

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the  
Capitol in the City of Bismarck, on Monday, the sixth day of January,  
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2393  
(Senators O'Connell, Solberg, Tomac)  
(Representative Nicholas)

AN ACT to create and enact sections 36-04-10.1 and 36-05-13.2 of the North Dakota Century Code, relating to violations of laws governing livestock dealers and livestock auction markets; to amend and reenact sections 36-04-02, 36-04-05.1, 36-04-10, 36-04-13, 36-05-02, 36-05-04.1, and 36-05-14 of the North Dakota Century Code, relating to the licensing of livestock dealers and livestock auction markets; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 36-04-02 of the North Dakota Century Code is amended and reenacted as follows:

**36-04-02. Restrictions on application of provisions of chapter.** The provisions of this chapter do not apply to:

1. Farmers who or farm associations which buy and sell livestock, poultry, or wool among themselves as producers.
2. Farmers who or farm associations which purchase livestock or wool to complete a load of their own livestock or wool for shipment to market if the amount so purchased does not exceed twenty-five percent of a ~~railroad carload~~ truckload.
3. Cooperative livestock or wool marketing associations of producers of livestock or wool in their dealings with their members.
4. Livestock purchased by local butchers for slaughter or processing in their business for local home consumption.

**SECTION 2. AMENDMENT.** Section 36-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**36-04-05.1. Records release required with application for licensure.** A dealer shall file, together with the license application, a release authorizing the access of the commissioner to financial records of the dealer held by financial institutions, accountants, and other sources. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing a dealer or in the course of an investigation of a dealer ~~when instituted due to a complaint against the dealer or when based upon evidence sufficient to establish probable cause of a violation of this chapter or the Packers and Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 481 et seq.].~~ Any information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to the attorney general, other state agencies, and any prosecuting officials requiring the information for use in pursuit of official duties.

**SECTION 3. AMENDMENT.** Section 36-04-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-04-10. Refusal or revocation of license.** The department shall refuse to grant a license, or shall revoke a license which it has granted, when it is satisfied that:

1. The applicant or licensee has violated any of the laws of this state governing the handling, shipment, or transportation of livestock or wool;

2. The applicant or licensee has been guilty of deceit, fraud, dishonesty, forgery, or theft as a dealer in livestock or wool, or in dealing therein;
3. The applicant made or caused to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
4. The applicant has failed to keep and maintain suitable records, which disclose all purchases and sales of livestock, or has refused, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any and all of such records relating to the dealer's business;
5. The applicant has failed or refused to furnish the information required under this chapter and as prescribed by the department; ~~or~~
6. The applicant has failed to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1;
7. The applicant or licensee has failed to pay brand inspection fees or veterinarian fees as required by law;
8. The applicant or licensee has failed to collect beef promotion assessments pursuant to chapter 4-34; or
9. The applicant or licensee has failed to pay for livestock purchased. Such failure includes the issuance of a check as payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

**SECTION 4.** Section 36-04-10.1 of the North Dakota Century Code is created and enacted as follows:

**36-04-10.1. Unlawful acts.** It is a violation of this chapter for any applicant or licensee to:

1. Violate any of the laws of this state governing the handling, shipment, or transportation of livestock or wool;
2. Make or cause to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
3. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any or all of such records relating to the dealer's business;
4. Fail or refuse to furnish the information required under this chapter as prescribed by the department;
5. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1;
6. Fail to pay brand inspection fees or veterinarian fees as required by law;
7. Fail to collect beef promotion assessments pursuant to chapter 4-34; or
8. Fail to pay for livestock purchased. Such failure includes the issuance of a check or payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

**SECTION 5. AMENDMENT.** Section 36-04-13 of the North Dakota Century Code is amended and reenacted as follows:

**36-04-13. Application by department for appointment of trustee - Hearing - Appointment.**

Upon the insolvency of a dealer as defined in section 36-04-01, the department ~~shall~~ may apply to the

district court of the county in which the dealer maintains its principal place of business for the appointment of itself as trustee. Upon such notice to the dealer as the court shall prescribe, but not exceeding ten days, or upon waiver of such notice in writing by the dealer, the court shall proceed to hear and determine such application in a summary manner. If it appears to the court that the dealer is insolvent within the meaning of this chapter and that it would be for the best interest of persons holding claims against the dealer for the purchase price of livestock or wool sold to such dealer or to his agent that the department shall execute such trust, the court shall issue an order appointing the department as a trustee, without bond, and the department shall proceed to perform its duties as such trustee in the manner set out in this chapter without further direction from the court.

**SECTION 6. AMENDMENT.** Section 36-05-02 of the North Dakota Century Code is amended and reenacted as follows:

**36-05-02. Premises excluded from application of chapter.** The provisions of this chapter do not apply to:

1. Any place used solely for the dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing his the person's business.
2. The premises of any butcher, packer, or processor who receives animals exclusively for immediate slaughter.
3. Any place where any individual or any duly constituted association of breeders of livestock of any class assembles and offers for sale and sells under his or its the individual's or association's management registered livestock or breeding sires owned by the individual or members of the association if such individual or association assumes all responsibility of the sale, guarantees title of such livestock, and makes proper provision for the inspection of all animals sold.
4. Any place where a duly constituted association of breeders of livestock of any class assembles and offers for sale and sells under its management, at an annual production sale, which sale may not exceed twenty-one calendar days, livestock raised or held for at least one year by producers affiliated with such association, provided such association assumes all responsibility of the sale, guarantees title of such livestock, and makes proper provision for the inspection of all animals sold.

**SECTION 7. AMENDMENT.** Section 36-05-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**36-05-04.1. Records release required with application for licensure.** A livestock auction market shall file, together with the license application, a release authorizing the access of the commissioner to financial records of the livestock auction market held by financial institutions, accountants, and other sources. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing a livestock auction market or in the course of an investigation of a livestock auction market ~~when instituted due to a complaint against the market or when based upon evidence sufficient to establish probable cause of a violation of this chapter or the Packers and Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.].~~ Any information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to the attorney general, other state agencies, and any prosecuting officials requiring the information for use in pursuit of official duties.

**SECTION 8.** Section 36-05-13.2 of the North Dakota Century Code is created and enacted as follows:

**36-05-13.2. Unlawful acts.** It is a violation of this chapter for any auction market or person to:

1. Make or cause to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
2. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse, during reasonable hours, to allow any authorized agent of the

department to have access to inspect and to copy any or all of such records relating to the dealer's business;

3. Fail or refuse to furnish the information required under this chapter as prescribed by the department;
4. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1;
5. Fail to pay brand inspection fees or veterinarian fees as required by law;
6. Fail to collect beef promotion assessments pursuant to chapter 4-34; or
7. Fail to pay for livestock purchased. Such failure includes the issuance of a check or payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

**SECTION 9. AMENDMENT.** Section 36-05-14 of the North Dakota Century Code is amended and reenacted as follows:

**~~36-05-14. Penalty for violation of provisions of chapter~~ Penalties - Criminal - Civil.** ~~Any person who violates any of the provisions of this chapter is guilty of a class B misdemeanor.~~

1. Any auction market or person who violates any of the provisions of this chapter is guilty of a class A misdemeanor.
2. Any auction market or person who violates any of the provisions of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing under chapter 28-32.

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2393.

Senate Vote:      Yeas    47            Nays    0            Absent    2

House Vote:      Yeas    94            Nays    0            Absent    3

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 1997.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 1997.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 1997,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State