

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**3 **SECTION 1. AMENDMENT.** Section 36-05-01 of the North Dakota Century Code is  
4 amended and reenacted as follows:5 **~~36-05-014.1-27-01.~~ Definitions.**

6 In this chapter, unless the context or subject matter otherwise requires:

- 7 1. "Commissioner" means the agriculture commissioner.
- 
- 8 2. "Livestock" means horses, mules, asses, bison, cattle, swine, sheep, farmed elk, and
- 
- 9 goats.

**NOTE:** This definition is more expansive than the ones contained in North Dakota Century Code Sections 36-05.1-01 and 36-11-01.1. However, it is less expansive than the definition of livestock in Sections 11-33-02.1, 11-33-22, 58-03-11.1, and 58-03-17.

- 10 3. "Livestock auction market" means a place or establishment conducted or operated for
- 
- 11 compensation or profit as a public market or a private buying station, consisting of
- 
- 12 pens or other enclosures and their appurtenances; in which livestock is received,
- 
- 13 held, or kept for sale; and where such livestock is sold or offered for sale, at either
- 
- 14 public auction or private sale.

15 **SECTION 2. AMENDMENT.** Section 36-05-02 of the North Dakota Century Code is  
16 amended and reenacted as follows:17 **~~36-05-024.1-27-02.~~ Premises excluded from application of chapter.**

18 The provisions of this chapter do not apply to:

- 19 1. Any place used solely for the dispersal sale of the livestock of a farmer,
- ~~dairyman~~
- dairy
- 
- 20
- producer
- , livestock breeder, or feeder who is discontinuing the person's business.

**NOTE:** The term "dairyman" does not appear in any other Century Code provision. "Dairy producer" is more commonly used.

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 the individual's or association's management registered livestock or breeding sires owned by the individual or members of the association if ~~such~~the individual or association ~~assumes~~;
  - a. Assumes all responsibility of the sale, ~~guarantees~~;
  - b. Guarantees title of ~~such~~the livestock; ~~and makes~~
  - c. 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~~ not exceeding twenty-one calendar days, livestock raised or held for at least one year by producers affiliated with ~~such~~the association, ~~provided such if~~ the association ~~assumes~~;
  - a. Assumes all responsibility of the sale, ~~guarantees~~;
  - b. Guarantees title of ~~such~~the livestock; ~~and makes~~
  - c. Makes proper provision for the inspection of all animals sold.

**SECTION 3. AMENDMENT.** Section 36-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**36-05-034.1-27-03. License requirements - Application - Fee - Commission schedule - Facilities.**

~~No~~A person may ~~not~~ establish or operate a livestock auction market within this state without first procuring a license to do so from the commissioner. The commissioner may not approve any application without written permission from the state veterinarian. An applicant for ~~such~~a license shall ~~do all of the following~~:

1. Make a written application ~~therefor~~ in the form prescribed by the commissioner;
2. File ~~such~~ evidence ~~as~~required by the state board of animal health or the commissioner ~~may require showing that to show~~ the person is financially responsible to operate ~~such~~ an auction market and ~~that~~ the person will own or control adequate facilities for the care, sorting, feeding, loading and unloading, and shipment of livestock;
3. Pay to the commissioner a license fee of two hundred dollars;

4. File with the commissioner a schedule of the fees and commissions ~~which~~that will be charged to owners, sellers, or their agents. The schedule must be posted conspicuously at the auction market. ~~This~~The schedule may not be altered except upon notification to the commissioner ~~and reposting of the changed.~~ The altered schedule- must be reposted upon notification to the commissioner;
5. State the ~~place~~location where the applicant proposes to operate a livestock auction market.;
6. Make a complete and detailed description of the property and facilities proposed to be used in connection with ~~such~~the livestock auction market.;
7. Make a showing of public convenience and necessity to the satisfaction of the commissioner.

**SECTION 4. AMENDMENT.** Section 36-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**36-05-044.1-27-04. Bond to accompany application for license - Amount - Approval - Conditions - Exemptions.**

Each

1. An applicant for a license to operate a livestock auction market shall file a surety bond of at least ten thousand dollars with the application for license, or ~~for a renewal thereof, a surety bond in the minimum amount of ten thousand dollars~~of a license. The bond must be approved by the commissioner as to the amount, form, and surety ~~by the commissioner~~. The commissioner must be named the obligee in the bond, ~~and the~~ The bond must be for the benefit of, and for the purpose of protecting, any person selling to or through the licensed livestock auction market, or buying livestock through or from the ~~licensee~~licensed livestock auction market or the licensee's agent. The commissioner may ~~demand~~require an additional bond of the licensee ~~whenever in the commissioner's judgment~~when the commissioner deems the volume of the business of the licensee warrants ~~such demand~~the additional bond. The bond must be conditioned for:
  - a. The payment of all money received by the licensee and the operator of ~~such~~the livestock auction market ~~as such operator~~, less reasonable expenses and agreed commissions;

2. ~~b.~~ The faithful performance by the licensee of the duties ~~as such of a livestock~~  
auction market operator; and

~~3. c.~~ The faithful performance by the licensee of all ~~of the provisions of this code~~ duties  
imposed by law relating to the purchase, sale, or holding of livestock.

2. The bond must cover the entire license period. ~~Provided, however, where~~ if the  
commissioner is the trustee or obligee of a surety bond ~~wherein~~ in which the auction  
market operator is the principal and is operating and is bonded under the Packers and  
Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.], the  
commissioner may accept ~~such~~ that bond in lieu of the one ~~herein otherwise~~ required  
under this section, except that the minimum bond requirements of ten thousand dollars  
will be continued.

**SECTION 5. AMENDMENT.** Section 36-05-04.1 of the North Dakota Century Code is  
amended and reenacted as follows:

**~~36-05-04.1-27-05.~~ Records release required with application for licensure.**

A livestock auction market shall file, ~~together with the license application,~~ a release in a  
form approved by the commissioner authorizing the ~~access of the commissioner to~~ access  
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. 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 6. AMENDMENT.** Section 36-05-05 of the North Dakota Century Code is  
amended and reenacted as follows:

**~~36-05-05.1-27-06.~~ Expiration and renewal of license - Fee returned upon failure to**  
**issue or renew license.**

Each license issued under this chapter expires on the thirty-first day of March ~~next~~ following  
the date of issuance. Each license must be renewed annually on or before March thirty-first.  
The fee for a renewal license is the same as ~~that prescribed~~ for an original license. If the

1 commissioner does not issue a requested original license or renewal license, the fee paid must  
2 be refunded to the applicant. ~~Licenses issued in 1991 extend until March 1992.~~

3 **SECTION 7. AMENDMENT.** Section 36-05-06 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **36-05-064.1-27-07. Investigation of auction market - Hearing to determine whether**  
6 **license should be issued or revoked.**

- 7 1. The commissioner, upon the commissioner's own motion or upon a complaint by any  
8 person, may enter into an investigation of the sales and transactions of any livestock  
9 auction market and of the conditions under which ~~it~~the business of the livestock  
10 auction market is conducted. The commissioner ~~when the commissioner deems it~~  
11 necessary may conduct a hearing to determine whether the license of any auction  
12 market should be revoked or whether the application of the owner or operator of a  
13 livestock auction market for an original or renewal license should be denied.

**NOTE:** It is not likely the commissioner would conduct a hearing the commissioner does not deem necessary.

- 14 2. The commissioner shall conduct an investigation of an alleged violation of this chapter  
15 when:
- 16 a. A complaint, allegation, or order to show cause, alleging an act which would  
17 constitute a violation of this chapter, is ~~issued by or sought~~filed by the packers  
18 and stockyards administration of the United States;
  - 19 b. The commissioner has information sufficient to form a reasonable belief that a  
20 violation of this chapter has occurred; or
  - 21 c. The commissioner has received a sworn statement, affidavit, or other evidence  
22 from any person alleging a violation of this chapter.
- 23 3. The commissioner shall conduct a hearing to determine whether a violation has  
24 occurred when, pursuant to an investigation, probable cause exists that a violation of  
25 this chapter has occurred.
- 26 4. The commissioner shall conduct an audit, or cause an audit to be conducted, when  
27 probable cause exists that any livestock auction market has violated any of the  
28 financial provisions of this chapter, when it reasonably appears that the liabilities of the  
29 livestock auction market exceed its assets, or when the auction market has refused to  
30 pay a proper claim without reasonable cause.

1       **SECTION 8. AMENDMENT.** Section 36-05-06.1 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       ~~36-05-06.14.1-27-08.~~ **Cease and desist authority.**

4       The commissioner may issue an order to cease and desist when, in the opinion of the  
5 commissioner, ~~or~~ any auction market within the state is taking or planning any action which is or  
6 may be in violation of this chapter. If an order is granted, the commissioner shall conduct a  
7 hearing within thirty days of the issuance of the order to determine whether the actions of the  
8 person named in the order violated or would have violated this chapter. ~~The~~After the hearing,  
9 but not later than forty-five days after the issuance of the order, the commissioner shall, ~~after~~  
10 ~~the hearing but not later than forty-five days after the issuance of the order,~~ revoke the order or  
11 make it permanent, as ~~the facts required~~determined by the evidence.

12       **SECTION 9. AMENDMENT.** Section 36-05-06.2 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14       ~~36-05-06.24.1-27-09.~~ **Injunctive authority.**

15       The commissioner may, seek an order from the district court of Burleigh County to enjoin a  
16 prohibited act when ~~in the commissioner's belief~~the commissioner believes any auction market  
17 or person is violating this chapter or is pursuing a course of action which may lead to a violation  
18 of this chapter, ~~seek an order from the district court of Burleigh County to enjoin the prohibited~~  
19 ~~act.~~

20       **SECTION 10. AMENDMENT.** Section 36-05-07 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22       ~~36-05-074.1-27-10.~~ **Sanitary regulations of livestock auction market.**

23       ~~Every~~Each livestock auction market must be maintained in a sanitary condition in  
24 accordance with this chapter. Any portion ~~thereof~~of a livestock auction market used for the  
25 handling of hogs, including all hogpens, alleys, and auction markets, must be equipped with  
26 concrete floors at least three inches [7.62 centimeters] thick. ~~Such~~The concrete floors must be  
27 cleaned and disinfected after each sale, or in case of a continuous sale, not less than once  
28 each week or as ~~often as may be~~ prescribed by the state board of animal health.

29       **SECTION 11. AMENDMENT.** Section 36-05-08 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1        **~~36-05-084.1-27-11~~. Scales maintained by auction market to be inspected.**

2        All scales used in the operation of a livestock auction market must be tested and inspected  
3        by the department of weights and measures ~~in the manner as~~ provided in ~~this code~~ by law. All  
4        livestock sold by weight must be weighed on such scales, and the purchaser and seller of  
5        ~~such~~ the livestock must be furnished with a true and correct statement of ~~such~~ the weight.

6        **SECTION 12. AMENDMENT.** Section 36-05-09 of the North Dakota Century Code is  
7        amended and reenacted as follows:

8        **~~36-05-094.1-27-12~~. Records to be kept by operator of auction market - Contents -**  
9        **Examination - Report.**

10        1. The operator of each livestock auction market shall keep on file an accurate record of  
11        all ~~of~~ the following:

12        1. a. The date on which each consignment of animals was received and sold;

13        2. b. The name and address of the buyer and seller of ~~such animals~~ the consigned  
14        animals;

15        3. c. The number and species of the animals received and sold; and

16        4. d. The marks and brands on each such animal.

17        This record

18        2. The records, together with the gross selling price, commission, and other proper care,  
19        handling, and sales charges on each consignment of livestock must be available for  
20        inspection by the commissioner, or authorized inspectors, ~~and a~~ A copy thereof of the  
21        information required in this section must be supplied to the owner of ~~such~~ the livestock.

22        All records of sales during the preceding twelve months must be kept readily  
23        accessible for immediate examination by the commissioner.

24        **SECTION 13. AMENDMENT.** Section 36-05-09.1 of the North Dakota Century Code is  
25        amended and reenacted as follows:

26        **~~36-05-09.14.1-27-13~~. Notice - Nonsufficient funds checks.**

27        A livestock auction market that receives a check for the sale of livestock which is returned  
28        unpaid with a notation that the payment has been refused because of nonsufficient funds shall  
29        notify the commissioner within ~~forty-eight hours~~ two business days after receipt of the returned  
30        check.

**NOTE:** It is likely that the 48-hour period would include days state offices are not open.

1       **SECTION 14. AMENDMENT.** Section 36-05-10 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       ~~**36-05-104.1-27-14. Inspection of livestock - Fees and rules governing.**~~

4       ~~When an~~Before it is offered for sale, each animal ~~that~~ enters a livestock auction market ~~and~~  
5 ~~before it is offered for sale,~~ it must be inspected for health by a veterinarian licensed in this state  
6 and approved by the state board of animal health ~~and in the case of cattle. Cattle also must be~~  
7 inspected for brands by a trained brand inspector, acting under rules adopted by the North  
8 Dakota stockmen's association and the state board of animal health. Veterinary inspection must  
9 include all livestock, whether it is to be moved interstate or intrastate. The veterinary inspector  
10 must be recommended by the livestock auction ~~agency~~market and approved by the state board  
11 of animal health. ~~Such~~The veterinarian must be a local veterinarian or a veterinarian of the  
12 vicinity, unless there is no such veterinarian available. If the livestock auction agency fails to  
13 recommend ~~such~~ a veterinarian within a reasonable time, the board may ~~in ten days~~approve a  
14 veterinarian, if qualified and willing to accept the position at the market, and provide notice to  
15 such~~the market~~ agency ~~appoint a veterinarian of the appointment.~~ The services and duties of the  
16 veterinary inspector are under the supervision of the state board of animal health and the  
17 inspector must be relieved of office when the inspector fails to perform ~~those~~the required  
18 services and duties. ~~This section does not apply to veterinarians who were approved by an~~  
19 ~~authorized state agency before July 1, 1969.~~ Fees for the inspection must be paid to the  
20 veterinarian by the livestock auction market company and must be in an amount agreed upon  
21 by the auction market company and the veterinarian.

**NOTE:** Question whether there is any veterinarian practicing who needs the 1969  
      grandfathering provision . . .

22       **SECTION 15. AMENDMENT.** Section 36-05-10.1 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24       ~~**36-05-10.14.1-27-15. Livestock unfit for sale.**~~

- 25       1. Livestock may not be offered for sale or sold at any licensed public livestock auction  
26 market if the livestock has a condition including the following:
- 27       ~~4.~~ a. Is infected with a disease that permanently renders the livestock unfit for human  
28 consumption;
- 29       ~~2.~~ b. Has severe neoplasia;
- 30       ~~3.~~ c. Has severe actinomycosis;



1       4. d. Is unable to rise to its feet by itself; or

2       5. e. Has an ~~obviously~~ fractured long bone or other fractures or dislocation of a joint  
3               that renders the livestock unable to bear weight on the affected limb without the  
4               limb collapsing.

5       2. If, in the judgment of a veterinarian licensed in this state and approved by the state  
6               board of animal health, the livestock consigned and delivered ~~onto~~ to the premises of a  
7               livestock auction market is ~~in~~ affected by any of the conditions described above, the  
8               veterinarian shall humanely euthanize the livestock or direct the consignor to  
9               immediately remove the livestock from the premises of the livestock auction market.

10              All expenses incurred for euthanasia and disposal of the livestock under the ~~provisions~~  
11              of this section are the responsibility of the consignor. Collection of expenses is not the  
12              responsibility of the consignee.

13       **SECTION 16. AMENDMENT.** Section 36-05-11 of the North Dakota Century Code is  
14       amended and reenacted as follows:

15       ~~36-05-114.1-27-16.~~ **Treatment administered to livestock before removal from auction**  
16       **market - Fees for inspection and treatment.**

17       ~~No~~ An operator of a livestock auction market may not permit the removal of any livestock  
18       from the establishment until ~~such~~ the livestock has been treated in accordance with the rules  
19       adopted by the state board of animal health. If livestock is destined to be shipped interstate, the  
20       authorized veterinarian of ~~such~~ the board shall furnish to each purchaser a certificate showing  
21       that inspection has been made and treatment administered in accordance with the requirements  
22       of the state of destination. All fees for veterinary inspection, treatment, and services, including  
23       brand inspection, must be collected by the operator of the livestock auction market and paid to  
24       the inspector.

25       **SECTION 17. AMENDMENT.** Section 36-05-11.1 of the North Dakota Century Code is  
26       amended and reenacted as follows:

27       ~~36-05-11.14.1-27-17.~~ **Grievance committee.**

28       1. Any livestock auction market ~~having~~ that has a complaint against the veterinarian  
29               assigned to the livestock auction market, or any veterinarian ~~having~~ that has a  
30               complaint against the auction market to which the veterinarian is assigned, may

submit a written complaint to the grievance committee. The grievance committee consists of the:

a. The president of the North Dakota stockmen's association or the president's designee, ~~the~~

b. The president of the livestock auction market association or the president's designee; and the

c. The president of the North Dakota veterinary medical association or the president's designee.

2. The members of the committee shall choose one member to serve as chairman. The committee shall meet at the call of the chairman. The committee shall take all complaints under consideration and report ~~its~~ a recommendation of the committee to the state board of animal health within thirty days after receipt of the complaint.

**SECTION 18. AMENDMENT.** Section 36-05-12 of the North Dakota Century Code is amended and reenacted as follows:

**~~36-05-124.1-27-18.~~ Operator to warrant title to purchaser - Dispute in title of animal sold.**

The operator of each livestock auction market shall warrant to the purchaser the title of all livestock bought by the purchaser through the auction market and the operator is liable to the rightful owner of any livestock sold through the auction market for the net proceeds in cash received for the livestock. If the operator of an auction market is notified by an authorized brand inspector that there is a question as to whether ~~or not~~ any designated livestock sold through the auction market is lawfully owned by the consignor of the livestock, the operator shall hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed sixty days, to permit the consignor to establish ownership. At the expiration of ~~such~~ the allotted time, if the consignor fails to establish lawful ownership of the livestock to the satisfaction of the brand inspector, the proceeds must be remitted to the state treasurer for deposit in the North Dakota stockmen's association fund ~~in accordance with chapter 36-22.~~

**SECTION 19. AMENDMENT.** Section 36-05-13 of the North Dakota Century Code is amended and reenacted as follows:

1        **~~36-05-134.1-27-19.~~ Use of fees - Grounds for refusal or revocation of license -**

2        **Procedure on default of licensee.**

3        All fees collected by the commissioner under this chapter must be credited to the general  
4        fund of the state treasury. A license to operate a livestock auction market may be refused or  
5        revoked for any of the reasons specified in ~~section 36-04-10~~sections 4.1-83-10, 4.1-83-19,  
6        4.1-88-09, or ~~subsection 2 of section 36-04-044.1-88-18.~~ When the holder of a license issued  
7        under this chapter defaults in any of the conditions of any bond filed with the commissioner by  
8        the licensee, the commissioner will become trustee of the bond and sections ~~36-04-124.1-83-21~~  
9        through ~~36-04-194.1-83-28~~ and 4.1-88-20 through 4.1-88-27 govern the procedure to be  
10       followed.

11       **SECTION 20. AMENDMENT.** Section 36-05-13.1 of the North Dakota Century Code is  
12       amended and reenacted as follows:

13       **~~36-05-13.14.1-27-20.~~ Review by the court.**

14       The action of the commissioner in denying an application for a license or in revoking or  
15       suspending a license may be appealed to the district court of Burleigh County by the procedure  
16       applicable to appeals taken in the manner provided in chapter 28-32, except ~~that~~ the  
17       commissioner's order revoking or suspending the license may be stayed by the court appealed  
18       to upon filing with the clerk of ~~said~~the court a bond approved by and in the amount set by the  
19       judge of ~~said~~the district court for the faithful observance of the laws of the state relative to the  
20       operation of the business licensed during the pendency of the appeal.

21       **SECTION 21. AMENDMENT.** Section 36-05-13.2 of the North Dakota Century Code is  
22       amended and reenacted as follows:

23       **~~36-05-13.24.1-27-21.~~ Unlawful acts.**

24       It is a violation of this chapter for any livestock auction market or person to:

- 25       1.    Make or cause ~~to be made~~ any false entry or statement of fact to be made in any  
26           application, financial statement, or report filed with the department under this chapter;  
27       2.    Fail to keep and maintain suitable records that disclose all purchases and sales of  
28           livestock or refuse, ~~during reasonable hours,~~ to allow any authorized agent of the  
29           department to have access, during reasonable hours, to inspect and to copy any or all  
30           of ~~such~~the records relating to the dealer's business;

- 1        3.    Fail or refuse to furnish the information required under this chapter as prescribed by
- 2            the department;
- 3        4.    Fail to notify the commissioner of the receipt of a nonsufficient funds check as required
- 4            by section ~~36-05-09-14.1-27-13~~;
- 5        5.    Fail to pay brand inspection fees or veterinarian fees as required by law;
- 6        6.    Fail to collect beef promotion assessments pursuant to chapter 4.1-03; or
- 7        7.    Fail to pay for livestock purchased. ~~Such failure includes, including~~ the issuance of a
- 8            check or payment for livestock purchased, when ~~such~~the check is returned unpaid
- 9            with a notation that the payment has been refused because of nonsufficient funds.

10        **SECTION 22. AMENDMENT.** Section 36-05-14 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12        **~~36-05-144.1-27-22.~~ Penalties - Criminal - Civil.**

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

**NOTE:** Any provision that does not include a culpability standard is considered a strict liability offense.

19        **SECTION 23. AMENDMENT.** Section 36-05-15 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21        **~~36-05-154.1-27-23.~~ Public livestock markets or commission firms - Duplicate scale**  
22 **tickets.**

23        All public livestock markets or commission firms doing business in this state shall deliver to  
24 each person consigning livestock to ~~such~~the market or purchasing livestock from ~~such~~the  
25 market a duplicate scale ticket showing the weight of such livestock.