

# LIVE STOCK LAWS

OF THE  
STATE OF ARIZONA



ARIZONA HISTORICAL FOUNDATION  
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**RULES AND REGULATIONS**  
OF THE  
**ARIZONA LIVE STOCK SANITARY BOARD**

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ISSUED BY THE LIVE STOCK SANITARY BOARD  
THIS FIRST DAY OF OCTOBER, 1941

## CHAPTER 50

### ANIMAL HUSBANDRY

#### Article 1

#### Live Stock Sanitary Board and State Veterinarian

##### Section.

50-101. Board appointment—Bond—Compensation.

50-102. General duties of board—Peace officers must assist board.

50-103. State Veterinarian—Bond and salary.

##### **§50-101. Board appointment—Bond—Compensation.**

Three (3) qualified electors identified with and experienced in the live stock interests in the state shall be appointed by the governor, with the advice and consent of the senate, who shall constitute the live stock sanitary board. Each member shall execute bond to the state, in the sum of two thousand dollars (\$2,000), conditioned for the faithful performance of his duties and the term of office shall be three (3) years. The board shall elect one (1) of their number chairman, keep a complete record of its proceedings and make such reports to the governor as required by him, and a biennial report to the legislature. The members shall each receive ten dollars (\$10.00) per day for the time necessarily employed in discharging their duties; provided, however, that in no one (1) year shall the board be in session more than sixty (60) days, except upon call of the governor; and members of the board shall receive the mileage allowance in attending such meetings.

#### NOTES TO DECISIONS

##### Filing Vacancies.

The governor has no authority to appoint a member of the board without the advice and consent of the senate, unless there is a vacancy, and where a duly appointed and qualified member held over after his term, as provided in Arizona Const., art. 22, paragraph 13, there was no vacancy. *McCall v. Cull*, 51 Ariz. 237, 75 Pac. (2d) 696.

The governor has no authority to reappoint a member before his term expires, but though such reappointment was invalid, such member was entitled to hold over until his successor was appointed and qualified and he could not be dispossessed by another whose appointment was invalid for being without the advice and consent of the senate. *Marley v. Cavness*, 51 Ariz. 247, 75 Pac. (2d) 700.

##### **§50-102. General duties of board—Peace officers must assist board. (a) The Board**

(1) Shall exercise general supervision over the live stock interests of the state, protect the industry from theft and from contagious and infectious diseases, and the public from diseased and unwholesome meat products;

(2) Shall advise and recommend legislation fostering the live stock industry;

(3) Shall appoint and fix the salary of a secretary who shall file an oath of office and give bond payable to the state in the sum of two thousand dollars (\$2,000);

(4) May employ such other clerical help as the board shall deem necessary;

(5) Shall appoint inspectors and deputies to further the objects specified in subdivision (a), who shall be under the direction and control of the board;

(6) Shall keep a permanent record of its acts and of the acts and reports of its inspectors and detectives;

(7) Shall assist in the prosecution of persons charged with the violation of the live stock laws;

(8) May call upon any cattle inspector or peace officer to execute its orders, and such officer shall obey such orders;

(9) May issue or revoke permits for the shipment of horses, mules, and asses which are being moved from time to time upon construction work within the state without brand inspection;

(10) May waive the inspection of live stock before slaughter, and may grant permission to transfer or sell hides of neat animals, horses, mules or asses without such hides being tagged or marked, provided, that such hides shall be inspected and the regular inspection fee paid thereon prior to such shipment or sale;

(11) May prescribe and enforce rules and regulations made in conformity with this chapter (article), waiving inspections and/or inspection fees in such cases as the board may deem advisable.

(b) By and with the advice of the state veterinarian the board shall have power:

(1) To make and publish rules and regulations to control the importation of animals into this state; to establish quarantine, provide its boundaries and give notice thereof, and to do all things necessary to affect the object of such quarantine and to protect the live stock industry from contagious or infectious diseases and to prevent the spread thereof.

(2) To make rules for the slaughter of animals affected with contagious or infectious diseases, and for the disposition of the carcasses of the animals so slaughtered, when such action appears necessary to prevent the spread of any contagion or infection among live stock.

(3) To make rules and regulations governing the importations, manufacture, sale, distribution or use within the state of serums, vaccines and other bio-

logics intended for diagnostic or therapeutic uses with animals, and to regulate the importation, manufacture, or use of virulent blood or living virus of any diseases affecting animals.

(4) The board shall prescribe rules and regulations for the sale of live stock straying from its accustomed range. The board shall furnish suitable blanks, in triplicate, upon which all inspectors shall keep a record of their inspections and upon which they shall report to the board all inspections made. The inspection reports, whether in the hands of the inspector or in the office of the board, shall at all times be subject to inspection by any person desiring to examine them, and the secretary of the board shall aid any person requesting any information obtainable from the inspection records. All moneys received by the board from the sale of strays shall be remitted every fifteen (15) days to the state treasurer, through the state auditor, to be deposited in a special fund designated as the "stray fund," and shall be expended only for the payment of stray claims, as provided by the rules of the board.

**§50-103. State veterinarian—Bond and Salary.** The governor shall appoint, with the consent of the senate, a skilled veterinary surgeon, who shall be a graduate in good standing of a recognized school of veterinary surgery, shall hold his office at the pleasure of the board, and whose salary, to be fixed by the board, shall not be less than eighteen hundred dollars (\$1,800) nor more than three thousand dollars (\$3,000) per annum, and the mileage and traveling expenses allowed public officers. He shall execute a bond to the state in the sum of five thousand dollars (\$5,000).

## ARTICLE II.

### ERADICATION OF TUBERCULOSIS

#### Section.

- 50-201. Board empowered to cooperate with U. S. bureau in eradication of tuberculosis.
- 50-202. Veterinarians empowered to inspect animals and destroy if infected.
- 50-203. Agreement as to value of animal to be killed—Memorandum thereof.
- 50-204. Fixing salvage value where not agreed on.
- 50-205. State to refund one-third value of animal after deducting salvage—Value limits.
- 50-206. Person in possession of animal presumed to be owner—Settling dispute as to ownership.
- 50-207. Construction of article.
- 50-208. Breeding stock brought into state—Sequestration—Inspection—Destruction—Violations—Penalty.

**§50-201. Board empowered to cooperate with U. S. bureau in eradication of tuberculosis.** The live stock

sanitary board may cooperate with the bureau of animal industry of the United States department of agriculture for the eradication of tuberculosis among cattle in the state, and accept for the state the terms of cooperative agreements promulgated by such bureau, under authority of the provisions of the acts of congress relating thereto to effect said purpose. The board may appoint veterinary inspectors to act with and under the direction of the state veterinarian, as may be necessary to give full force and effect to the terms of such cooperative agreements.

**§50-202. Veterinarians empowered to inspect animals and destroy if infected.** The state veterinarian and any inspector appointed hereunder may enter any place where an animal may be and take custody thereof for the purpose of making an examination of such animal as to the presence of a contagious disease including tuberculosis, and retain such custody for the purpose of applying the tuberculin test thereto. If the animal reacts to such test, the inspecting officer may at once condemn said animal, and order that it be killed.

**§50-203. Agreement as to value of animal to be killed—Memorandum thereof.** When an animal in which tuberculosis is found is ordered killed, the inspector and the owner shall attempt to agree upon the value of such animal within the limit of value prescribed in this article. Upon such agreement being made, the inspector shall make a memorandum showing the date of the order of killing, describing the place where the animal was taken and from whom, describing the animal, and insert therein the value agreed upon. The memoranda shall be signed by the owner and the inspecting officer, one to be delivered to the owner, one returned by the inspector to the office of the board, one to the bureau of animal industry, and one for record. If such agreement is not made, the inspector shall fix the value of such animal, and execute a like memorandum thereof, except that it shall recite the fact that the owner refused to agree as to value, or refused to join in the execution of the memoranda.

**§50-204. Fixing Salvage value where not agreed on.** If the inspector and owner can not immediately agree as to any salvage value from the carcass of such animal, it shall be taken by the owner to the nearest slaughter house where federal inspection is maintained, there slaughtered and the carcass disposed of under such federal inspection, and the amount received from a sale so made shall be deemed the salvage value of such animal. The inspecting officer shall continue the custody of each animal ordered killed until killed and the carcass sold or otherwise disposed of. Any person interfering with

any veterinary inspecting officer acting under the provisions of this article shall be guilty of interfering with officers in the discharge of their official duties.

**§50-205. State to refund one-third value of animal after deducting salvage—Value limits.** After the salvage value has been received from a disposition of the carcass, the amount so received shall be paid to the owner of the animal and deducted from the appraised value of the animal, and the owner shall have a claim against the state for one-third of the balance of the appraised value, subject to the limitations herein. Such claims shall be presented to the board accompanied by the memoranda of appraisal and report showing the salvage sale and amount received from such sale and shall be verified by the claimant and paid as other claims against the state are paid. No claim shall be allowed in excess of fifty dollars (\$50.00) for a pure-bred animal nor twenty-five dollars (\$25.00) for a grade stock animal. The presentation and allowance of such claims against the state shall not deprive the claimant of any rights to present claims for the same animals to the United States.

**§50-206. Person in possession of animal presumed to be owner—Settling dispute as to ownership.** For the purpose hereof, the person in whose actual possession or control an animal is first found by a veterinary inspector, shall be deemed the owner thereof, and shall be dealt with as such owner, until the contrary appears. If a dispute arises as to ownership the veterinary inspector shall nevertheless proceed hereunder, condemn any animal reacting to the tuberculin test, appraise such animal, have same inspected and sold for salvage, and report his acts to the board, with a remittance of amounts received as salvage. Claimants may present their rights to the board within thirty (30) days after the animal is first taken. The board shall hold the salvage money, and all claims for compensation, where the report shows a conflict as to ownership of an animal, until thirty (30) days have elapsed, and thereafter until such board can satisfy itself as to the rightful claimant, or until the rightful claimant is determined in court. The board shall not be liable for any distribution of salvage or compensation by it made after the thirty (30) days have elapsed, nor shall any claim accrue against the state on account of any action taken by the board in the distribution of such funds.

**§50-207. Construction of article.** The powers conferred by this article are to be so construed as to permit the condemnation and killing of such animals as are, in the opinion of the inspector, infected with tuberculosis.

**§50-208. Breeding stock brought into state—Sequestration—Inspection—Destruction—Violations—Penalty.** All dairy cattle and all grades of hogs and cattle classified and known as breeding stock, exclusive of range cattle, transported into the state shall be kept by the owner thereof, or the person having the control and charge thereof, sequestered and separated from other cattle and live stock for a period of sixty (60) days from the date of their arrival in the state. At the expiration of sixty (60) days said stock shall be inspected by direction of the state veterinarian and the tuberculin test applied, and if any of said stock are determined to be afflicted with tuberculosis, they shall be disposed of in all respects as prescribed in this article; except that no compensation shall be paid by the state for the condemnation, killing or disposition of any such animal. Any person having control or charge of such stock who shall refuse or neglect to keep same sequestered, as provided herein, shall be guilty of a misdemeanor.

#### HOUSE BILL NO. 5

#### AN ACT

**RELATING TO LIVESTOCK, PROVIDING FOR THE ERADICATION OF DOURINE, MAKING AN APPROPRIATION THEREFOR AND DECLARING AN EMERGENCY.**

**Be it Enacted by the Legislature of the State of Arizona:**

**Section 1. Definitions.** In this act, unless the context otherwise requires:

“board” means livestock sanitary board;

“bureau” means bureau of animal industry of the United States department of agriculture;

“inspector” includes state veterinarian, any authorized representative of the state veterinarian, and any authorized inspector of the board or bureau;

“equine” means horse, mule, ass, or other equine animal;

“reactor” means an equine afflicted with dourine, as determined by a test approved by the bureau.

**Section 2. Cooperation with bureau.** The livestock sanitary board shall have power to cooperate with and to accept for the state agreements promulgated by the bureau of animal industry of the United States department of agriculture, for the purpose of eradicating the disease of dourine.

**Section 3. Testing equines.** The state veterinarian, his authorized representative, or any authorized in-

spector of the board or the bureau shall have power to enter any premises outside an Indian reservation, where an equine may be, for the purpose of testing such equine for dourine.

**Section 4. Destruction of reactors.** In the event an equine is determined to be a reactor to dourine, as the result of a test approved by the bureau, the state veterinarian shall order such reactor destroyed and the remains disposed of in a manner prescribed by him. Written notice shall be given the owner or custodian, and such reactor shall be destroyed not later than fifteen days after the date thereof. In the event the reactor is not destroyed as ordered, an inspector shall forthwith seize and destroy such reactor.

**Section 5. Determination of value.** When a reactor is destroyed or ordered to be destroyed, the reactor shall be appraised at its actual value by the state veterinarian or his assistant and an inspector or representative of the bureau, and a record of their action shall be filed in the office of the board.

**Section 6. Repayment.** (a) The state shall pay the owner one-half the value of any reactor destroyed pursuant to this act, determined as provided in section 5, but the state's share shall not exceed one hundred dollars for any one reactor.

(b) Any person claiming payment for the destruction of a reactor shall file a written claim therefor with the board. The claim shall contain proof of actual destruction, a statement of the value of the reactor as agreed upon or appraised, an agreement to accept such amount in no event in excess of one hundred dollars, as provided in clause (a) of this section, as compensation in full for the discharge of all claims against the state for the destruction of the reactor, and an affidavit of ownership. If the claim be valid, the board shall certify one-half of the amount thereof to the state auditor, who shall draw his warrant therefor payable to the claimant.

**Section 7. Disputed ownership.** For the purpose of this act, the person in whose possession or under whose control an equine may be shall be deemed the owner. In the event conflicting claims for repayment for a destroyed reactor are filed, payment shall be withheld until ownership is determined by agreement of the parties or by a competent court. However, in the event such agreement is not reached and no court action is filed within thirty days after the conflicting claim is filed, the board shall forthwith determine the ownership and certify the proper claim. Neither the state nor any state official or employee shall be liable in damages for any action taken in conformity with this act.

**Section 8. Quarantine.** The board, upon the recommendation of the state veterinarian, shall have power to quarantine any premises within which equines afflicted with or exposed to dourine shall be isolated. It shall take such measures as may be necessary to enforce the quarantine and prevent the spread of the disease, and shall not release the quarantine until the danger is past. Reasonable notice of the establishment of a quarantine shall be given all persons affected. Any person willfully permitting, procuring, or aiding the escape or removal of any equine from a quarantined area shall be guilty of a violation of this act.

**Section 9. Employees.** The board may employ and fix the compensation of such assistants as may be necessary to carry out the provisions of this act.

**Section 10. Duties of board.** The board shall: 1. purchase such equipment and supplies as may be necessary to carry out the provisions of this act; 2. make a quarterly report to the governor of its activities pursuant to this act, including a detailed financial report, on the tenth days of January, April, July, and October of each year; and, 3. promulgate and enforce such reasonable rules and regulations as may be necessary to eradicate dourine.

**Section 11. Duties of officers.** The state veterinarian, his assistants, and all sheriffs and deputies sheriff, shall upon demand, assist the board or any inspector in enforcing the provisions of this act.

**Section 12. Penalty.** Any person interfering in any way with any inspector acting under the authority of this act, or otherwise violating any provision of this act, shall be guilty of a misdemeanor, and upon conviction punished by a fine of not more than three hundred nor less than fifty dollars, imprisonment in the county jail not more than six months nor less than thirty days, or both.

**Section 13. Appropriation.** The sum of five thousand dollars is appropriated to the livestock sanitary board for the purpose of carrying out the provisions of this act.

**Section 14. Emergency.** To preserve the public peace, health, and safety it is necessary that this act shall become immediately operative. It is therefore declared to be an emergency measure, and shall take effect upon its passage in the manner provided by law.

### ARTICLE III.

#### INSPECTION AND BRANDING

**Section.**

50-301. Live Stock inspectors.

50-302. Powers and duties of inspectors.

- 50-303. Duties with respect to unbranded live stock.
- 50-304. Manner of inspecting live stock—Record of inspections.
- 50-305. Inspections of live stock—How made.
- 50-306. Inspection must be made immediately—Fee—Certificate.
- 50-307. Unlawful to receive live stock for transportation without inspection.
- 50-308. Range stock to be branded—Seizure.
- 50-309. Terms defined.
- 50-310. Inspector to report seizure—Sale of seized cattle—Costs.
- 50-311. Proceedings before justice—Citation to appear.
- 50-312. Service of citation on brand and mark owners—Default.
- 50-313. Trial and judgment—Form of judgment.
- 50-314. Sale of stock, bill of sale—Disposal of proceeds.
- 50-315. Brands and earmarks—Transfers.
- 50-316. Recording and re-recording of brands—Fees.
- 50-317. Certificate of brand as evidence.
- 50-318. Bill of sale necessary—Lack of in trial for theft.
- 50-319. Owner of brand must give written authority to any other person using same.
- 50-320. Using unlawful or unrecorded brand—Penalty.
- 50-321. Taking animal without consent of owner—Violations in general.

**§50-301. Live stock inspectors.** The board may appoint live stock inspectors, and upon petition of not less than five (5) cattlemen, each of whom shall be the owner of not less than fifty (50) head of live stock in the state, shall appoint an inspector at any point where there is no regularly appointed and acting inspector. Each inspector so appointed shall take the oath of office and give bond to the state for the faithful performance of his duties in the sum of five hundred dollars (\$500). Such inspector may appoint deputies to enforce the live stock laws.

**§50-302. Powers and duties of inspectors.** Inspectors shall have authority to authenticate bills of sale of live stock, brands and marks, give certificates of acknowledgment of the same under his hand and seal, and take acknowledgments to applications for brands and marks, and shall have the powers of peace officers. No inspector shall receive a fee of more than twenty-five (25c) for taking an acknowledgment. An inspector shall arrest any person who violates the live stock laws, and shall, upon reliable information that any person has violated any such law, make the necessary affidavits for the arrest and examination of such person, and shall, upon warrants issued therefor, immediately arrest such person, make due return of the warrant, and notify the live stock sanitary board.

**§50-303. Duties with respect to unbranded live stock.** No inspector shall grant any certificate of inspection of any unbranded hides or live stock, or

of any hides or live stock upon which the marks and brands can not be ascertained, or which shows the ownership to be in some person other than the one seeking the certificate of inspection, and he shall prevent the hides of live stock being shipped or transported, and any live stock from being shipped, driven or transported unless they are identified by proof or by bill of sale signed by the owner of such hides or live stock.

**§50-304. Manner of inspecting live stock—Record of inspections.** The inspectors shall inspect for health and for marks and brands, at the railway loading station, at the place of exit from the state, and at all places where live stock are gathered to be sold, transported or driven off their range for any purpose whatsoever. Inspectors shall make inspections by daylight and shall require from the owner or person in charge a list of the brands and marks and determine by inspection of such live stock that the person in charge is the owner thereof or is authorized in writing by the owner to handle such stock. The inspector shall make a permanent record of such inspection, showing the place and date of making the same, the name of the seller, the shipper, the kind and description of such live stock, together with the number of head in every brand and mark, and any other necessary information. If, upon such inspection, live stock be found not belonging to the shipper, or which the driver is not authorized in writing to sell, ship or drive, it shall be taken by the inspector and dealt with in accordance with the rules of and the instructions of the board. The inspector shall make a record of all inspections in triplicate, the original of which shall be sent to the board, a duplicate furnished the person having such inspection made and retain a duplicate for his own use.

**§50-305. Inspections of live stock—How made.** Inspections of live stock shall be made in such manner as to enable the inspector to personally see and inspect each and every mark and brand, and record same.

**§50-306. Inspection must be made immediately—Fee—Certificate.** (a) Before any neat animals, horses, mules or asses are slaughtered, sold or driven or conveyed from their accustomed range, or driven or conveyed out of this state, or driven or conveyed from a pasture or other place where they have been kept, such animals must be inspected for health, brands and marks immediately before such drive or conveyance.

(b) Except as otherwise provided for in this act, it shall be unlawful to slaughter, sell, drive or convey any of the aforesaid animals without such in-

spection. Upon being advised that any of the aforesaid animals are subject to inspection, the inspector shall proceed at once to inspect said animals, and the owner or person in charge shall pay said inspector ten cents (10c) per head for such inspection. Upon the completion of said inspection, the inspector shall deliver to the person in charge of said animals a certificate on a form provided by the Livestock Sanitary Board, showing the date of inspection, the purpose for which inspected, the number, sex and kind of animals inspected, with the brands thereon, and the fee collected therefor, if any, which fee shall thereupon be paid to said inspector by the person in charge of said animals. Provided, that when, prior to inspection, application is made to the board in writing for a waiver of inspection fee, and it appears to the satisfaction of the board that animals are to be moved from pasture or other feeding ground for any purpose, other than slaughter, sale, change of ownership, or removal from the state, the board may waive the inspection fee; but it is unlawful for any person to sell, transfer ownership in, or move any of the aforesaid animals from this state until said animals have been inspected and the inspection fee paid thereon.

Any person who shall sell or otherwise cause the ownership to be changed of any neat animals, horses, mules or asses or who shall cause any such animal to be slaughtered or driven or removed from the state, from the accustomed range or from a pasture or other place where they have been kept before they have been inspected as provided in subsections (a) and (b) hereof, and any person who, for the purpose of procuring any waiver of an inspection fee as provided in subsection (b), shall falsely represent to the board that any animals are being removed from one feeding ground to another for a purpose other than change of ownership, slaughter or removal from the state, shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty (\$50.00) nor more than three hundred dollars (\$300), or imprisoned in the county jail not less than thirty (30) nor more than one hundred and eighty (180) days, or both.

**§50-307. Unlawful to receive live stock for transportation without inspection.** It shall be unlawful for any railroad to receive any neat animals, horses, mules or asses for transportation unless furnished with a certificate by an inspector showing that such stock has been inspected for brands and health. A violation of this section shall constitute a misdemeanor punishable by a fine of not less than twenty (\$20.00) nor more than one hundred dollars (\$100) for each and every such animal so transported without inspection. It shall be unlawful for any person, firm or corporation to transport or convey, by any

conveyance other than by railroad, any neat animals, horses, mules or asses, without first having such live stock inspected, and having a duplicate certificate of inspection showing the number, kind and sex of such animals, with their brands and other description necessary to the identification of the same. Any inspector may stop any person who is in possession of and is transporting any such animals and demand the duplicate certificate of inspection. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty (\$20.00) nor more than three hundred dollars (\$300), or by confinement in the county jail not exceeding ninety (90) days, or by both such fine and imprisonment.

### NOTES TO DECISIONS

#### Certificates of Inspection Forged.

Carrier was not liable for losses incurred by owners of stock which had been accepted and transported by carrier in good faith, without knowledge that it had been stolen and the certificates of inspection forged. *Colglazier v. Southern Pac. Co.*, 35 Fed. (2d) 582.

**§50-308. Range stock to be branded—Seizure.** It shall be unlawful for any owner of range live stock to permit such stock, excepting unweaned animals running with their mothers, to roam and feed upon the ranges in this state unless branded and marked as prescribed by law. Every inspector shall seize any live stock, except unweaned animals running with their mothers, wherever found, not branded according to law, or the ownership of which such inspector or other person questions, and any live stock having brands so mutilated, indistinct, burnt or otherwise disfigured as to be difficult of ascertainment, or upon which there is a brand which is not recorded as required by law, or which is freshly branded and not found with its mother, or which has a brand or mark not the recorded brand or mark of the owner, and any animals which are known as "leppys," "orejanas," "sleepers," "dogies," or "mavericks."

### NOTES TO DECISIONS

#### Analysis

Applies to range stock only.  
 Claim of ownership to justify seizure.  
 Construction.  
 Legislative purpose.  
 Re-seizing.  
 Theft of unbranded cattle.  
 Venting or barring brand.

#### Applies to Range Stock Only.

This section applies only to range stock, which by reason of physical appearance in relation to their brands, or lack of brands, raises a doubt as to their ownership and not to ordinary domestic cattle kept in enclosures. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

#### Claim of Ownership to Justify Seizure.

Under Laws 1903, Act No. 26, Section 5 authorizing the seizure

of live stock "the ownership of which is questioned," a seizure of animals in the actual possession of another was not warranted unless some claim of ownership was made, or the officer himself was able to question the ownership because of facts brought to his knowledge from which it might be inferred that the possessor was not the lawful owner. *Lacey v. Parks*, 9 Ariz. 241, 80 Pac. 367.

#### Construction.

The statute is to be liberally construed to effect its object, but being a special proceeding, no cattle may be seized and disposed of hereunder, unless they come strictly within its provisions, but if they are within its application, only a material departure from its procedure will render subsequent proceedings void. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

#### Legislative Purpose.

One of the fundamental principles of the law of 1931 is that the prima facie ownership of range cattle is to be determined by branding and earmarking. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

That the matter is simply a controversy between private individuals as to the ownership of property, does not render the seizure improper, for it was the purpose of the law to provide a summary method of trial when certain circumstances in regard to the brands of cattle raised a doubt as to their true ownership. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

#### Re-seizing.

A cattle inspector may seize the cattle a second time, if he brings himself within the statute, where the first seizure was not heard on its merits. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

#### Theft of Unbranded Cattle.

It is unlawful to allow animals to feed on ranges in this state unless branded, but this statute does not permit thefts of cattle that were not branded by the rightful owner. *Heckethorn v. State*, 48 Ariz. 151, 59 Pac. (2d) 331.

#### Venting or Barring Brand.

Venting or barring a brand and rebranding with a new one, in accordance with range custom, to indicate a purchase from the original owner, can not be used in place of the bill of sale required by Section 2116 (section 50-318), nor to prevent seizure for having a brand or mark not the recorded brand or mark of the owner. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

**§50-309. Terms defined.** "Range live stock," when used in this chapter (article), is defined to be live stock customarily permitted to roam upon the ranges of this state, whether public domain or in private control, and not in the immediate actual possession or control of the owner though occasionally placed in enclosures for temporary purposes; "live stock" is defined to be neat animals, horses, mules and asses; "range" is defined as the lands outside of cities and towns, enclosed and unenclosed, of every character, upon which by custom, license, permit or otherwise live stock is permitted to roam and feed.

## NOTES TO DECISIONS

#### Range Cattle.

The word "range" when used in connection with live stock, means cattle that roam and feed on open and unenclosed tracts of land, and not in the actual possession of the owner. *Wightman v. King*, 31 Ariz. 89, 250 Pac. 772.

It is obvious that the purpose of the legislature was to require one who buys range cattle to segregate his purchase

from the herd of the seller and distinguish them from other cattle. *Wightman v. King*, 31 Ariz. 89, 250 Pac. 772.

**§50-310. Inspector to report seizure—Sale of seized cattle—Costs.** When an inspector has seized live stock, as herein provided, he shall safely keep and care for the same for a period of twenty-five (25) days during which time any person shall have a right to inspect the cattle seized, and at any time prior to the expiration of twenty (20) days after said seizure, the county attorney of the county in which the cattle are seized may take charge of the live stock so seized and keep said live stock at the expense of the state of Arizona when he deems said live stock of evidentiary value in any criminal prosecution arising from said seizure; but if said county attorney does not so take said live stock upon the expiration of the aforesaid twenty (20) days the live stock shall be sold by the inspector at public auction to the highest bidder for cash after five (5) days notice to be given by a written notice posted in three (3) public places in the precinct where the live stock is held. The proceeds from the sale of said live stock shall be delivered to the live stock sanitary board and be by it deposited in the "seizure fund" and upon final determination of all actions arising from said seizure said live stock sanitary board shall pay said proceeds to those entitled thereto under the judgment of the court.

The expense of seizure, feeding and caring for said live stock for the aforesaid twenty-five (25) day period shall be a charge against said live stock sanitary board and be paid out of any fund available for that purpose. The inspector shall forthwith report such seizure to the county attorney and to the clerk of the superior court of the county where the stock has been seized or to an available justice of the peace of such county having his office nearest the place of seizure, and such clerk or justice of the peace shall file such report and docket the same as an action by the state in its name and against the reputed owners of the live stock if any are known and if not known, against the unknown owners and such clerk or justice of the peace shall issue a citation against the reputed owners and any person claiming said live stock requiring said reputed owners and claimants to appear and furnish testimony of his claim to said live stock which said citation shall be returnable as in a civil action and heard as such. The report of the inspector herein provided for shall give a general description of the live stock seized and the brands if any, together with the place of and the reason for the seizure and the probable value of such live stock and ask that the owner and claimant be cited to appear and prove ownership. In all such cases it shall be the duty of the

county attorney of the county wherein the live stock is seized to represent the inspector and the interest of the state.

### NOTES TO DECISIONS

#### Costs and Expenses of Seizure.

While individuals may litigate their rights to cattle seized in these proceedings, the primary purpose was to enforce the law in regard to brands and earmarks and all costs and expenses of the seizure are to be paid by the state. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

#### Forthwith Meaning and Effect.

Forthwith does not mean within any particular time, but as speedily as reasonably possible under the circumstances, and a report made several months afterwards was not made forthwith, but such failure does not prevent another seizure. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

#### Statute Must be Followed.

The statute must be strictly followed, and a material departure from the procedure authorized will render the subsequent proceedings void. *Lacey v. Parks*, 9 Ariz. 241, 80 Pac. 367.

#### Sufficiency of Report.

A report, which shows that cattle bore brands other than the recorded brand or mark of the reputed owner who claimed the cattle, sufficiently alleges a cause for seizure. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

The report takes the place of a complaint in an ordinary action, but it is not to be tested by technical rules of pleading, and is sufficient if it shows the facts necessary to give the court jurisdiction. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

**§50-311. Proceedings before justice—Citation to appear.** The clerk of the court (or) of the justice of the peace shall file the report and enter a brief statement of the report on his docket and fix a time for the hearing of evidence of the ownership of the live stock, which time shall not be less than ten (10) and not more than twenty (20) days after the date of the filing of the report. He shall thereupon issue a citation directing all persons claiming said live stock, or any of them, to appear at the time fixed therefor and offer proof of ownership. Said citation shall be addressed to whom it may concern and set up the facts in the report and be delivered to and served by the inspector who made the seizure or by any constable or the sheriff of the county.

### NOTES TO DECISIONS

#### Notice Must be Given in Time.

The failure to give notice for the length of time prescribed by this section is a material departure rendering void a subsequent sale of the animals. *Lacey v. Parks*, 9 Ariz. 241, 80 Pac. 367.

**§50-312. Service of citation on brand and mark owners—Default.** If the live stock be branded and marked with the recorded brands or marks of any person, said citation shall be served upon the person owning the brand and mark as shown by the record, if he can be found in the county, at least one (1) day before the day fixed for the hearing, and a copy of said citation shall be posted in at least

three (3) public and conspicuous places in said county at least eight (8) days before the day fixed for said hearing. At the time fixed for hearing, an inspector, or other officer, shall make return of the citation to said court. If it appears that due service of said citation has been made, as required herein, and no one appears to claim said live stock so seized, or any thereof, the court shall thereupon adjudge the same forfeited to the state and shall order the same to be sold as hereinafter prescribed.

### NOTES TO DECISIONS

#### Posting Copies of Citation.

The failure to post copies of the citation as required by this section is a fatal defect, invalidating a subsequent sale of the animal seized. *Lacey v. Parks*, 9 Ariz. 241, 80 Pac. 367.

**§50-313. Trial and judgment—Form of judgment.** If any person appear at the time fixed for the hearing and claim said live stock, or any thereof, his claim shall be stated and the judge of the court shall enter upon the court minutes the fact that such claim was made and the hearing shall proceed as in trials of civil actions. Stock adjudged to any person shall be released from seizure and stock not adjudged to any person, or the ownership of which is doubtful, shall be forfeited to the state, and ordered sold by the inspector at public auction at a convenient public place in the county where seized, upon a fixed date after notice, as in sales of personal property under execution. An appeal may be taken in the same manner as in civil cases and be regulated by the same rules that apply to appeals from the justice of the peace when the citation is heard therein, and from a judgment of the superior court when heard therein, by the laws controlling appeals therefrom.

### NOTES TO DECISIONS

#### Pleadings and Issues.

The proceedings are the same as after answer filed in the ordinary action and the parties may file demurrers or dilatory pleas. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

#### Trial by Jury.

This is a special action in the nature of replevin and it is an action at law rather than an interpleader in equity, thus the jury's verdict is binding on the court. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

The return day of the citation is similar to a summons to answer a complaint, and the case is to be set for trial, after the issues are made up, as an ordinary civil action, and a demand for a jury trial on the day the case is set for trial was timely and a jury was not waived. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

**§50-314. Sale of stock, bill of sale—Disposal of proceeds.** The officer shall execute the order of sale and deliver a bill of sale to the purchaser, describing therein the live stock sold and the amount for which sold, and forward to the board a duplicate of such bill of sale. Upon the delivery of the bill of

sale, title to the live stock shall rest in the purchaser. The inspector shall immediately after the sale is made remit the entire proceeds of the sale to the board, together with an itemized statement of the expense of such seizure and sale, to be by it paid as other claims are paid. The amount so received by the board shall be remitted to the state treasurer, to be deposited in a special fund designated as the "seizure fund," which said fund may be used by the board for the enforcement of and compliance with the provisions of this chapter.

**§50-315. Brands and earmarks—Transfers.** Every person owning range live stock in this state shall adopt and record a brand and earmark with which to brand and mark neat animals, and brand horses, mules and asses, and every owner of other animals may adopt a brand or mark with which to brand or mark such animals. No two brands of the same design or figure shall be adopted or recorded, provided that the board, may, in its discretion, reject and refuse to record a brand or mark similar or conflicting to a previously adopted and recorded brand or mark. Before any new brand shall be recorded in the brand book, it shall be advertised in some newspaper, journal or bulletin, published in the state, at least once; if no objection to such brand is filed, it shall be recorded as hereinafter provided. The brand adopted and recorded shall be the property of the person so adopting and recording the same, and the right to its use may be sold and transferred. No sale or transfer thereof shall be valid, except by bill of sale duly signed and acknowledged as deeds for the conveyance of real estate are acknowledged, and recorded in the office of the live stock sanitary board.

## NOTES TO DECISIONS

### In General.

Rules that govern sale of personal property generally do not apply to sales of range stock on the open range. *Wightman v. King*, 31 Ariz. 89, 250 Pac. 772.

### Transfer of Brand.

This section relates to the sale, transfer or encumbrance "of the right to use" a brand or mark, and has no direct application to a sale of the animals; and upon a prosecution for larceny of an animal a bill of sale thereof to the person alleged in the indictment to be the owner may be admitted in evidence, although it was recorded after the date of the alleged commission of the offense. *Webb v. State*, 14 Ariz. 506, 131 Pac. 970.

Statute does not require the use of brand by owner of range cattle, nevertheless the right to use same is made a property right that may be sold and transferred. *Wightman v. King*, 31 Ariz. 89, 250 Pac. 772.

Whether it is the brand, or individual animals of such brand, or right to use such brand, the sale must be by written bill of sale properly acknowledged. *Wightman v. King*, 31 Ariz. 89, 250 Pac. 772.

**§50-316. Recording and re-recording of brands—Fees.** The board shall record in a brand book all

brands and earmarks adopted as herein provided. Such recording shall consist in depicting in the brand book a facsimile of the brand adopted, and a diagram of the earmarks, together with an entry in said book of the name, residence, and post office address of the person adopting the same, the date when presented for record, the place upon the live stock or other animals where the brand is proposed to be used, the kind of animals upon which it is proposed to be used, and a general designation and statement of the location of the range whereon such animals are permitted to range. Before such record is made, proof shall be submitted to the board that the applicant is entitled to use the same. The applicant shall also make an affidavit that he does not know, and is in no way interested in, any similar brand or earmark that is being run or used by another in adjoining states or the Republic of Mexico. The fee for recording a brand or earmark shall be five dollars (\$5.00), and shall entitle the owner to a certified copy of the record. For recording a bill of sale or other instrument of conveyance of a brand or mark, or for the issuance of an additional certified copy of a brand or bill of sale of a brand, the fee shall be one dollar (\$1.00). Every owner of a brand or earmark of record as provided in this chapter (article) who desires to continue the use of the same, shall, on or before the thirty-first day of December, 1931, and every ten (10) years thereafter, make application to the board for the re-recording of such brand or earmark. It shall be the duty of the board, at least sixty (60) days prior to January 1, 1932, to notify in writing every owner of a brand or earmark of legal record in its office, of the right to re-record the same as provided herein. The said notice shall be sent by mail to such owner at the last address of record in the office of the board. The board may also advertise the approach of the re-recording period in such manner and at such time as it may deem advisable. All recorded brands or earmarks for which no application to re-record has been made by December 31, 1931, and by December thirty-first of each re-recording year, shall be deemed abandoned and no longer of legal record. Brands or earmarks thus deemed abandoned shall not be awarded or re-recorded by the board to other persons than those abandoning the same until one (1) year shall have elapsed from the date of such abandonment. The fee for re-recording a brand or earmark shall be two dollars (\$2.00). Otherwise the re-recording shall proceed in the same manner as provided for original recording, including the furnishing of one (1) certified copy of the record to owners of such brand or earmark. It shall not be necessary to advertise brands offered for re-recording. The board is authorized and empowered to issue as it may deem advisable books and supplements thereto

containing transcripts or part or all of its records of brands and earmarks, so arranged and indexed as to be suitable for use in identifying any brand or earmark which may be found on any neat animals, horses, mules, asses, sheep, goats, or the hides thereof, and used in compliance with the terms of this chapter (article); copies of such books shall be available to anyone desiring them at a charge, to be fixed by the board, commensurate with the cost of compilation, publication and issuance, provided, that copies of such brand books or supplements thereto may be furnished by the board, without charge, to any public official or other person whose possession of the same will, in the opinion of the board, serve to promote the general welfare. Expenses in connection with the provisions of this section shall be met from any operation fund of the board, and any moneys derived from the sale of such books or supplements shall be remitted to the state treasurer to be credited to the general fund.

#### CHAPTER 115

#### HOUSE BILL NO. 203

#### AN ACT

**RELATING TO LIVESTOCK; PRESCRIBING THE METHOD OF RECORDING AND RE-RECORDING BRANDS, AND AMENDING ARTICLE 3, CHAPTER 50, ARIZONA CODE OF 1939, BY ADDING SECTION 50-316A.**

**Be it enacted by the Legislature of the State of Arizona:**

Section 1. Article 3, chapter 50, Arizona Code of 1939 (article 4, chapter 48, Revised Code of 1928), is amended by adding section 50-316a:

**50-316a. Method of recording or re-recording.** The board may record and re-record brands and earmarks in a brand book or a filing system. Recording or re-recording by either method shall be deemed compliance with the requirements of this article.

**APPROVED: March 26, 1941.**

**§50-317. Certificate of brand as evidence.** A certified copy of any entry made in the brand book relating to a brand or mark shall be taken in all the courts of this state as prima facie evidence of all the facts required to be entered in said book and of the right of the person therein named to use such brand and mark for branding or marking his animals. The appearance upon an animal of the recorded brand of the owner as shown by the said record shall be taken in court as prima facie evidence that the animal bearing such brand is the

property of the owner of the recorded brand, except when such brand is borne by an animal seized under the provisions of this chapter (article).

### NOTES TO DECISIONS

#### Authentication.

In prosecution for grand larceny a certificate of cattle-brand issued by live stock sanitary board which substantially complied with statutory requirements, though somewhat faulty in construction, was a valid authentication of date of recording brand, and was properly admitted in evidence. *Dickson v. Territory*, 6 Ariz. 199, 56 Pac. 971.

#### Brand or Evidence.

The evidentiary value of properly recorded brand section was not destroyed by LAWS 1919, chapter 16. *Douglas v. State*, 26 Ariz. 327, 225 Pac. 335.

It is prima facie evidence that range animal bearing certain brand belongs to the owner of the brand. *Mounce v. Wightman*, 30 Ariz. 45, 243 Pac. 916; *Wightman v. King* 31 Ariz. 89, 250 Pac. 772; *Heckethorn v. State*, 48 Ariz. 151, 59 Pac. (2d) 331.

Under this section, the ownership of animals might be established independently of a brand. *Heckethorn v. State*, 48 Ariz. 151, 59 Pac. (2d) 331.

#### Certificate Not Evidence of Title of Animals.

While this section constitutes the certificate of the registration of a brand competent evidence of such registration and prima facie evidence of the ownership of such brand, it does not make such certificate either competent or prima facie evidence for the purpose of showing title to the cattle, where the ownership of the brand or the fact of its registration was not in controversy. *Brill v. Christy*, 7 Ariz. 217, 63 Pac. 757.

#### Ownership of Range Stock.

Party claiming ownership of range animal may make out prima facie title by procuring the certified copy made by the secretary of the live stock sanitary board of the entry of the record of the brand made in the brand book relating to the brand borne by the animal. *Marley v. State*, 15 Ariz. 495, 140 Pac. 215.

#### Use of Unrecorded Brands Abolished.

This and subsequent sections evince an intention by the legislature so far as possible to abolish the use of unrecorded marks or brands in Arizona. *Mounce v. Wightman*, 30 Ariz. 45, 243 Pac. 916.

**§50-318. Bill of sale necessary—Lack of in trial for theft.** Upon the sale or transfer of any neat animals, horses, mules, or asses, the delivery of such animals shall be accompanied by written and acknowledged bill of sale from the vendor to the party purchasing. Upon the trial of any person charged with the theft, unlawful possession, handling, driving or killing of any such animal, the possession under claim of ownership without such bill of sale shall be prima facie evidence against the accused, that such possession was illegal.

### NOTES TO DECISIONS

#### Analysis

Bill of sale—Necessity—Sufficiency.

Construction of statute.

Delivery.

Evidence.

Larceny.

Venting or barring brands.

Bill of Sale—Necessity—Sufficiency.

This act does not prohibit the sale or transfer of cattle on the range by bill of sale without actual delivery. *Brill v. Christy*, 7 Ariz. 217, 63 Pac. 757.

A bill of sale is admissible in evidence although it has not been acknowledged as prescribed by statute. Such evidence is admissible to rebut a prima facie case. *Epperson v. Crozier*, 10 Ariz. 30, 85 Pac. 482.

This section does not apply in the case of an action by a seller against a buyer for breach of contract to take and pay for certain cattle, since the buyer's failure to obtain a bill of sale does not affect the buyer's absolute title to the cattle as against the claim of the seller. *Platt v. Union Packing Co.* 32 Cal. App. (2d series) 329, 89 Pac. (2d) 662.

#### Construction of Statute.

This statute, similar to the statute of frauds, must be strictly construed. *Epperson v. Crozier*, 10 Ariz. 30, 85 Pac. 482.

Actual delivery must be made at time of sale together with bill of sale, giving number, kinds, marks and brands of each animal sold and delivered. *Wightman v. King*, 31 Ariz. 89, 250 Pac. 772.

#### Evidence.

Where indictment charges that persons who are not butchers killed and sold cattle, and failed to retain hides of same for the statutory period of time, the question of whether the defendants were butchers is material and would have to be proved. The overt act charged is a statutory misdemeanor and subject to strict construction. *Territory v. Turner*, 4 Ariz. 290, 37 Pac. 368.

#### Larceny.

Where indictment charges the larceny of a steer, such allegation must be proved and proof of the larceny of a cow is a fatal variance. *Martinez v. Territory*, 5 Ariz. 55, 44 Pac. 1089.

Although there is a dispute between two persons as to the ownership of certain cattle, the possession of one of them is enough to make the cattle the subject of larceny. *Maxwell v. Territory*, 10 Ariz. 1, 85 Pac. 116.

In prosecution for cattle stealing, instruction by court, that if evidence showed that one defendant did not aid other defendant in commission of crime charged he should be found not guilty, did not indicate that court believed other defendant guilty and was not a comment on the evidence as prohibited by constitution and statutes, and defendant may not take isolated phrases from instructions and predicate error on them, where instructions, construed as a whole, correctly state the law. *Vigil v. State*, 33 Ariz. 51, 262 Pac. 14.

#### Venting or Barring Brands.

Venting or barring a brand in accordance with range custom can not be used in place of a bill of sale. *State v. McEuen*, 42 Ariz. 385, 26 Pac. (2d) 1005.

**§50-319. Owner of brand must give written authority to any other person using same.** Any person owning a recorded mark or brand and being the owner of animals of the horse, mule, ass or neat cattle kind, branded with such brand, or who is the lawful owner of such animals having other brands, who may wish to authorize any other person to gather, drive or otherwise handle any of said animals by their mark and brand, shall furnish to such person an authority in writing containing a list of the marks and brands authorized to be handled and authorizing him to gather, drive or otherwise handle the stock therein described. If any person in giving any such written authority shall insert therein any mark or brand of which said person is not the lawful owner, and any animal having any such brand or

mark shall be unlawfully taken, gathered, driven or otherwise handled by the person having such written authority and by virtue thereof, then the person giving such written authority shall be deemed a principal to the unlawful taking, gathering, driving or handling of such animal.

**§50-320. Using unlawful or unrecorded brand—Penalty.** Every person who shall brand any range live stock with a brand that has not been recorded under the provisions of this chapter (article) shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine for each offense of not less than ten (\$10.00) nor more than one hundred dollars (\$100), or by imprisonment not less than ten (10) nor more than thirty (30) days, or by both such fine and imprisonment. Any person who obliterates, disfigures, extends or changes a recorded brand, or by other and additional marks, figures or characters converts a recorded brand into some other brand, shall be guilty of a felony and be punished by imprisonment not less than one (1) nor more than ten (10) years; provided, that when it has been shown that a recorded brand has been converted or changed into another brand claimed or owned by any person, it shall be prima facie evidence in all the courts, boards or commissions of this state that the claimant or owner of the latter brand obliterated, disfigured, and changed the prior recorded brand.

## NOTES TO DECISIONS

### In General.

A brand is a means of identification, not a title, and title is not shown by an unrecorded brand. *Mounce v. Wightman*, 30 Ariz. 45, 243 Pac. 916.

**§50-321. Taking animal without consent of owner—Violations in general.** It shall be unlawful for any person to take up from a range, ranch, farm, corral, yard or stable any neat animal, horse, mule or ass and use the same without the consent of the owner of such animal, or of the person having the same lawfully in charge, and such person shall be guilty of a misdemeanor.

## ARTICLE V.

### ESTRAYS AND MIGRATORY LIVE STOCK

#### Section.

50-501. Estrays—When may be taken up—Notice.

50-502. Sale of stray animals.

50-503. Fees of officers—Bill of sale—Disposal of proceeds.

50-504. Destruction of predatory animals.

**§50-501. Estrays—When may be taken up—Notice.** No one shall take up any horse, mule, neat animal, sheep or swine, unless found within an enclosure

possessed by him. Anyone taking up an estray shall immediately forward to the nearest justice of the peace and to the nearest inspector a description of each animal taken, giving its kind, age, sex, color, all marks and brands, when, where and by whom it was taken up and where it can be seen, and shall not, during the time it is in his possession as an estray, use the same. On receipt of such description by said officers, each shall post the same, or a copy thereof, in a conspicuous place in their offices and keep the same posted for at least thirty (30) days. The inspector shall enter in a book the information contained in the description so received by him and shall undertake to find the owner and advise him where his animal can be found. The one taking up the animal shall, at any time before its sale, deliver the same to its owner on demand and payment to him of any costs incurred in advertising the same for sale.

**§50-502. Sale of estray animals.** At the expiration of twenty (20) days after the taking up of an estray, if the owner thereof has not been found, or has not paid, or tendered, the amount due thereon and demanded its return, the taker-up shall file with the justice of the peace nearest to the place where the animal was taken up an affidavit showing his right to take up the animal, its description and a compliance with the preceding section, whereupon the justice of the peace shall appoint three (3) competent and disinterested persons to appraise the value of the estray and return their appraisement to said justice, who shall enter in his docket a minute of the filing of the affidavit, the appointment of the appraisers, their names and their returns, designate a time and place where said estray shall be sold at public sale, the constable or sheriff of the county who shall conduct the sale, issue an order to the officer named to advertise the animal and sell it, and designate a newspaper in which said sale shall be advertised. Said sale shall be advertised by the officer in the newspaper designated, for a period of not less than ten (10) days, and shall take place not less than two (2) nor more than five (5) days after the expiration of such advertisement. The sale shall be for cash and for a sum not less than seventy-five (75) per cent of the appraised value; provided, that any time within one (1) year after such animal has been sold as hereinbefore provided, the owner thereof may re-take said animal upon the payment to the purchaser at the sale, or his successor in interest, the costs incidental to the advertisement and sale and the amount paid for the animal.

**§50-503. Fees of officers—Bill of sale—Disposal of proceeds.** The justice shall receive a fee of two dollars (\$2.00), the appraisers each one dollar (\$1.00), and the officer ten (10) per cent on the amount of

the purchase price of the animal, to be advanced by the taker-up. The officer shall, on receipt of the purchase price, execute to the purchaser a bill of sale of the animal, vesting in him the title thereto, deliver the animal to the purchaser, pay to the taker-up the fees advanced by him, deduct his commission, deposit the remainder with the county treasurer to the credit of the school fund of the county and make return of his acts, together with his vouchers, to the justice.

**§50-504. Destruction of predatory animals.** Sufficient money for the purpose of cooperating with the United States government in the destruction of predatory animals and rodents destructive to live stock and detrimental to crops, equaling the federal appropriation and expenditure for those purposes within the state, to be expended under the supervision and direction of the bureau of biological survey of the United States, pursuant to any cooperative agreement between the state live stock sanitary board, the extension service, University of Arizona, and the said bureau, shall be paid when approved by the biological assistant, or the predatory animal inspector in charge, out of any appropriation therefor as other claims are paid.

## ARTICLE VI.

### FENCES

#### Section.

- 50-601. Lawful fence defined.
- 50-602. Damages not recoverable unless plaintiff's fence lawful.
- 50-603. Notice of trespass—Assessment of damage—Owner liable—Lien on stock.
- 50-604. Actions—Venue—Damages—Lien.
- 50-605. Incorporated cities excepted.
- 50-606. No-fence district—Established on petition—Dissolution—Violations—Penalty.
- 50-607. Traveler through enclosed field must close gate—Penalty.

**§50-601. Lawful fence defined.** Every enclosure of land shall be deemed under a lawful fence when such fence is constructed and maintained with good and substantial posts firmly planted in the ground at intervals of not more than thirty (30) feet apart, upon which are strung and fastened at least four (4) barbed wires of the usual type tightly stretched and secured to the posts and spaced as follows: The top wire to be fifty (50) inches above the ground, the next wire to be twelve (12) inches, the second wire to be twenty-two (22) inches, and the third wire to be thirty-two (32) inches, below the top wire. If the posts are set more than one rod apart, the wires shall be supported by stays placed not more than seven and one-half (7½) feet apart or from the posts, extending from the top wire of the fence to the ground, and each wire of a fence se-

curely fastened thereto. All fences constructed otherwise, or of other material, equally as strong and otherwise efficient to turn live stock as that above described, shall also be deemed lawful fences within the meaning hereof.

**§50-602. Damages not recoverable unless plaintiff's fence lawful.** An owner or occupant of land shall not be entitled to damages resulting from the trespass of animals thereon, unless such land is enclosed within a lawful fence; provided, that this section shall not apply to owners or occupants of lands in no-fence districts as herein provided.

**§50-603. Notice of trespass—Assessment of damage—Owner liable—Lien on stock.** When live stock breaks into an enclosure enclosed by a lawful fence and damages the crop, or any property therein, or such fence, the party suffering said damages shall immediately notify the justice of the peace, who, with two disinterested parties to be chosen by himself, shall immediately make personal examination of the property damaged, appraise the amount of damages suffered, and make a record thereof in his docket. The owner of such stock, as well as the person in charge thereof at the time of such breach, shall be liable to the owner or occupant of such land for the damages caused, to the amount entered on the docket of the justice of the peace as the damages appraised in the particular instance; provided, that either party may appeal from said appraisal where the damages equal or exceed twenty-five dollars (\$25.00). Such owner or occupant shall have a lien on such stock causing such damage for the amount thereof; if he has possession of said stock he may retain the same until the amount of such damages is ascertained and paid, and shall within forty-eight (48) hours after taking possession of said stock give personal notice, or written notice of such trespass by mail addressed to the last known address of the owner of said stock, or in case the post office address of the owner of said stock be unknown to such claimant, then such notice may be given to the live stock sanitary inspector of the district within which such trespass was committed.

**§50-604. Actions—Venue—Damages—Lien.** The owner or occupant of any land enclosed by a lawful fence, upon which damage has been done by live stock which has broken through such fence, may bring action to recover such damage in the precinct or the county in which said land lies, regardless of the place of residence of the owner of such live stock, or of the person having charge thereof at the time of such trespass. If the claimant for damages has possession of the stock causing the damage, and he recover judgment, the court shall, in addition to the personal judgment, declare a lien on such

stock for the amount of the judgment, and order a sale of such stock to discharge the same.

**§50-605. Incorporated cities excepted.** Nothing in this chapter (article) shall affect any ordinance of an incorporated city or town relating to stock running at large therein, nor shall any of its provisions be operative within an incorporated city or town.

**§50-606. No-fence district—Established on petition—Dissolution—Violations—Penalty.** A majority of all taxpayers, according to the last preceding assessment roll for county and state taxes, residing on any land in an irrigation district containing not less than thirty-five thousand (35,000) acres of irrigable land for which water is available; or a majority of all taxpayers residing upon any portion of a compact body of land containing not less than twenty thousand (20,000) acres, and where at least seventy-five (75) per cent of the area of such body of land is being successfully irrigated; or a majority of all taxpayers residing upon a body of land containing not less than one thousand (1,000) acres, said body of land being contiguous to the limits of any incorporated city or town, which city or town had a population of not less than thirty thousand (30,000) people by the last preceding United States census, and extending not more than five (5) miles in one direction beyond the limits of such incorporated town or city, may petition the board of supervisors of the county in which such district or land is situate, that a no-fence district be formed and that no fence be required around the land in such no-fence district as designated in said petition. Upon the filing of such petition the board shall immediately enter the facts upon its records and order such no-fence district, provided that upon application of a local live stock association, said board shall designate one or more roads across said district to be selected and properly fenced by lawful fences and be maintained by the county, over which roads live stock may be driven. The board shall publish said order once each week in a newspaper published in the county for four (4) weeks next succeeding; and from and after the completion of such publication, no fence shall be required around the lands in said no-fence district, and it shall be unlawful for live stock to thereafter run at large in such district. Such no-fence district may be dissolved at any time in the same manner as it was organized; provided it is hereby made the duty of the board of supervisors of the county upon the application of a local live stock association, wherein no-fence districts lie, to declare a road or roads over or across said districts a stock driveway, and to erect and maintain on both sides of said road a legal fence over and across said district between which said fences live stock may be driven. The owner on (or) owners of, and/or the

person or persons in charge of any live stock, who knowingly, willfully, carelessly or negligently suffers, allows or permits any such live stock, to run at large within such no-fence districts shall be guilty of a misdemeanor, and in addition thereto shall be liable in damages for such trespass in like manner as provided for the collection of damages by owners of land enclosed within lawful fences.

**§50-607. Traveler through enclosed field must close gate—Penalty.** Any person traveling on a road or highway open for use and used by the public, which passes into or over any part of an enclosed field or pasture of another person, when such road or highway at the point of entrance to or exit from such enclosed field or pasture has a gate or bars across such road or highway shall securely close such gate or bars, if he opens the same. Any person violating this section shall be guilty of a misdemeanor, and punished by a fine of not less than five (\$5.00) nor more than fifty dollars (\$50.00).

## ARTICLE VII.

### DAMAGES TO LIVE STOCK BY RAILROADS

#### Section.

- 50-701. Record by railroad of stock killed or crippled.
- 50-702. Railroad crossings for stock—Bridge openings—Violations—Penalty.
- 50-703. Liability for damage to live stock by railroad company.
- 50-704. Killing or injury by railroad—Owner driving stock on track.

**§50-701. Record by railroad of stock killed or crippled.** Persons operating railroads shall require all section foremen, or persons discharging like duties, to keep at the section house a specific record, upon forms furnished by the live stock sanitary board, of stock killed or crippled upon their sections of such railroad, giving age, color, sex, marks and brands of such stock, which record may be inspected by the public at all reasonable times. They shall require each engineer to make a report to the railroad company on arrival at terminal, of all stock killed or crippled by his train and the time and place of such accident. The report of the engineer and the record of the section foreman shall be posted on Monday of each week at the section house or station house nearest where the accident occurred, and kept posted for thirty (30) days.

**§50-702. Railroad crossings for stock—Bridge openings—Violations—Penalty.** A railroad, fencing its line or road, shall leave an opening at least once in every three (3) miles, in an accessible place for stock to pass through, such opening to be at least sixty (60) feet wide, with cattle-guards at each end, and fences run to such guards, place cattle-guards

and wing fences on either side of the said openings, sufficient to prevent cattle entering upon the said right of way so enclosed, and leave unfenced any places wherein the railroad runs over any trestles or bridges that are sufficiently high for cattle to go under the same. Any company violating this section shall be guilty of a misdemeanor.

**§50-703. Liability for damage to live stock by railroad company.** Whenever live stock is injured or killed by locomotive or cars on the line of any railroad company unfenced by good and sufficient fence or other barrier sufficient to turn live stock, the company shall be liable in damage therefor to the owner of such live stock, unless it be shown that the owner, his agent or servants, immediately contributed to such killing or injury. The mere straying, or grazing unattended by a herder, of live stock upon unfenced portions of such railroad shall not be contributory negligence on the part of the owner.

**§50-704. Killing or injury by railroad—Owner driving stock on track.** Every railroad which negligently injures or kills any horse, jack, jennie or mule, or any cattle or other domestic animal, by running a locomotive or cars against such animal shall be liable to the owner for the damages sustained by reason thereof. The killing or injury shall be prima facie evidence of negligence. If the owner or the person in charge of such animals drives the same upon the track of such company, with intent to thereby injure it or them, such owner shall be liable for all damage occasioned thereby.

## ARTICLE VIII.

### SLAUGHTER OF ANIMALS

#### Section.

- 50-801. Slaughter for sale without license prohibited.
- 50-802. Inspection of hides.
- 50-803. Slaughter house regulations—License and bond—Penalty.
- 50-804. License, slaughtering without prohibited—Penalty.
- 50-805. Producers may slaughter for own use.
- 50-806. Inspection before slaughter.
- 50-807. Secreting or defacement of hide unlawful—Penalty.
- 50-808. Purchase of uninspected hide unlawful.
- 50-809. Slaughter-house to keep record of animals—Penalty for failure.
- 50-810. Transportation or selling of uninspected hides unlawful—Penalty.

**§50-801. Slaughter for sale without license prohibited.** It shall be unlawful for any person to slaughter any neat animals, horses, mules, asses, sheep or goats for sale or exchange, unless licensed as provided in this chapter (article), except producers who may, upon special permit authorized by the board, slaughter, not to exceed five head of neat

animals, horses, mules or asses, or twenty (20) head of sheep and goats in any one calendar year, and who shall not be subject to the requirements of Section 2148 (section 50-804) relating to licenses to peddle or retail fresh meats.

**§50-802. Inspection of hides.** (a) It is unlawful for any person to have in his possession, or to sell, offer for sale, give or exchange the meat of any neat animal, horse, mule or ass, unless the whole hide of such animal has been inspected for marks and brands and the meat thereof stamped as hereinafter provided. The hide of any such animal shall be marked, as provided by the board, so that it may be identified, for which the inspector shall collect ten cents (10c) for each hide so inspected. The inspector shall stamp upon the hind quarter, side, shoulder, neck and shank, of both sides of the meat of the carcass the words "brand inspected." Such stamping shall be done with a stamp adopted and furnished by the board. A violation of this section shall constitute a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty (\$50.00) nor more than three hundred dollars (\$300), imprisonment in the county jail not less than thirty (30) nor more than one hundred and eighty (180) days, or both.

(b) Inspectors shall have authority to stop and search, without warrant, any vehicle, or to search without warrant any container which such inspector suspects contains unstamped meat, and if any be found it shall be taken by the inspector, and unless proof be submitted within twelve (12) hours which satisfied the inspector that the person from whom the meat was taken is the lawful owner thereof, such meat shall be forfeited to the state and sold or disposed of by the inspector.

(c) This section shall not be construed to apply to producers who are slaughtering such animals for their own consumption, nor to require that meat bearing a federal meat inspection stamp, unless the possessor so desires, be stamped as provided in this act.

**§50-803. Slaughter-house regulations—License and bond—Penalty.** Every person licensed to engage in the slaughtering of neat animals, horses, mules, asses, sheep and goats for sale shall slaughter all such animals in a fixed and definite slaughter-house or slaughter pen, to be kept by such person for that purpose, or in the slaughter-house established by the authorities of an incorporated city or town. Before such person shall begin, or carry on the business of slaughtering, he shall first make written application for and procure a license from the live stock sanitary board, and shall execute upon a form furnished by the board a bond to the state

in the penal sum of one thousand dollars (\$1,000), to be approved by the secretary of the board, conditioned that such person will comply with the law and will not slaughter any animals, sell or expose for sale the meat thereof, without first complying with the law regulating the sale of the animal slaughtered and the rules and regulations of the board. A violation of any of these conditions may be enforced by the board in the name of the state in the full sum of the bond.

**§50-804. License, slaughtering without prohibited—Penalty.** The board may grant an applicant, upon payment of the fees and presentation of proof of good moral character, a license to slaughter neat animals, horses, mules, asses, sheep or goats, as may be set forth in such license. For a license to slaughter not to exceed forty-five (45) head of neat animals, horses, mules or asses and not to exceed fifty-five (55) head of sheep or goats in any one calendar year the applicant shall pay a license fee of five dollars (\$5.00); for a license to slaughter more than forty-five (45) and not to exceed one hundred fifty (150) head of neat animals, horses, mules or asses and more than fifty-five (55) and not to exceed one hundred sixty (160) head of sheep or goats in any one calendar year, he shall pay a license fee of fifteen dollars (\$15.00); for a license to slaughter more than one hundred fifty (150) head of neat animals, horses, mules or asses and more than one hundred sixty (160) head of sheep or goats in any one calendar year, he shall pay a license fee of eighty dollars (\$80). For good cause shown the board may, after a hearing, and after notice to the holder of such license of its intention so to do revoke any license issued hereunder. It shall be a misdemeanor for any person other than producers slaughtering under special permit, to slaughter any neat animals, horses, mules, asses, sheep or goats for sale or exchange or to offer for sale or exchange any portion thereof without first procuring a license.

Every peddler or retailer of fresh meat of any neat animals, horses, mules, asses, sheep or goats, shall, before offering such meat for sale or exchange procure a license therefor from the live stock sanitary board, for which he shall pay an annual license fee of ten dollars (\$10.00) for each place of business, store, stand, market or vehicle wherein or wherefrom such meat is to be sold or exchanged, and he shall enter in a book kept by him for that purpose the name and address of each person from whom the purchaser obtained such meat, the date of purchase, quantity purchased, time and place of purchase, and upon the request of an inspector or peace officer he shall exhibit the same to such inspector or peace officer. All licenses issued hereunder shall expire on December thirty-first of the year in which issued.

Any one failing to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty (\$20.00) nor more than one hundred dollars (\$100) for each offense or by imprisonment for not less than twenty (20) nor more than one hundred (100) days, or by both such fine and imprisonment.

**§50-805. Producers may slaughter for own use.** It shall not be necessary for producers who are slaughtering neat animals, horses, mules, asses, sheep or goats for the sole purpose of using the meat thereof for food for themselves, their immediate family or employees to procure a special permit or slaughtering license as required under the provisions of Section 2145 or Section 2148 of this chapter (section 50-801 or section 50-804); provided, that the whole hide of all neat animals, horses, mules and asses slaughtered shall be hung in a conspicuous place on the premises of the producer and kept there until such hide has been inspected and marked or tagged by an inspector. Anyone failing to comply with this requirement shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred (\$100) nor more than five hundred dollars (\$500), or by imprisonment in the county jail not less than sixty (60) nor more than two hundred (200) days, or by both such fine and imprisonment.

**§50-806. Inspection before slaughter.** Any person carrying on the business of slaughtering live stock shall notify the nearest live-stock inspector of the location of his slaughter-house and of the time it is proposed to slaughter any such animals. No live stock shall be slaughtered until inspected, unless inspection before slaughter be waived by the board. When any such animals are slaughtered, the inspector shall inspect the hides for brands and marks, charging therefor ten cents (10c) for each hide inspected, and tag or mark the same in the manner prescribed by the board, unless such tagging or marking be waived by the board.

**§50-807. Secreting or defacement of hide unlawful—Penalty.** Any person secreting any hide or hides of any live stock, or detaching, obliterating or defacing from or upon such hide any mark or brand before it is inspected by an inspector shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred (\$100) nor more than three hundred dollars (\$300), or by imprisonment not less than sixty (60) nor more than one hundred eighty (180) days, or by both such fine and imprisonment.

**§50-808. Purchase of uninspected hide unlawful.**

It shall be unlawful for any person to purchase or otherwise acquire possession of any hide of neat animals, horses, mules, or asses until such hides shall have been inspected, and the possession of an untagged or unmarked hide upon which the tagging or marking has not been waived by the board shall be a misdemeanor, unless the person possessing such hide can show that the same was taken from an animal owned by him at the time of slaughter, or death, or that he had written authority from the owner to remove the hide from such animal.

**§50-809. Slaughter-house to keep record of animals—Penalty for failure.** Every person who shall carry on the business of slaughtering shall keep a true record in a book kept for that purpose of all neat animals, horses, mules, asses, sheep and goats purchased or slaughtered by him, with a description of all such animals so purchased or slaughtered, the marks and brands, if any, the name and residence of the person from whom purchased and the date of such purchase, and shall at the end of each month make a true copy of such record under oath, and deliver the same to the inspector of his district. Every such person who fails to keep such record, or who fails to deliver a true copy of the record, or who refuses to exhibit such record to any person demanding it, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten (\$10.00) nor more than one hundred dollars (\$100) for every day he shall have failed to comply.

**§50-810. Transportation or selling of uninspected hides unlawful—Penalty.** It shall be unlawful for any person to receive for transportation any hides of live stock until they have been inspected, and it shall be unlawful for any person to sell any hides of live stock until they have been inspected. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty (\$20.00) nor more than one hundred dollars (\$100), or by imprisonment for not less than ten (10) nor more than sixty (60) days, or by both such fine and imprisonment. All moneys collected under the provisions of this chapter (article), except those for taking acknowledgments, shall be paid to the live stock sanitary board and by it remitted to the state treasurer, to be deposited in the general fund, unless otherwise specifically provided.

## CHAPTER 43

### ARTICLE 36

#### CRIMINAL OFFENSES

##### Live Stock

## Section.

- 43-3601. Branding animals of another—Altering brands—Liability—Penalty.
- 43-3602. Killing or selling live stock of another—Purchasing without right to sell.
- 43-3603. Selling unbranded or stolen stock.
- 43-3604. Concealing live stock killed by railway company.
- 43-3605. Duty of drover whose stock intermixes—Penalty.
- 43-3606. Driving stock off of range without owner's consent—Penalty of drover.
- 43-3607. Owner of drover allowing drove to trespass on ranches—Penalty.
- 43-3608. Herding on land or camping at water of another—Penalty.
- 43-3609. Herding or grazing sheep on cattle ranges—Moving sheep to shipping points or lambing grounds.
- 43-3610. Stock being moved to be branded—Penalty for failure.
- 43-3611. Bull allocation—Penalty.
- 43-3612. Gathering for cattle contests—Penalty.
- 43-3613. Racing horses under assumed name at fairs—Penalty.
- 43-3614. Allowing stallions to run at large—Penalty.

**§43-3601. Branding animals of another—Altering brands—Liability—Penalty.** Any person who shall brand or mark any animal with any brand, other than the recorded brand of the owner, or who shall efface, deface, alter or obliterate any brand or mark upon any animal, with intent to feloniously convert the same to his own use, is guilty of a felony and punishable by imprisonment for not less than one (1) nor more than ten (10) years, and shall be liable to the owner of such animal for three (3) times the value thereof.

## NOTES TO DECISIONS

## Elements.

In order to convict one charged with altering a brand, it is necessary for the state to prove four things: (1) That the defendant altered a brand; (2) that it was on an animal which was of the general kind described in the information; (3) that the animal was the property of the person alleged in the information; and (4) that it was done with intent to convert the animal to his own use. *Holder v. State*, 31 Ariz. 357, 253 Pac. 629.

## Indictment.

An indictment under this section must allege the intention of defendant to convert the animal to his own use. *Blevins v. Territory*, 4 Ariz. 326, 41 Pac. 442.

## Owner's Noncompliance with Law.

The fact that the owner of a calf had no recorded brand, and had not branded it according to law, does not authorize another to brand an animal in which he has no interest whatever. *Heckethorn v. State*, 48 Ariz. 151, 58 Pac. (2d) 331.

**§43-3602. Killing or selling live stock of another—Purchasing without right to sell.** Any person who shall feloniously steal, take or carry away, or embezzle, or knowingly kill, sell, drive, or lead away any neat animal, horse, mule, ass, sheep, goat or swine, the ownership of which is known or unknown, or any person who shall willfully and feloniously purchase from any one not having the lawful right

to sell or dispose of any neat animal, horse, mule, ass, sheep, goat, or swine, the ownership of which is known or unknown, is guilty of a felony. But this section shall not apply to taking up such animals under the estray laws of this state.

**§43-3603. Selling unbranded or stolen stock.** Any person who may sell or offer for sale or trade any animals mentioned in the preceding section upon which such person has not his recorded brand, or for which he has neither bill of sale, nor power of attorney from the owner authorizing such sale, is guilty of a felony, unless such person shall prove that he was at the time the owner, or that he acted by direction of the owner, or that he acted in good faith, and with an innocent purpose.

**§43-3604. Concealing live stock killed by railway company.** Any person who shall bury, remove or in any manner conceal any stock killed or injured by locomotives or cars of any railroad company, or by any motor vehicle, with intent to conceal the cause of such death or injury, shall be guilty of a misdemeanor, and fined not less than one hundred (\$100) nor more than three hundred dollars (\$300), or imprisoned in the county jail not less than one (1) nor more than three (3) months, or by both.

**§43-3605. Duty of drover whose stock intermixes—Penalty.** When the stock of any resident of the state shall intermix with any drove of animals not the property of any such resident, the drovers or persons in charge shall cut out and separate such stock from said drove, without unreasonable delay, and drive such animals back to the place of intermixing, except in the case of sheep and horses, which shall be driven to the nearest suitable corral to be separated. Any person connected with the management of such drove, who shall fail or neglect to do so, shall be guilty of a misdemeanor.

**§43-3606. Driving stock off of range without owner's consent—Penalty of drover.** When the stock of any resident of this state shall be driven off its range without the owner's consent by the drover of any herd, every person engaged in the care or management of such herds, shall be guilty of a felony.

**§43-3607. Owner or drover allowing drove to trespass on ranches—Penalty.** Any person owning or having charge of any drove of cattle, horses, mules, sheep, goats or hogs, who shall drive the same into or through any county of this state where the land in such county is occupied by ranchers, shall prevent his animals from mixing with animals belonging to such ranchers, and from trespassing on such lands as may be the property of or be in the possession of any actual settler and used by him for

grazing of animals or the growing of hay or other crops. No owner or person in charge of any such drove shall willfully injure any resident of this state by driving such drove of stock from the public highway and herding the same on lands occupied by settlers in possession of the same, or negligently allow such stock to wander from the highway and do injury as aforesaid. Violation hereof shall be punished by fine not less than twenty-five (\$25.00) nor more than one hundred dollars (\$100). But this section shall not apply to persons merely driving or herding across unenclosed lands in passing to public grazing lands or to lands owned or possessed by the owner of such drove, if the animals are the property of a resident of this state, and are assessed and taxed therein.

**§43-3608. Herding on land or camping at water of another—Penalty.** Any person owning or having charge of sheep or goats who shall herd or permit the same to be herded on lands lawfully owned or possessed by another, without the express consent of such other person, or allow such sheep or goats to camp at any water developed and owned or leased by another without the express consent of the owner or lessee of said water, shall be guilty of a misdemeanor. The term "lawfully owned or possessed" applies to all land or lands owned in fee or held under lease, contract of purchase, pre-emption, homestead, or other law of the United States or the state. The instrument evidencing such possessory right to lands held other than by virtue of the laws of the United States or of the state, shall be recorded in the office of the county recorder of the county wherein such land is located before any complaint can be made.

## NOTES TO DECISIONS

### In General.

The complaint must show that the defendant was in charge of the sheep either as owner or herder to withstand a demurrer. *Brown v. State*, 25 Ariz. 462, 218 Pac. 993.

**43-3609. Herding or grazing sheep on cattle ranges—Moving sheep to shipping points or lambing grounds.** Any person owning or having charge of sheep or goats who herds, grazes or pastures the same or permits or suffers the same to be herded, grazed or pastured on any cattle range previously occupied by cattle or upon any range usually occupied by a cattle grower either as a spring, summer or winter range for his cattle, is guilty of a misdemeanor; but the priority of right between cattle and sheep owners to any range is determined by priority in the usual and customary use of such range either as a cattle or sheep range.

Provided, that nothing herein contained shall be

construed as prohibiting the herding or grazing of sheep over or upon any mixed range, and

Provided further, that any person, firm or corporation who may have heretofore purchased or may hereafter purchase any entire cattle range or lands or right to possession or use thereof, theretofore used as a cattle range or cattle grazing ground, or the grantees or assigns of any such person, firm or corporation, may thereafter use the same as lambing grounds or grazing grounds for sheep, subject otherwise to the provisions of this act.

Sheep and goats, when being moved from their accustomed range to a shipping point to be shipped or to lambing grounds for lambing purposes or when being returned from a shipping point where they were unloaded from cars or being returned to their accustomed range from said lambing grounds where they were located during lambing time, shall, when off a designated stock driveway and crossing a range which is being and has been used as a cattle range, travel at least three (3) miles per day. That in moving from their accustomed range to said shipping point or lambing grounds or from such lambing grounds or unloading point to their accustomed range they shall travel by the most direct practicable route to one of the Arizona stock driveways designated by the United States government or to any other stock driveway hereafter fixed and determined and shall thence travel over and on such driveway and not depart therefrom until they reach a point nearest to their said shipping point or their usual lambing grounds and travel thence from said point by the nearest practicable route to said shipping point or lambing grounds, traveling at the rate of not less than three (3) miles per day while crossing a cattle range and shall pursue the same course, traveling at the same rate, when going from said lambing point or unloading place back to their accustomed range. Provided, however, that when they are upon one of the aforesaid designated trails or upon any trail hereafter established, they shall travel at such rate as they may deem proper; and

Provided further, that nothing in the provisions of this paragraph shall be construed to give the right for any such sheep or goats to travel over, be herded on or graze upon the lands or possessory rights to lands of another.

Any person violating any provision hereof shall be guilty of a misdemeanor, and each day shall constitute a separate offense.

### NOTES TO DECISIONS

#### Analysis

#### What is Cattle Range.

To deprive a cattle range of its character as such by the

herding of sheep, acquiescence of sheep herding, without protest by cattlemen, either express or implied from joint use for a time long enough to amount to a custom, is necessary. *Havas v. State*, 25 Ariz. 453, 219 Pac. 229.

**§43-3610. Stock being moved to be branded—Penalty for failure.** Each drover of cattle or sheep which may be driven into or through any county of this state shall be plainly branded or marked with one (1) uniform brand or mark. The cattle shall be distinctly so branded with the distinguishing ranch or road brand of the owner. Sheep shall be marked distinctly with such mark or device as may be sufficient to distinguish the same readily, should they become intermixed with other flocks of sheep owned in the state. Any owner or person violating the provisions hereof, shall be fined not less than fifty (\$50.00) nor more than three hundred dollars (\$300).

**§43-3611. Bull allocation—Penalty.** Any person owning twenty-five (25) or more cows, who shall allow such cows to run at large, without providing at least one (1) serviceable bull of good American graded stock to run with each twenty-five (25) or fraction of twenty-five (25) cows permitted to run at large, is guilty of a misdemeanor, and shall be fined not less than fifty (\$50.00) nor more than two hundred dollars (\$200).

**§43-3612. Gathering for cattle contests—Penalty.** Any person who shall gather any range cattle for the purpose of any tournament or contest for amusement or reward, or competition for prizes, or who engages in any steer tying contest or exhibition of steer tying, or who casts, ropes or throws any animal of the horse, cow or other kind, without the written consent of the owner, except in the necessary work done on the range or elsewhere in the handling of such animals, shall be guilty of a misdemeanor.

**§43-3613. Racing horses under assumed name at fairs—Penalty.** Any person who knowingly enters for competition, or competes for any purse, prize, premium, stake or sweepstake any horse, or colt under an assumed name or out of its proper class in a trotting, pacing or running race, shall be guilty of a misdemeanor.

**§43-3614. Allowing stallions to run at large—Penalty.** Any person who shall permit any stallion over two (2) years old to run at large upon the range within the state, unless such stallion shall be a high grade of some recognized good breed of horses, shall be guilty of a misdemeanor, and fined not less than twenty-five (25.00), nor more than three hundred dollars (\$300).

## CHAPTER 44

## CRIMINAL PROCEDURE

## ARTICLE 18

## Section.

44-1820. Evidence of other offenses in stock stealing.

44-1821. Evidence on trial for violating stock laws.

**§44-1820. Evidence of other offenses in stock stealing.** Upon a trial for stealing any neat animal, evidence that the accused has stolen other neat animals shall be admissible, provided the other offenses so follow each other, when taken in connection with the facts and circumstances pertinent to each case, as to show a purpose of engaging in and continuing the work of stealing neat cattle.

## NOTES TO DECISIONS

## In General.

The offense of altering the brand on an animal with intent to convert it being so closely related to the offense covered by this section should be governed by the same rule, and accordingly evidence of another offense tending to establish a common scheme or plan embracing the commission of two or more crimes, so related to each other that proof of one tends to establish the other, is admissible. *Holder v. State*, 31 Ariz. 357, 253 Pac. 629.

The rule that evidence of other offenses is admissible where the evidence tends to show a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other does not depend upon this section, but is a general principle of evidence. Such evidence is admissible without there having been an actual conviction of the other crimes. *Vigil v. State*, 33 Ariz. 51, 262 Pac. 14.

**§44-1821. Evidence on trial for violating stock laws.** Upon a trial for violating any of the stock laws of the state the prosecution shall have the right to prove, as tending to show conversion by the accused, that the animals in question were branded into a brand or were marked into a mark claimed by the accused to be his brand or mark, although such brand or mark are neither of them recorded, and in all cases where any live stock the property of a resident of a foreign country or state are alleged to have been stolen and are held in this state, which live stock have either strayed or have been driven from a foreign country or state into this state, the ownership thereof may be shown by the marks or brands thereupon, although such marks or brands shall not have been recorded, and in every such case the question whether any such live stock were stolen in a foreign country or state and were driven into this state, and were stolen in this state, shall be immaterial, in all cases where the allegation of the indictment or information is that they were stolen in the county where the indictment is found, or the information filed.

## CHAPTER 62

## LIENS, MORTGAGES AND PLEDGES

## ARTICLE 4

## LIENS ON PERSONAL PROPERTY

## Section.

- 62-404. Lien for feed and pasturage—Sale of stock.
- 62-405. Owner of stallion in service to file statement and post certificate.
- 62-406. Giving false pedigree—Penalty.
- 62-407. Lien for service charges of stallion.

**§62-404. Lien for feed and pasturage—Sale of stock.**

All persons who furnish pasture or feed for any live-stock, to be fed on the premises of the person furnishing same, shall have a lien on such stock for the amount of the charges due and unpaid for same and may take possession of and retain such stock until such charges are paid. When such possession has continued for twenty (20) days after the accruing of such charges, and the charges have not been paid, the person taking possession of such stock shall notify the owner in writing, if he be in the county where the stock is located, and is known to the person holding said stock, to pay the charges, and on his failure within ten (10) days after such notice, the holder of said property, after five (5) days' notice posted in three (3) public places at the county seat of the county wherein said stock shall be located, may sell said property, or so much thereof as necessary to pay all charges and costs as herein provided for, at public auction and out of the proceeds thereof pay said charges, together with the costs and charges of making such sale, and pay the balance, if any, to the person entitled to the same. If the owner does not reside in the county where the stock is retained, or is not known by the person holding possession, he shall, instead of the service of the notice, publish said notice at least three (3) times in some newspaper published in the county where said animals are held, if there be one; if there be no newspaper published in the county then by posting a notice as herein provided in three (3) public places.

**§62-405. Owner of stallion in service to file statement and post certificate.** Every person having the custody or control of a stallion for service shall, before advertising or offering such service to the public for compensation, file for record with the county recorder of the county in which he resides, or in which such stallion shall be kept for service, a written statement giving the name, age, pedigree and record, if known, and if not known that the same is unknown, the description and terms and conditions upon which such stallion will serve. The recorder shall cause same to be recorded upon payment of a fee, in a book kept by him for that purpose, and issue a certificate that such a statement has been filed in his office. A copy of the statement so filed

and recorded shall be posted in a conspicuous place in each locality in which said stallion shall be kept for service.

**§62-406. Giving false pedigree—Penalty.** Any person who shall file or publish a false pedigree or record or statement of any kind regarding any stallion, or who shall neglect or refuse to comply with the provisions of the preceding section, shall forfeit all fees for the services of such stallion, and shall be guilty of a misdemeanor; and the person who may be deceived or defrauded, may sue and recover such damages as sustained by reason of such false representation.

**§62-407. Lien for service charges of stallion.** Upon filing such statement and posting such certificate the services of such stallion shall from the date of such service become and be a lien on each mare served, together with the foal of such mare resulting from such service, for the amount agreed upon between the parties at the time of service, or in the event of no such agreement, then in such an amount as specified in the statement; a notice of such lien shall be filed within six (6) months after such service in the office of the county recorder of the county where said stallion shall be owned or stand, giving the date of service, description of mare, name of owner, and amount for which a lien is claimed, which lien shall terminate at the end of one (1) year from the date of filing such notice, unless within that time an action be commenced for the foreclosure of the lien.

Pursuant to the authority vested by paragraph 50-102 of the Live Stock Laws of Arizona, the Live Stock Sanitary Board adopts and orders spread upon its minutes the following rules and regulations.

### **RULES AND REGULATIONS**

(1) A stray is an animal whose owner is unknown, or for which there are no claimants or contestants. Strays may be sold by an inspector, and the inspector shall record the following information on the form one certificate of inspection: The name of the purchaser, the place where the stray was sold, date of sale, the inspector's name, the signature of a disinterested witness to the sale, and a complete description of each animal (all marks, brands and identifying features), together with the total amount received, and notation of deduction of expense incurred, which will include the inspection fee, and the net amount that will be remitted to the office. Not more than one animal shall appear on a certificate. The original and the two railroad or truck copies and the seller's copy shall be sent to the office with the inspector's reports; the purchaser's copy shall be given to the purchaser of the

stray and the inspector's copy shall remain in the possession of the inspector for his record. The expenses incurred for the sale of a stray shall not at any time exceed twenty percent of the total value received from the sale. However, expense in excess of twenty percent will be acceptable when the required certificates are accompanied by properly executed and itemized statements. All funds received from this source shall be recorded in the stray book in the office of the Live Stock Sanitary Board. Upon presentation of satisfactory proof of ownership of any animal sold as a stray, the Live Stock Sanitary Board will provide the necessary claim to be filled out, and upon receipt of the same properly executed will refund the net amount received from the sale of such stray. Inspectors shall not under any circumstances sell stray horses, mules or asses under the provision of this rule.

(2) Inspectors are required to report all violations of Chapter 43, Article 36, Revised Code of Arizona, 1939, to the Live Stock Sanitary Board office so that the proper claim may be presented for the payment or remittance to the Live Stock Sanitary Board of all fines imposed by the justice and higher courts.

(3) All practicing veterinarians in Arizona must report to the State Veterinarian of Arizona, any outbreaks of contagious and infectious diseases such as Encephalomyelitis, Anaplasmosis, Anthrax, Foot and Mouth Disease, Texas Fever, Scabies, Dourine and Hog Cholera, etc.

#### **RULES AND REGULATIONS FOR THE IMPORTATION OF LIVE STOCK INTO THE STATE OF ARIZONA**

(4) No person or persons, individual, firm, corporation, company or association, or the agent thereof shall ship or drive live stock into the State of Arizona, from any other state or foreign country without the proper health certificates as outlined below, and no railroad company, common carrier, or the operators of trucks or other conveyances shall ship or move into the State of Arizona any live stock without first ascertaining if the required health certificates are attached to the bill of lading, if transported by railroad, or placed in the hands of the operators of trucks, or other conveyances by which the live stock are being moved.

(5) Any person or persons, individual, firm, company or association, or agent thereof, who ships, drives or moves live stock into the State of Arizona from any other state or foreign country, in violation of these regulations, shall be held responsible for the payment of all expenses and damages resulting from such violation.

(6) All live stock shipped, or driven into or through

the State of Arizona from any state or foreign country where fevertick, cattle scabies or diseases that require dipping are known to exist, must be dipped free of infection and certified to as having been so handled by an authorized inspector of the Bureau of Animal Industry, U. S. Department of Agriculture, and a copy of said certificate must be attached to the waybill accompanying the shipment, if by railroad, or delivered to the operator of the truck or other conveyances by which the live stock are being transported, and a copy mailed to the office of the State Veterinarian at Phoenix, Arizona.

(7) The last preceding rule shall not be construed to prohibit the importation of live stock under Federal supervision for the purpose of dipping in vats or applying other devices used in the disinfection of live stock, when such vats and other devices are located on Arizona soil adjacent to the state or inter-national lines. Attention to all shippers, or their agents, is directed to Paragraph Numbers 4 and 5 before their shipments are loaded at point of origin.

**(8) HORSES, MULES AND ASSES.**

Horses, Mules and Asses must be accompanied by a health certificate by an authorized veterinarian stating freedom from infectious or contagious diseases.

**(9) DAIRY CATTLE.**

(A) Dairy cattle must be accompanied by a special permit from the State Veterinarian of Arizona and a health certificate, including tuberculin test, within past 30 days, by an authorized veterinarian. In lieu of tuberculin test, Rule 11 and Rule 12, Paragraph A, also apply.

(B) All dairy cattle, before shipment into Arizona, must pass a standard tube agglutination test, or other recognized test, by a laboratory approved by the State Veterinarian or proper Live Stock Sanitary Official of state of origin and the State Veterinarian of Arizona. This test must be made within 30 days prior to shipment and only dairy cattle which are negative to the test in dilutions 1-50, 1-100 and 1-200 are eligible to consignment to Arizona. The Veterinary Inspector's official health certificate shall show the agglutination test. A copy of the laboratory test must be forwarded to the State Veterinarian at Phoenix, Arizona for approval before he can forward a permit for the shipment.

(C) One copy of the health certificate and laboratory test shall accompany the shipment and

one copy of each shall be forwarded to the State Veterinarian at Phoenix, Arizona.

- (D) Dairy cattle shall be held under quarantine and sequestered from other cattle for a period of 60 days, from the date of their arrival in the state. At the expiration of 60 days, said stock shall be tuberculin tested at owner's expense and released from quarantine when tested and passed.

**(10) RANGE CATTLE.**

- (A) Range cattle must be accompanied by a health certificate by an authorized veterinarian, including statement that they are free from scabies or exposure thereto. Rule 12, Paragraph B, also applies regarding T. B. test on range cattle.

- (B) **RANGE BULLS (Breeding).** Range bulls must be accompanied by a special permit from the State Veterinarian of Arizona and in addition must be accompanied by a health certificate by an authorized veterinarian, including a statement that they are free from scabies or exposure thereto, and were tuberculin tested within 30 days prior to shipment. In addition, range bulls for breeding must be dipped once, under veterinary supervision, within 10 days before entering the State, in a recognized scabies dip, namely: Lime and Sulphur or Nicotine. Rule 12, Paragraph B, also applies regarding T. B. test on range bulls.

- (C) **RANGE BULLS (Feeders).** Feeder bulls from Old Mexico will be held in quarantine at destination until released by the State Veterinarian, for immediate shipment for slaughter.

(11) All cattle, regardless of breed, originating in an Individual State and Federal Tuberculosis Free Accredited Herd, having been tuberculin tested within eleven months before shipment, may, after complying with all other state regulations, be shipped into Arizona without a tuberculin test at point of origin and will not be held for a sixty day retest, provided the State Veterinarian or the Federal Inspector in Charge of the state of origin certifies on the Interstate Health Certificate, the following: "The cattle in this shipment originated in an Individual State and Federal Tuberculosis Free Accredited Herd, Number (giving Herd Certificate number), last date tested, (giving date)."

(12) Shipments of cattle from Modified Tuberculosis Free Accredited Areas will be recognized as follows:

- (A) Dairy cattle of all breeds, provided all other

state regulations have been complied with and a permit has been issued, may enter Arizona without a tuberculin test at point of origin, upon certification of the State Veterinarian or the Federal Inspector in Charge of state of origin, on the Interstate Health Certificate, "These cattle originated in a Modified Tuberculosis Free Accredited Area, are tuberculin tested, or originated from Tuberculin tested cattle, accreditation of this area expires (giving date of expiration)." They shall be held for a re-test for tuberculosis at destination at owner's expense.

- (B) Range, Feeder and Beef cattle of all breeds, after complying with all other state regulations, may enter Arizona upon certification of the State Veterinarian or the Federal Inspector in Charge of the state of origin on the Interstate Health Certificate, "These cattle originated in a Modified Tuberculosis Free Accredited Area, are tuberculin tested, or originated from Tuberculin tested cattle, accreditation of this area expires (giving date of expiration)."

**(13) CATTLE FOR SHOW OR EXHIBITION PURPOSES.**

- (A) Any bull or bulls entering the State of Arizona for show or exhibition purposes, must be accompanied by a health certificate by an authorized veterinarian, including a statement that the bull or bulls are free from scabies or exposure thereto for a period of six months before shipment and were tuberculin tested within 30 days prior to shipment. Any bull or bulls coming under this classification need not be dipped as required for range bulls (Rule 10, Paragraph B). Application for permit to ship any bull or bulls into the State of Arizona for show or exhibition purposes shall give the owner's name and address, the registration name and registration number of each animal and the point of origin and destination of shipment.
- (B) Upon arrival of the animals at the show grounds, the State Veterinarian or his appointed agent shall inspect them for scabies or any infectious or contagious disease. If any animal or animals are found to have scabies, it or they shall be removed at once from the show grounds, taken to a dipping vat and dipped in a lime and sulphur or nicotine dip at such time and place and in such manner as approved by the State Veterinarian. If any animal or animals are found with any serious infectious or contagious disease, it or they shall be removed at once from the show grounds and quarantined

until released by the State Veterinarian.

- (C) All bulls for show or exhibition purposes shall be segregated from cattle originating within the State except in the show ring at judging time. The owner shall bear the burden of all expenses necessary to dipping, transportation and treatment and any expense incidental thereto.
- (D) If any bull or bulls are sold to remain in the state, it or they shall come under the classification of range bulls (Rule 10, Paragraph B) and shall be dipped at once in a lime and sulphur or nicotine dip under the direction of the State Veterinarian.

**(14) SWINE.**

- (A) All swine imported into Arizona for feeding or breeding purposes must be accompanied by a health certificate certifying that they have been immunized with hog cholera serum not more than fifteen days prior to the date of importation, when serum alone is used, or not less than 21 days prior to date of importation when the serum and virus are used. All swine must be accompanied by a veterinary certificate, countersigned by the authorities of the state of origin and to the effect that said swine to the best of his knowledge and belief are not affected with a contagious, infectious or communicable disease.
- (B) All swine imported into Arizona for immediate slaughter must be consigned to approved slaughter houses where Federal or Municipal meat inspection is maintained, and they must be accompanied by a health certificate by an authorized veterinarian.

**(15) DOGS.**

No permit or health certificate necessary.

**(16) HEALTH CERTIFICATES.**

All certificates of health must be made within 30 days of date of animals entering the State. They must be in quadruplicate, the original sent to the Chief of the Bureau at Washington, duplicate attached to waybill, triplicate sent to the State Veterinarian of the state of origin of shipment, and the quadruplicate sent to the State Veterinarian at Phoenix.

**(17) WHO MAY INSPECT.**

Federal Veterinarians, State Veterinarians, Assistant State Veterinarians and other veterinarians authorized to make tests and inspections for interstate shipments by the live stock authorities of the state in which they reside.

**(18) VIRUS.**

All serum manufacturers and dealers are hereby prohibited from selling hog cholera virus or anthrax

virus to any one except for use under the supervision of an authorized veterinarian.

**(19) SERUMS AND VACCINES.**

No employee, agent, representative or any one selling vaccines, bacterins, aggrissions or serums or any other biological product, shall vaccinate any animals other than his own in order to sell or demonstrate his biological supplies or for any other purpose. He shall not guarantee any biological product as a cure or preventive of any disease. This regulation does not apply to any qualified veterinarian regularly licensed by the State of Arizona.

**(20) OFFICIAL STATE VETERINARIAN, PHOENIX.**

The State Veterinarian upon receiving information from the Live Stock Sanitary Board or other reliable source concerning a serious outbreak of infectious or contagious disease among the domesticated animals of this state or an adjoining state, shall proceed to the location of the suspected outbreak and make an investigation. And if, upon investigation, he finds there exists an infectious or contagious disease of a serious nature among the domesticated animals, he shall place a quarantine and issue orders concerning sanitary regulations and adopt such measures as are necessary to protect the live stock of Arizona and report forthwith his findings to the Chairman of the Live Stock Sanitary Board.

In order to execute the above regulations, the State Veterinarian is authorized to enter any premises within the State of Arizona to make such investigation and to employ such assistance as may be necessary.

The Live Stock Sanitary Board reserves the right to suspend, abrogate or add to the foregoing rules and regulations whenever deemed necessary in order to fully protect the health of the people and the Live Stock Industry of Arizona.

All rules and regulations in conflict or inconsistent with these rules and regulations are hereby repealed.

Approved by the Live Stock Sanitary Board, in open session this 26th day of June, 1941.

**LIVE STOCK SANITARY BOARD OF ARIZONA**

**JOHN A. THOMPSON,**  
Chairman.

**HARRY J. SAXON,**  
Member.

**MARION WELBORN,**  
Member.

Attest:

(MRS.) **ANN E. MOSSMAN,**  
Secretary, Live Stock Sanitary Board.

Approved:

**DR. T. B. JONES,**  
State Veterinarian.

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