

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### House Bill 2863

FISCAL  
NOTE

BY DELEGATE HOLSTEIN

[Introduced March 03, 2021; Referred to the  
Committee on Agriculture and Natural Resources  
then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §19-38-1, §19-38-2, §19-38-3, §19-38-4, §19-38-5, §19-38-6, §19-38-7, and  
3 §19-38-8, all relating to establishing a Livestock Branding Act; defining terms; creating  
4 registry of brands; providing for reregistration of brands; requiring bill of sale for branded  
5 livestock; authorizing rulemaking; and providing for criminal penalties of violations of act.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 38. LIVESTOCK BRANDING ACT.**

### **§19-38-1. Property identification definitions.**

1 As used in this article:

2 “Brand” means a distinctive design, mark of identification, or number that is applied to the  
3 hide of livestock by a hot iron or other humane method approved by the commissioner and is  
4 currently registered under §19-38-2 of this code.

5 “Livestock” means cattle, sheep, goats, and other animals of the family bovidae, swine  
6 and other animals of the family suidae, horses, mules, burros, asses, and other animals of the  
7 family equidae, alpacas, and llamas.

8 “Person” includes an individual, firm, association, partnership, corporation, or other legal  
9 entity, and the state and any of its agencies, institutions, instrumentalities, or political subdivisions.

### **§19-38-2. Central registry of livestock brands.**

1 (a) The commissioner shall record livestock brands and maintain a central registry of  
2 brands. The commissioner shall publish a booklet of brands registered pursuant to this section,  
3 containing a facsimile of each registered brand and the name and address of the individual to  
4 whom it is registered. The commissioner shall update or supplement the booklet at least once  
5 annually and shall provide copies of the booklet and any updating or supplemental materials, free  
6 of charge, to all state and county law-enforcement agencies in West Virginia. The commissioner  
7 shall also provide copies of the booklet and updating or supplemental materials to the public upon  
8 request and payment of a fee established by the director. The fee shall reasonably relate to the

9 cost of printing and mailing the booklet and materials.

10 (b) A person owning livestock in this state may apply to register and obtain the right to  
11 exclusive use of a brand by filing an application with the commissioner on a form approved and  
12 provided by the commissioner. The commissioner shall register a brand received upon application  
13 and payment of the fee authorized by this section unless the brand submitted is identical to or, in  
14 the director's opinion, so similar to a brand previously recorded as to cause confusion as to the  
15 identity or ownership of livestock. If the commissioner rejects an application, he or she shall return  
16 a facsimile brand submitted with the application, refund the recording fee, and explain the basis  
17 for the rejection to the applicant.

18 (c) If the commissioner accepts an application, he or she shall record and maintain the  
19 brand in the central registry of the department, furnish the applicant with a certificate as evidence  
20 of the registration, and inform the applicant that he or she has, from the date of filing, exclusive  
21 right to the use of the brand in this state.

22 (d) If the commissioner receives two or more acceptable applications for the same or a  
23 similar brand, he or she shall make a determination as to which application will be accepted. In  
24 making this determination, the commissioner shall consider all factors he or she deems relevant,  
25 including, but not limited to, the length of time that any of the applicants have used the brand prior  
26 to applying for registration under this section.

27 (e) The commissioner may not concurrently register more than one brand name in the  
28 name of the owner of livestock in this state.

29 (f) Registration of a brand is for five years. Registrations may be renewed for periods of  
30 five years under procedures prescribed by rule of the commissioner.

31 (g) The commissioner shall establish, by rule, fees for the registration, renewal,  
32 reinstatement, and reregistration of brands under this section and §19-38-3 of this code. The fees  
33 shall be reasonably related to the cost of the transaction, but shall not exceed \$25.

34 (h) In any civil or criminal proceedings in this state in which title to or ownership of livestock

35 is in dispute, a certificate of registration issued pursuant to subsection (c) of this section or of  
36 reregistration issued pursuant to §19-38-3 of this code is prima facie evidence of ownership by  
37 the holder of the certificate of all livestock bearing the brand described in the certificate.

**§19-38-3. Reregistration of brands.**

1 A brand currently registered under §19-38-2 of this code is personal property of the person  
2 in whose name it is registered and may be sold, assigned, transferred, or bequeathed or pass  
3 under the laws of descent and distribution as other personal property. However, the buyer or other  
4 assignee or transferee of a currently registered brand shall apply to the commissioner on a form  
5 prescribed and provided by the commissioner for the reregistration of the brand in the name of  
6 the buyer, assignee, or other transferee. On receipt of the application, fee, and such proof of sale  
7 or assignment that the commissioner may require, the commissioner shall reregister the brand in  
8 the name of the buyer, assignee, or other transferee.

**§19-38-4. Bill of sale for branded livestock sales - waybill or bills of lading for transported**  
**livestock.**

1 (a) A person who sells livestock branded with a brand shall execute to the purchaser a  
2 written bill of sale bearing the signature and residence of the seller, the name and address of the  
3 purchaser, the total number of livestock sold, a description of each animal sold as to sex and kind,  
4 and identification of the brand and shall give a copy of the bill of sale to each hauler of livestock,  
5 other than railroads, to accompany the shipment of livestock while in transit. The bill of sale or a  
6 copy shall be shown by the possessor on demand to any law-enforcement officer. The bill of sale  
7 is prima-facie evidence of the conveyance of title of the livestock described by the bill of sale.

8 (b) A person engaged in the business of transporting or hauling livestock in this state shall,  
9 upon receiving livestock for transportation, issue a waybill or bill of lading for all livestock  
10 transported or hauled. The waybill or bill of lading shall accompany the shipment of livestock and  
11 a copy shall be furnished to the person delivering livestock to the hauler. The waybill or bill of  
12 lading shall show the place of origin and destination of the shipment, the name of the owner of

13 the livestock, the date and time of loading, the name of person or company hauling the livestock,  
14 the number of livestock and a general description thereof, and identification of the brands. The  
15 waybill or bill of lading shall be signed by the person delivering the livestock to the hauler certifying  
16 that the information contained therein is correct.

**§19-38-5. Livestock brand offenses.**

1 (a) No person, with purpose to deprive the owner of livestock and without privilege to do  
2 so, shall knowingly apply a brand to livestock owned by another or knowingly destroy or alter a  
3 brand on livestock owned by another.

4 (b) No person shall knowingly offer to sell, sell, purchase, or transport livestock on which  
5 a brand has been destroyed or altered for the purpose of depriving the owner of the livestock.

6 (c) No person, without privilege to do so, shall knowingly use a brand registered to another.

7 (d) No person shall knowingly apply a brand to livestock in a way that overlaps, disfigures,  
8 mutilates, or destroys a brand or other mark of identification or ownership previously applied.

**§19-38-6. Administrative rules.**

1 (a) The commissioner shall propose rules for legislative approval in accordance with the  
2 provisions of §29A-3-1 et seq. of this code to implement, administer, and enforce this article.

3 (b) In cooperation with law-enforcement officers in this and other states, the commissioner  
4 shall develop a uniform procedure for notifying livestock marketing and slaughtering  
5 establishments of reported livestock thefts and of any brands or other identifying marks on such  
6 livestock.

**§19-38-7. Identification number registration for farm equipment, livestock and grain - fund.**

7 The commissioner may establish and administer a program for registering identification  
8 numbers for farm equipment, livestock, and grain. The rules may provide for a central registry of  
9 identification numbers, the transfer, renewal, reinstatement, and reregistration of numbers, for  
10 fees, assuring that registrants are entitled to exclusive use of a number during periods of current  
11 registration, and other matters necessary and convenient for administration or enforcement of the

12 program.

13 Moneys received by the commissioner pursuant to rules adopted under this section shall  
14 be deposited in the identification number fund, which is hereby created in the State Treasury. The  
15 commissioner shall spend moneys from the fund to pay the costs and expenses of administering  
16 this section.

**§19-38-8. Criminal penalties.**

1 (a) Whoever violates §19-38-4 of this code is guilty of a misdemeanor and, upon conviction  
2 thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one  
3 year, or both fined and confined.

4 (b) Whoever violates §19-38-5 (a) or (b) of this code is guilty of a felony and, upon  
5 conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor  
6 more than 10 years, or imprisoned in a state correctional facility not more than one year and fined  
7 not more than \$500.

8 (c) Whoever violates of §19-38-5(c) of this code is guilty of a misdemeanor and, upon  
9 conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more  
10 than one year, or both fined and confined.

11 (d) Whoever violates of §19-38-5(d) of this code is guilty of a misdemeanor and, upon  
12 conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more  
13 than one year, or both fined and confined.

14 (e) Whoever violates a rule of the commissioner adopted under §19-39-6 is guilty of a  
15 misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500  
16 or confined in jail not more than one year, or both fined and confined.

NOTE: The purpose of this bill is to establish a Livestock Branding Act; define terms; create registry of brands; provide for reregistration of brands; require bill of sale for branded livestock; authorize rulemaking; and provide for criminal penalties of violations of act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.