, shall, in transactions where such agent uses his own funds to pay for livestock purchased on order, transmit or deliver to such agent the full amount of the purchase price before the close of the next business day following receipt of notification of the payment of such purchase price, unless otherwise expressly agreed between the parties before the purchase of the livestock. Any such agreement shall be disclosed in the records of the principal and in the records of any market agency or dealer acting as such agent.

(Approved by the Office of Management and Budget under control number 0580-0015)
(7 U.S.C. 228, 7 U.S.C. 222, and 15 U.S.C. 46)
[49 FR 6083, Feb. 17, 1984, as amended at 49 FR 8235, Mar. 6, 1984; 54 FR 16355, Apr. 24, 1989; 68 FR 75388, Dec. 31, 2003]