

**FIRST ENGROSSMENT
with Senate Amendments**

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 sections 23-25-11 and 42-04-01 of the North Dakota
2 Century Code, relating to animal feeding operations and livestock auction markets.

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 at a
16 point that is at least one-half mile [.80 kilometer] from the property boundary of the
17 agricultural operation.
- 18 2. In areas located outside a city or outside the area over which a city has exercised
19 extraterritorial zoning as defined in section 40-47-01.1, a person may not
20 discharge into the ambient air any objectionable odorous air contaminant that
21 causes odors that measure seven odor concentration units or higher as measured
22 at any of the following locations:
- 23 a. Within one hundred feet [30.48 meters] of any residence, church, school,
24 business, or public building, or within a campground or public park. An odor

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

1 department may proceed with an enforcement action provided at least two certified
2 inspectors at the same time each measure a violation and then confirm the
3 violation by a second odor measurement taken by each certified inspector, at least
4 fifteen minutes, but no more than two hours, after the first measurement.

5 4. A person is exempt from this section while spreading or applying animal manure or
6 other recycled agricultural material to land in accordance with a nutrient
7 management plan approved by the state department of health. A person is
8 exempt from this section while spreading or applying animal manure or other
9 recycled agricultural material to land owned or leased by that person in
10 accordance with rules adopted by the department. An owner or operator of a
11 lagoon or waste storage pond permitted by the department is exempt from this
12 section in the spring from the time when the cover of the permitted lagoon or pond
13 begins to melt until fourteen days after all the ice cover on the lagoon or pond has
14 completely melted. Notwithstanding these exemptions, all persons shall manage
15 their property and systems to minimize the impact of odors on their neighbors.

16 5. This section does not apply to chemical compounds that can be individually
17 measured by instruments, other than a scentometer, that have been designed and
18 proven to measure the individual chemical or chemical compound, such as
19 hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the
20 state department of health has established a specific limitation by rule.

21 6. For purposes of this section, a public park is a park established by the federal
22 government, the state, or a political subdivision of the state in the manner
23 prescribed by law. For purposes of this section, a campground is a public or
24 private area of land used exclusively for camping and open to the public for a fee
25 on a regular or seasonal basis.

26 7. a. In a county that does not regulate the nature, scope, and location of an
27 animal feeding operation under section 11-33-02, the department shall
28 require that any new animal feeding operation permitted under chapter 61-28
29 be set back from any existing residence, church, school, business, public
30 building, park, or campground.

- 1 (1) If there are fewer than three hundred animal units, there is no minimum
2 setback requirement.
- 3 (2) If there are at least three hundred animal units but no more than one
4 thousand animal units, the setback for any animal operation is one-half
5 mile [.80 kilometer].
- 6 (3) If there are at least one thousand one animal units but no more than
7 two thousand animal units, the setback for a hog operation is
8 three-fourths mile [1.20 kilometers] and the setback for any other
9 animal operation is one-half mile [.80 kilometer].
- 10 (4) If there are at least two thousand one animal units but no more than
11 five thousand animal units, the setback for a hog operation is one mile
12 [1.60 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 animal units, the setback for a
15 hog operation is one and one-half miles [2.40 kilometers] and the
16 setback 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.

24 **SECTION 2. AMENDMENT.** Section 42-04-01 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **42-04-01. Agricultural operation defined.** As used in this chapter, "agricultural
27 operation" means the science and art of ~~production of~~ producing plants and animals useful to
28 people; by a corporation or a limited liability company as allowed under chapter 10-06.1; or by
29 a corporation or limited liability company, a partnership, or a proprietorship; and ~~including, to a~~
30 ~~variable extent,~~ includes the preparation of these products for people's use and ~~their~~ the
31 disposal of these products by marketing or ~~otherwise, and~~ other means. The term includes

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- 1 livestock auction markets and horticulture, floriculture, viticulture, forestry, dairy, livestock,
- 2 poultry, bee, and any and all forms of farm products, and farm production.