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PUBLISHED BY AUTHORITY

THE LIVESTOCK IDENTIFICATION BILL, 1998

(Bill No. 11 of 1998)

(To be presented by the Minister for Agriculture & Co-operatives)

MEMORANDUM OF OBJECTS AND REASONS

The object of the Bill is to provide for -

- (a) appointment of the Registrar of Livestock Identification marks;
- (b) the registration of personal livestock identification marks;
- (c) compulsory marking of livestock with identification marks, and
- (d) matters incidental to the objects of the Bill.

M. DWAMENA
Attorney-General

A BILL
entitled

An Act to provide for the registration of livestock identification marks and the compulsory marking of livestock with registered livestock identification marks.

ENACTED by the King and the Parliament of Swaziland.

Arrangement of Sections

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Short title and commencement.

1. This Act may be cited as the Livestock Identification Act, 1998 and shall come into effect on a date to be announced by the Minister by notice in the Gazette.

Interpretation.

2. In this Act unless the context otherwise requires -

"authorised traditional authorities" means traditional authorities and chiefs duly recognized as such by any law in force in Swaziland and includes the family council;

"cattle" means any bull, ox, steer, cow, heifer or calf;

"deed of transfer" means, a document duly signed by the livestock owner under the seal of an officer containing details of the identification of the livestock, their new owner and the reasons for the transfer of ownership.

"group" in relation to livestock, means either large stock, small stock or ostriches as the circumstances may require;

"identification mark" means a mark duly registered under this Act and made or placed on livestock in the prescribed manner;

"inspector" means any person appointed as an inspector of identification marks by the Minister, under section 8;

"livestock" means cattle and any other species of animals which the Minister may by notice in the Gazette declare as such for the purposes of this Act;

"marking instrument" means any instrument prescribed for marking livestock;

"mark" means to make or place a permanent identification mark on livestock;

"Minister" means the Minister responsible for Livestock;

"Ministry" means the Ministry under which the Livestock portfolio falls;

"officer" means a public officer whose duties are relevant or relating to the operations of this Act in the Ministry responsible for Livestock;

"owner" in relation to any registered identification mark, means the person in whose name such identification mark is registered or in relation to livestock, holder of livestock bearing an identification mark in whose name such an identification mark has been registered;

"prescribed" means prescribed by regulations made in terms of this Act;

"register" means the record kept in pursuance of this Act containing a list of identification marks for livestock registered thereunder;

"registered" means entered in the register in terms of this Act;

"registration" means entry of livestock identification marks in the register by the Registrar;

"Registrar" means the Registrar of Livestock Identification marks appointed under section 6;

"stud book" means a register kept by livestock breeders societies or association for the registration of pedigree livestock;

"speculator" means a person who buys livestock for the purpose of re-sale primarily as a profit generating venture;

"tattoo" means any mark made by inserting indian ink or other pigment or colouring matter into punctures on any livestock;

"temporal owner" means the holder of livestock under a deed of transfer;

"this Act" includes any regulation made in terms thereof; and

"Veterinary officer" includes veterinary assistants.

Brands Provided for in the other Laws.

3. (1) The provisions of this Act shall supersede the provisions of any other law in existence at the commencement of this Act, authorizing or requiring the identification of livestock.

(2) Subject to section 9 any person or the holder of any office required by the Minister so to do, shall, within the period specified by the Minister, submit to the Registrar any identification mark with which any livestock are so authorized or required to be marked.

(3) The registrar shall, before considering such or any other marks for registration, ensure that such or similar marks have not been registered and where duplication or confusion may occur, an alternative mark shall be submitted by the applicant to the Registrar for consideration.

Incidental powers.

4. (1) The Minister, Registrar, Inspector or such other authorised officer may require or order any person under this Act to produce any document, livestock identification marks, instruments or any other thing for the purposes of this Act or for the proper administration of this Act and such person so ordered shall comply with such order specified in that order.

(2) The Minister, Registrar, Inspector or such other authorized person, may, for the purposes of this Act do any lawful act which is permitted or which may be lawfully done under this Act for purposes of achieving the objects of this Act.

Delegation of Powers by Minister.

5. The Minister may delegate to any officer of the Ministry responsible for livestock any of the powers conferred upon the Minister by this Act.

Registrar of Livestock Identification marks.

6. (1) The Minister shall appoint a public officer in the Ministry to be Registrar of Livestock Identification marks for Swaziland.

(2) The functions and duties of the Registrar shall, in addition to those found in this Act, be prescribed in the Regulations and include such other functions and duties as may be specified by the Minister.

Register.

7. The Registrar shall keep a register in the prescribed form of all identification marks in Swaziland in terms of this Act.

Appointment of Public Officers as Inspectors.

8. The Minister may appoint public officers to be inspectors whose functions shall include inspection of identification marks, marking instruments, identification mark certificates and such other duties as may be deemed necessary.

Registration of Identification Marks.

9. (1) Every person who owns livestock or who lawfully holds livestock at the coming into force of this Act, shall register an identification mark with the Registrar within six months of the date of the promulgation of this Act.

(2) Every owner of livestock identification marks that were registered in terms of any previous legislation shall re-register such livestock identification marks within twelve months after the commencement of this Act provided they are in accordance with this Act.

(3) Any other person who becomes or intends to be an owner, subsequent to the coming into force of this Act, shall make an application in terms of section 10 and shall, within the time specified under section 13 (1), mark such livestock and further comply with the provisions of this Act.

(4) The application mentioned in subsection (3) shall be made within the time prescribed in the regulations or such reasonable time after acquiring ownership of the livestock.

(5) The Minister, for the effectiveness of this Act, may, by notice in the Gazette amended, the time limits provided in this section.

Application for registration of identification marks.

10. Every person required by this Act to register an identification mark shall submit an application in writing to the Registrar on the prescribed form with a sketch of the proposed identification mark.

Allocation of identification marks.

11. The registrar shall, before registering any identification mark, ensure that it has not been registered in the name of any other person and where duplication may occur, the applicant shall provide an alternative or a new identification mark which may be allocated by the Registrar.

Certificate of registration.

12. Upon the registration of an identification mark, the Registrar shall issue and transmit to the applicant a certificate of registration.

Duties of owners of livestock.

13. (1) Each owner of livestock shall -

- (a) within three months of the date of the certificate of registration referred to in section 12, mark that owners livestock in the prescribed manner with the livestock identification mark registered in that owners name and ensure that the country mark and the dip tank mark is marked on such livestock as prescribed in the Regulations.
- (b) within fourteen days of the date on which the owner becomes the owner of livestock, mark such livestock in the prescribed manner with an identification mark registered in that owner's name;
- (c) in the case of cattle, mark that owners calves immediately after weaning, that is to say, before the calf is nine months old;
- (d) in the case of cattle, identify the calves by an ear-tag within three calendar days after birth in the manner as may be prescribed, that is, before the operation of paragraph (c) of this subsection;
- (e) in the case of sheep or goats, identify such off-spring within three calendar days after birth in the manner as may be prescribed;
- (f) where livestock is erroneously marked, draw the inspector's attention and mark such livestock in the correct and prescribed manner.
- (g) if an identification mark on livestock becomes invisible or indistinct, draw the inspector's attention and against mark the livestock in question in the prescribed manner.
- (h) where an identification mark on the livestock is, in the opinion of the Registrar, an inspector, a police officer or such other person appointed by the Minister, is invisible or indistinct, the owner may be given written notice to mark the livestock clearly with the owners registered identification mark within fourteen days and the owner shall comply.

(2) No person shall in any manner -

- (a) dispose or acquire any livestock unless the livestock has been marked or identified in the prescribed manner.
- (b) acquire any livestock unless the person disposing of the livestock furnishes the person acquiring the livestock with a deed of transfer or the document of identification referred to in section 8 of the Stock Theft Act 1982;

- (c) hold livestock not bearing that person's identification mark, unless that person holds a lawful deed of transfer in respect of that livestock.

Size of identification marks.

14. The size of the characters marked on livestock shall be in accordance with the specifications contained in the regulations.

Method of marking.

15. All marks shall be branded, imprinted or tattooed upon livestock in accordance with the specifications contained in the regulations and in the certificate of registration.

Police and poundmasters to be furnished with a list of identification marks.

16. (1) At the end of each quarter in every year the Registrar shall supply every police regional headquarters, regional veterinary officers and poundmasters in Swaziland a list of all livestock identification marks or brands registered during the past three months.

(2) The Registrar shall further provide the persons named in subsection (1) with an update or current list of existing and cancelled livestock identification marks or brands in the same manner as in subsection (1).

Transfer of registration and identification marks.

17. (1) Subject to the provisions of this Act, any owner of livestock of the appropriate group may, on the prescribed form, apply to the Registrar for the transfer of the registration of an identification mark from the name of any other person into that applicant's own name.

(2) The application shall be accompanied by the consent in writing of the owner of the identification mark.

(3) If the Registrar is satisfied that the application is in order, the Registrar shall transfer the registration of the identification mark in question into the name of the applicant and issue the applicant a certificate of registration in the prescribed manner.

Transfer and cancellation of registration after the death of owner.

18. (1) Any person acquiring in any manner any livestock from the estate of a deceased owner with a registered identification mark may, in the prescribed manner apply to the Registrar for the transfer of the registration of such identification mark to the applicant's own name.

(2) The provisions of sections 10 or 17, as the case may be, shall *mutatis mutandis* apply in respect of any such application or acquisition of ownership.

(3) If the Registrar is satisfied that the owner of a registered identification mark is deceased and the Master of the High Court or authorized traditional authority consents and that no other application in terms of sub-section (1) has been made for the transfer of such identification mark within the prescribed period after the death of such owner, the Registrar shall cancel the registration of such an identification mark and transfer the registration of the identification mark to the new owner.

Surrender of identification marks.

19. (1) Where a registered identification mark is no longer required by the owner for whatever reason, the owner of such an identification mark shall accordingly notify the Registrar in writing of the intention to de-register the identification mark.

(2) The Registrar shall, on receipt of such notice and on surrender of the certificate of registration by the owner of the identification mark or any other thing which may be required by the Registrar, cancel the registration of such an identification mark.

Cancellation of identification marks.

20. (1) If the Registrar, on information supplied by any person or information available to the Registrar, is of the opinion that an identification mark is not being used, the Registrar may cause notice to be given in writing to the owner and to that owners last-known address calling upon the owner to show cause why the identification mark should not be cancelled.

(2) In default of a reply by the owner or a reply not to the satisfaction of the Registrar, the Registrar shall after the lapse of three months after the first notice cancel such registration.

(3) The Registrar shall publish the notice mentioned in subsection (1) in three instances, each separated by a period of not less than fourteen calendar days, in a newspaper of general circulation and in a Government Gazette at the owner's expense.

(4) Where the Registrar, in response to the notice published in terms of this section, receives any objections, the Registrar shall hear and decide on the objections.

(5) Any person dissatisfied with the Registrar's decision or action in terms of this section, may appeal to the Minister against the decision or action to the Registrar within 14 days of the decision or action as may be or such time stipulated in the Regulations.

Notification of Change of Address.

21. Where the owner of a registered identification mark changes that owner's postal or residential address, that owner shall forthwith, in person or in writing notify the Registrar of the owner's new address.

Inspection of registers.

22. (1) The register kept in terms of this Act and the lists and descriptions of identification marks shall be open to inspection by the public at convenient times subject to the payment of a prescribed fee.

(2) The Auditor General and the Director of Veterinary and Livestock Services shall each at least once a year inspect all registers kept in terms of this Act.

Butchers and Dealers Register.

23. (1) Every speculator, operator of a slaughter facility, poundmaster or auctioneer shall keep a register in the prescribed manner recording the transactions and the identification marks of every livestock slaughtered, dealt in, impounded, sold or bought by any such person.

(2) Further such a register shall reflect particulars of such speculator, operator of a slaughter facility, poundmaster or auctioneer and shall be subject to public inspection.

(3) Where applicable the sellers and purchasers of any livestock and their addresses shall also be recorded in such register.

Stray Livestock.

24. (1) For purposes of this section "stray livestock" includes livestock found loitering on or near a public road or highway and not being herded by any person or being herded but not in a manner conducive to the safety of other users of that road and which is likely to cause or contribute to a road or traffic accident.

(2) Any person who finds stray livestock in any place shall confine under custody such livestock and thereafter report such find and confinement -

(a) firstly, and where applicable, to at least two of that person's neighbours or nearest homesteads or to such authorised traditional authorities and in default of which, to two nearest homesteads or authorised traditional authorities in the vicinity of where the stray livestock is found, as soon as may be practicable and in any event within twelve hours of such find or confinement; and

(b) secondly, to the nearest veterinary office or officer, police post or officer or poundmaster as soon as may be practicable and in any event within seventy-two hours of such find or confinement.

(3) On receipt of the report referred to in subsection (2) -

(a) in the case of -

(i) a veterinary officer or official;

(ii) police officer; or

(iii) authorised traditional authority,

such officer or authorised traditional authority shall immediately take all reasonable action to inform the owner of the stray livestock or identification mark as marked on the stray livestock of the find and confinement; and

(b) in the case of a poundmaster, the poundmaster shall immediately impound such livestock and thereafter take all reasonable action to inform the owner of the stray livestock or identification mark as marked on the stray livestock of the impoundment and of any other action the poundmaster may have taken or intends to take subsequent to the notification.

(4) Any person claiming the return or ownership of the stray livestock from any person mentioned in this section shall first prove lawful justification for the return or ownership of the stray livestock to the satisfaction of the holder or the person in whose custody the stray livestock is, by producing -

(a) proper and lawful personal identification documents of that claimant; and

(b) the certificate of registration referred to under section 12, or in appropriate circumstances -

(i) the deed of transfer, referred to under section 13 (2) (b); or

(ii) the other document also referred to under section 13 (2) (b).

(5) The owner, of the stray livestock or of the identification mark as marked on the stray livestock, shall be responsible for the payment of all direct or indirect charges, fees and any other expenses connected with or arising from the operation of this section.

(6) For the purposes of this section, no person shall -

(a) release or cause to be released to another person or place; or

(b) receive or cause to be received or take or cause to be taken from another person or place,

any stray livestock without complete compliance with the provisions of subsection (4).

Notification of impounded livestock.

25. (1) On receipt of any livestock to be impounded, the poundmaster shall establish the identity of the owner and shall notify such owner of the identification mark of livestock and the regional veterinary officer to which the dip tank marks relate within 14 days through expeditious means including the mail, radio and printed media.

(2) The costs incurred in notifying such owner shall be additional to costs and fees the poundmaster is permitted to charge by any law and shall be recovered from the owner on presentation or when the livestock is claimed or from the sale of such livestock if not claimed within the period specified in subsection (3).

(3) Any livestock remaining unclaimed thirty days after the notification in subsection (1) shall be liable to sale by public auction subject to subsection (4).

(4) Before a public auction is conducted under this section, the poundmaster shall advertise the public auction in three instances each separated by a period of not less than five calendar days in a newspaper of general circulation and in a Government Gazette.

(5) The first advertisement under subsection (4) shall only be caused by the poundmaster to be published after the expiration of the thirty days period mentioned in subsection (3).

(6) The poundmaster shall, after the compliance with the provisions of this section and any other lawful directives as may be prescribed, cause to be sold by public auction any impounded livestock which is subject to subsections (1), (3) and (4).

(7) For purposes of notification a registered letter to the address entered in the register as the address of the owner and copied to the veterinary official controlling the owner's diptank shall be deemed to be sufficient notice.

Pound Marks.

26. The Minister may if the Minister deems necessary allocate a special identification mark to every pound in Swaziland and the poundmaster shall so mark all livestock sold by that poundmaster in the prescribed manner.

Special Marks.

27. The Minister shall, upon the recommendation of the Director of Veterinary and Livestock Services, allocate special identification marks for the purpose of disease control and to facilitate international trade.

Registration of Livestock Markers.

28. (1) Any person who intends to be a livestock marker shall, register with the Registrar in the prescribed form.

(2) Each livestock marker, referred to in subsection (1), shall keep a register in the prescribed form for purposes of this Act and for other requirements which may be specified in the Regulations.

(3) A registered livestock marker, before assuming the duties of a livestock marker, shall be a holder of a valid licence issued by the Registrar upon application and payment of a licence fee.

Powers of entry, Investigation and Seizure.

29. (1) An officer, inspector, or police officer on reasonable suspicion and upon production of identification, may enter on or into any place where livestock is kept or any other place and inspect any livestock, hides, skins and marking instruments and compare the same with the identification mark certificate which shall be produced, on demand, to such officer, inspector or police officer.

(2) An officer, inspector or police officer may investigate any person for anything in connection with the purposes or objectives of this Act and whilst carrying out such duties do anything which may be lawfully done to ensure compliance with this Act or the prevention of its abuse or contravention.

(3) Every such officer, inspector or police officer may seize and impound any livestock, hides and skins, marking instrument, equipment and certificate in respect of which the possessor fails to produce proof of right to possess or to ownership to the satisfaction of such officer, inspector or police officer and may, where necessary, employ any person or persons to assist in carrying out the provisions of this section.

(4) Every such officer, inspector or police officer may seize and impound anything which the officer, inspector or police officer reasonably believes could be of evidential value in a trial or subsequent trial or prosecution of an offender, or for anything which is a purpose or object of this Act.

(5) Every such officer, inspector or police officer shall accordingly keep a proper record under this section and shall notify the nearest police post, the Registrar and the Director of Veterinary and Livestock Services of any contravention to this act.

(6) Any properly seized and impounded under this section shall be dealt with and disposed of in terms of the applicable law.

Identification Mark to be Prima Facie Evidence of Ownership.

30. On the trial of any person for the theft of any hide, skin or livestock or for receiving without a deed of transfer any such hide, skin or livestock or any part thereof knowing the same to have been stolen, the prosecution shall give evidence that the mark upon the hide or livestock alleged to have been stolen is the identification mark of the person alleged to have been the owner of such hide, skin or livestock or of some person through or from whom such owner derived the right to such livestock and a certificate purporting to be under the hand of the Registrar of a certified copy of such owners identification mark issued by the Registrar shall constitute prima facie proof of the facts therein.

Mutilation, defacing etc.

31. (1) No person shall deface, erase, alter, obliterate or mutilate any hide, skin or identification mark except in terms of this Act.

(2) Subsection (1) and (4) shall not apply to a skin or hide from livestock which was lawfully killed by a person who had a lawful right to kill such livestock or which the livestock's death is not caused by any unlawful act and provided that the mutilation, defacing, erasing or obliterating is lawful.

(3) On the trial of any person for theft of any livestock, hide or skin where there is reasonable suspicion that the livestock is stolen and the hide or skin has been mutilated in such a way that any identification mark is removed or rendered illegible, the onus of proving ownership or lawful possession of such livestock, hide or skin shall rest on the accused person.

(4) It shall be an offence for any person to deface, erase, alter, obliterate, or mutilate any hide, skin or identification mark contrary to the purpose or provisions of this Act or where the result would or likely to cancel the lawful owner or identification of the lawful owner of the livestock.

Prohibited Marking of Livestock.

32. (1) No person shall -

- (a) Subject to the provisions of subsection (2), mark any livestock with an identification mark which is not registered;
- (b) mark any livestock with a registered identification mark without the authority of the owner of such an identification mark or in terms of this Act;
- (c) mark any livestock with a registered identification mark other than in the prescribed manner;
- (d) mark any livestock with an identification mark which is registered in the name of a person who is not the owner of such livestock without the written consent of that person;
- (e) use more than one registered identification mark in respect of the same group of livestock, unless the registration of all such identification marks were lawfully obtained and still permitted by this Act.

(2) The provisions of paragraphs (a) and (c) of subsection (1) shall not apply in respect of stud book registered livestock.

Offences and Penalties.

33. (1) A person who contravenes any provision of this Act where punishment is not specified shall, on conviction, be liable to a fine not exceeding E10 000 or imprisonment for a period not exceeding 5 years or both, provided that theft of livestock shall be treated as a separate offence for purposes of punishment.

(2) Without prejudice to subsection (1), any person who -

- (a) fails to register as a livestock marker while operating as one;

- (b) has in that person's possession or has possessed any marking instrument other than that person's own registered identification mark and who fails to give acceptable excuse or reason, in law, for such possession;
- (c) fails to keep a proper record when so required by this Act;
- (d) contravenes any provision of section 31;
- (e) has in that person's possession any livestock identified otherwise than in accordance with or in a manner allowed by the provisions of this Act;
- (f) alters, obliterates, mutilates or cancels any identification mark contrary to the purposes of provisions of this Act;
- (g) without lawful reason has in that person's possession or sells, or otherwise disposes of, or offers for sale or disposal in any manner, to any person any livestock on which an identification mark has been altered, mutilated or cancelled contrary to the purposes or provisions of this Act;
- (h) without lawful reason has in that person's possession, or sells, or otherwise disposes of, or offers for sale or disposal in any manner to any person, livestock of which any ear or portion thereof has been cut off contrary to the purposes of provisions of this Act;
- (i) hinders or obstructs an officer, inspector or any other person or a police officer in the execution of any duties or requirements under the Act;
- (j) fails or refuses to produce, when required in terms of this Act by the Registrar, an officer or a police officer to do so, any livestock or other thing in that person's possession or control;
- (k) with intent to evade or defeat the provisions of this Act, alters any certificate or document issued in terms of this Act;
- (l) in terms of section 9 obtains for that person's benefit or use, except in the prescribed manner, the registration of more than one identification mark in respect of the same group of livestock;
- (m) fails to comply with any provision of section 13;
- (n) in any application made in terms of this Act, makes or causes to be made a statement which is false in a material respect;
- (o) falsely holds oneself out to be the Registrar or an authorized person;
- (p) marks livestock that are not, that person's property and is not registered in terms of section 27;
- (q) does any act whose import is to defeat the purposes, objects or provisions of this Act;
- (r) whilst being or not being the Registrar, unlawfully or contrary to the provisions of this Act, registers a livestock identification mark, livestock or issues a certificate contemplated or required for the purposes of this Act;

(s) whilst being or not being an officer, inspector or police officer does any act or thing contrary to the purposes or provisions of this Act;

(t) operates as a livestock marker without a valid licence;

commits an offence and shall, on conviction be liable to a fine not exceeding E5 000 or imprisonment for a period not exceeding 36 months or both.

(3) Notwithstanding the penalty imposed under this section, a court may in addition order compensation and return of the stolen property to the owner.

(4) The Minister may for a good reason amend the amount payable as fines by notice or regulations published in the Government Gazette.

(5) A Magistrate's Court shall, notwithstanding any provision in any other law, have jurisdiction to impose any penalty provided for in terms of this Act.

Regulations.

34. (1) The Minister may by notice published in the Gazette, make such regulations as the Minister deems necessary, to control, regulate, restrict, or prohibit for the purpose of carrying out and giving effect to this Act, or to prevent evasion or contravention of its provisions.

(2) Without prejudice to the generality of sub-section (1), the regulations may provide for -

- (a) the prescription of anything which is required or permitted under this Act;
- (b) the size, shape, pattern and composition of prescribed identification marks;
- (c) the size, shape and construction of marking instruments;
- (d) the persons by whom, and the conditions under which marking instruments may be made, altered, repaired and supplied;
- (e) the age which livestock shall have attained before they may be marked;
- (f) the manner in which, the parts on which and the material with which livestock shall or may not be marked;
- (g) the conditions on which an owner of livestock may obtain more than one identification mark in respect of the same group of animals;
- (h) the fees which may be payable under this Act; and
- (i) the allocation of special identification marks including microchips and bar codes.

(3) The Minister may make different regulations in respect of different kinds of identification marks, and different groups or species of livestock and different areas.

Repeal of Laws.

35. (1) The Great Stock Brands Act, 1937 (Act No. 64 of 1937), is repealed.