

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1291

Introduced by

Representatives Brandenburg, Froelich, Kempenich, Nicholas

Senators Erbele, Taylor

1 A BILL for an Act to amend and reenact section 23-25-11 of the North Dakota Century Code,
2 relating to animal feeding operations.

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

4 **SECTION 1. AMENDMENT.** Section 23-25-11 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **23-25-11. Regulation of odors - Rules.**

- 7 1. In areas located within a city or the area over which a city has exercised
8 extraterritorial zoning as defined in section 40-47-01.1, a person may not
9 discharge into the ambient air any objectionable odorous air contaminant that
10 measures seven odor concentration units or higher outside the property boundary
11 where the discharge is occurring. If an agricultural operation as defined by section
12 42-04-01 has been in operation for more than one year, as provided by section
13 42-04-02, and the business or residence making the odor complaint was built or
14 established after the agricultural operation was established, the measurement for
15 compliance with the seven odor concentration units standard must be taken within
16 one hundred feet [30.48 meters] of the subsequently established residence,
17 church, school, business, or public building making the complaint rather than at the
18 property boundary of the agricultural operation.
- 19 2. In areas located outside a city or outside the area over which a city has exercised
20 extraterritorial zoning as defined in section 40-47-01.1, a person may not
21 discharge into the ambient air any objectionable odorous air contaminant that
22 causes odors that measure seven odor concentration units or higher as measured
23 at any of the following locations:

- 1 a. Within one hundred feet [30.48 meters] of any residence, church, school,
2 business, or public building, or within a campground or public park. An odor
3 measurement may not be taken at the residence of the owner or operator of
4 the source of the odor, or at any residence, church, school, business, or
5 public building, or within a campground or public park, that is built or
6 established within one-half mile [.80 kilometer] of the source of the odor after
7 the source of the odor has been built or established; or
- 8 b. At any point located beyond one-half mile [.80 kilometer] from the source of
9 the odor, except for property owned by the owner or operator of the source of
10 the odor, or over which the owner or operator of the source of the odor has
11 purchased an odor easement.
- 12 c. If a county or township has zoned or established a setback distance for a
13 concentrated feeding operation which is greater than one-half mile [.80
14 kilometer] under either section 11-33-02 or section 58-03-11, measurements
15 for compliance with the seven odor concentration units standard must be
16 taken at the setback distance rather than one-half mile [.80 kilometer] from
17 the facility under subdivision b, except for any residence, church, school,
18 business, public building, park, or campground within the setback distance
19 which was built or established before the concentrated feeding operation was
20 established, unless the concentrated feeding operation has obtained an odor
21 easement from the preexisting facility.
- 22 3. An odor measurement may be taken only with a properly maintained scentometer,
23 by an odor panel, or by another instrument or method approved by the state
24 department of health, and only by inspectors certified by the department who have
25 successfully completed a department-sponsored odor certification course and
26 demonstrated the ability to distinguish various odor samples and concentrations. If
27 a certified inspector measures a violation of this section, the department may send
28 a certified letter of apparent noncompliance to the person causing the apparent
29 violation and may negotiate with the owner or operator for the establishment of an
30 odor management plan and best management practices to address the apparent
31 violation. The department shall give the owner or operator at least fifteen days to

- 1 implement the odor management plan. If the odor problem persists, the
2 department may proceed with an enforcement action provided at least two certified
3 inspectors at the same time each measure a violation and then confirm the
4 violation by a second odor measurement taken by each certified inspector, at least
5 fifteen minutes, but no more than two hours, after the first measurement.
- 6 4. A person is exempt from this section while spreading or applying animal manure or
7 other recycled agricultural material to land in accordance with a nutrient
8 management plan approved by the state department of health. A person is
9 exempt from this section while spreading or applying animal manure or other
10 recycled agricultural material to land owned or leased by that person in
11 accordance with rules adopted by the department. An owner or operator of a
12 lagoon or waste storage pond permitted by the department is exempt from this
13 section in the spring from the time when the cover of the permitted lagoon or pond
14 begins to melt until fourteen days after all the ice cover on the lagoon or pond has
15 completely melted. Notwithstanding these exemptions, all persons shall manage
16 their property and systems to minimize the impact of odors on their neighbors.
- 17 5. This section does not apply to chemical compounds that can be individually
18 measured by instruments, other than a scentometer, that have been designed and
19 proven to measure the individual chemical or chemical compound, such as
20 hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the
21 state department of health has established a specific limitation by rule.
- 22 6. For purposes of this section, a public park is a park established by the federal
23 government, the state, or a political subdivision of the state in the manner
24 prescribed by law. For purposes of this section, a campground is a public or
25 private area of land used exclusively for camping and open to the public for a fee
26 on a regular or seasonal basis.
- 27 7. a. In a county that does not regulate the nature, scope, and location of an
28 animal feeding operation under section 11-33-02, the department shall
29 require that any new animal feeding operation permitted under chapter 61-28
30 be set back from any existing residence, church, school, business, public
31 building, park, or campground.

- 1 (1) If there are fewer than three hundred animals, there is no minimum
2 setback requirement.
- 3 (2) If there are at least three hundred animals but no more than one
4 thousand animals, the setback for any animal operation is one-half mile
5 [.80 kilometer].
- 6 (3) If there are at least one thousand one animals but no more than two
7 thousand animals, the setback for a hog operation is three-fourths mile
8 [1.20 kilometers] and the setback for any other animal operation is
9 one-half mile [.80 kilometer].
- 10 (4) If there are at least two thousand one animals but no more than five
11 thousand animals, the setback for a hog operation is one mile [1.60
12 kilometers] and the setback for any other animal operation is
13 three-fourths mile [1.20 kilometers].
- 14 (5) If there are five thousand one or more animals, the setback for a hog
15 operation is one and one-half miles [2.40 kilometers] and the setback
16 for any other animal operation is one mile [1.60 kilometers].
- 17 b. The setbacks set forth in subdivision a do not apply if the owner or operator
18 applying for the permit obtains an odor easement from the preexisting use
19 that is closer.
- 20 c. The department shall define by rule the number of animals that constitute an
21 animal unit.
- 22 8. A permitted animal feeding operation may expand its permitted capacity by
23 twenty-five percent on one occasion without triggering a higher setback distance.