

Introduced by

1 A BILL for an Act to create and enact chapters 4.1-72, 4.1-73, 4.1-74, 4.1-75, 4.1-83, and 4.1-88
2 of the North Dakota Century Code, relating to the North Dakota stockmen's association,
3 livestock branding, estrays, registered livestock, and the licensing of livestock dealers and wool
4 dealers; to repeal chapters 36-04, 36-09, 36-13, and 36-22 of the North Dakota Century Code,
5 relating to livestock branding, estrays, and the licensing of livestock dealers and wool dealers;
6 to provide a penalty; to provide for a legislative management study; and to provide a continuing
7 appropriation.

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

9 **SECTION 1.** Chapter 4.1-72 of the North Dakota Century Code is created and enacted as
10 follows:

11 **4.1-72-01. North Dakota stockmen's association - Statutory authority.**

- 12 1. The North Dakota stockmen's association is a livestock association organized under
13 the laws of this state and registered as a market agency under the Packers and
14 Stockyards Act, 1921 [7 U.S.C. 181 et seq.]:
- 15 a. For the protection of the livestock industry of this state; and
16 b. To secure uniformity of inspection and cooperation with the United States
17 department of agriculture.
- 18 2. The association shall inspect all cattle, horses, and mules, which are shipped or
19 consigned to any livestock auction market, buying station, or packing plant, in this
20 state, and all those that are shipped or consigned to a livestock auction market, buying
21 station, or packing plant, located outside this state, if brand inspection services are
22 provided in accordance with section 4.1-73-24, for the purpose of determining or
23 verifying ownership and for any other purpose established by law.

SOURCE: Section 36-22-02.

NOTE: Current law authorizes the North Dakota Stockmen's Association to provide inspection services for the purpose of determining or verifying ownership of all cattle, horses, and mules that are shipped or consigned to a livestock auction market, a buying station, or a packing plant. Because brand inspections are statutorily required for other purposes as well, the committee asked that verbiage be added to include other purposes.

1 **4.1-72-02. Discrimination - Prohibited.**

2 The North Dakota stockmen's association may not discriminate between members of the
3 association and persons who are not members of the association with respect to fees,
4 recordings, complaints, requests for assistance, or any other duties assigned under this
5 chapter.

SOURCE: Section 36-09-18.

6 **4.1-72-03. Office for recording brands - Chief brand inspector - Employment.**

7 The North Dakota stockmen's association shall:

- 8 1. Maintain an office for recording brands; and
9 2. Employ an individual to serve as the chief brand inspector of this state.

SOURCE: Section 36-09-01.

10 **4.1-72-04. Chief brand inspector - Deputy brand inspectors - Licensed peace officers.**

- 11 1. The chief brand inspector and any individual employed by the North Dakota
12 stockmen's association to serve as a deputy brand inspector must be licensed peace
13 officers in accordance with chapter 12-63 and may exercise the full authority of that
14 license to enforce the brand laws and any other state laws relating to livestock. The
15 chief brand inspector and the deputy brand inspectors may provide aid and assistance
16 to other law enforcement agencies or officers, upon request, provided the requests are
17 not for continuous or ongoing assistance.
18 2. Nothing in subsection 1 precludes the North Dakota stockmen's association from
19 employing, as the chief brand inspector or as a deputy brand inspector, an individual
20 who has not yet attained licensure as a peace officer, provided the individual is
21 pursuing or as a condition of employment agrees to pursue the licensure. For the
22 purpose of enforcing brand laws and all other laws relating to livestock, such an
23 individual has the same authority as a licensed peace officer for a period of one year
24 from the date of employment.

SOURCE: Section 36-09-24.

NOTE: North Dakota Stockmen's Association personnel indicated that an individual who is hired as a Chief Brand Inspector or as a deputy brand inspector might need some time

within which to complete the classes and examinations necessary in order to become a licensed peace officer. Subsection 2 was added to address this concern.

1 **4.1-72-05. Federally sponsored programs - Administration - Authorization.**

- 2 1. The North Dakota stockmen's association shall serve as the state's administrator and
3 allocator for that portion of any federally sponsored animal identification program
4 which pertains to cattle, horses, and mules.
5 2. If requested by the agriculture commissioner or the state board of animal health, the
6 North Dakota stockmen's association may serve as the state administrator for or assist
7 in the administration of any other federally sponsored program pertaining to livestock.

SOURCE: Section 36-09-25.

NOTE: North Dakota Stockmen's Association personnel requested retention of current language referencing their role in any federally sponsored animal identification program. This has been accomplished in subsection 1. Subsection 2 authorizes the association's participation in any other federally sponsored program pertaining to livestock.

8 **4.1-72-06. Federally sponsored programs - Administration - Records.**

- 9 1. Except as provided in subsection 2, any information created, collected, or maintained
10 by the state veterinarian or the North Dakota stockmen's association with respect to
11 the administration of any federally sponsored program pertaining to livestock as
12 permitted by section 4.1-72-05 is confidential and not subject to the open records
13 requirements of section 44-04-18.
14 2. Neither the state veterinarian nor the North Dakota stockmen's association may
15 release any information designated as confidential under subsection 1, except:
16 a. Upon the written consent of every person identified or identifiable by the
17 information;
18 b. In accordance with federal law;
19 c. To any state or federal agency for the purpose of animal disease control or
20 animal disease traceback;
21 d. To the attorney general and any other law enforcement agency pursuing a
22 criminal investigation; or
23 e. Pursuant to an order issued by a court upon a showing of good cause.
24 3. This section does not preclude the exchange of information between the state
25 veterinarian and the North Dakota stockmen's association.
26 4. Any person violating this section is subject to the remedies set forth in section
27 44-04-21.2. For purposes of applying section 44-04-21.2, "public entity" includes any

1 person that has contracted with the state for the administration of any federally
2 sponsored program pertaining to livestock.

SOURCE: Section 36-09-28.

3 **4.1-72-07. Collection of fees - Continuing appropriation.**

4 The North Dakota stockmen's association shall forward all moneys received under this title
5 to the state treasurer for deposit in a special fund known as the North Dakota stockmen's
6 association fund. All moneys in the North Dakota stockmen's association fund, together with all
7 income earned on the moneys in the fund, are appropriated on a continuing basis to the North
8 Dakota stockmen's association to carry out its statutory directives.

SOURCE: Sections 36-09-18 and 36-22-08.1.

9 **4.1-72-08. Biennial audit.**

10 At least once every two years the North Dakota stockmen's association shall provide for an
11 audit by a certified public accountant or a licensed public accountant and shall submit an
12 electronic copy of the audit report to the legislative council.

SOURCE: Section 36-22-09.

13 **SECTION 2.** Chapter 4.1-73 of the North Dakota Century Code is created and enacted as
14 follows:

15 **4.1-73-01. Definition.**

16 For purposes of this chapter, "brand" means an identifying imprint that is:

- 17 1. Placed on livestock by use of a hot branding iron; or
- 18 2. Placed on equines by means of either a hot branding iron or a freeze branding
19 technique.

SOURCE: New section.

NOTE: North Dakota Stockmen's Association personnel asked that this section be clarified to accommodate the use of freeze brands on equines.

20 **4.1-73-02. Brand - Application for ownership.**

- 21 1. To acquire ownership of a brand, a person shall file an application with the North
22 Dakota stockmen's association.
- 23 2. The application must contain a depiction of the proposed brand.
- 24 3. The application must include a statement regarding:
 - 25 a. The kind of livestock on which the brand will be placed; and
 - 26 b. The placement or position of the brand on each kind of livestock listed in
27 subdivision a.

1 4. The chief brand inspector shall review each application to ensure compliance with the
2 requirements of this chapter.

SOURCE: Section 36-09-02.

3 **4.1-73-03. Brands - Requirements for recording.**

4 1. The chief brand inspector shall approve an application for ownership of a brand, filed
5 in accordance with section 4.1-73-02, and record the brand, unless:

6 a. The chief brand inspector determines that:

7 (1) Official records indicate the brand is owned by another person;

8 (2) The brand is deceptively similar to another recorded brand;

9 (3) The brand is recorded in another state;

10 (4) The brand may not be legible when placed on livestock; or

11 (5) The proposed placement or position of the brand does not meet the
12 requirements of section 4.1-73-05; or

13 b. The brand:

14 (1) Consists of only one letter, number, or symbol, except as provided in
15 subsection 2;

16 (2) Contains either the letter "g" or the letter "q";

17 (3) Contains a letter not found in the modern English alphabet;

18 (4) Contains the numeral "0" or "1";

19 (5) Contains a dot;

20 (6) Contains a letter, number, or symbol placed within another letter, number, or
21 symbol; or

22 (7) Contains a symbol other than:

23 (a) A diamond;

24 (b) An arrow;

25 (c) A mill iron;

26 (d) A cross;

27 (e) A heart;

28 (f) A box;

29 (g) A triangle;

30 (h) A quarter circle;

31 (i) A bar;

- 1 (j) A star; or
2 (k) A forward or a backward slash.

3 2. The chief brand inspector may permit the recording of a brand that consists of one
4 letter, number, or symbol, provided the brand meets all other statutory requirements
5 for recording and is to be placed only on goats or sheep.

SOURCE: Section 36-09-02.1.

NOTE: At the request of North Dakota Stockmen's Association personnel, a forward or a backward slash was added to the statutory list of acceptable symbols. (See, subsection 1(b)(7)(k). This change reflects current practice.

6 **4.1-73-04. Brand inspection certificate.**

7 Upon approving an application, the chief brand inspector shall provide a brand certificate to
8 the owner. The certificate is evidence of the brand's ownership.

SOURCE: Section 36-09-04.

9 **4.1-73-05. Brands - Permissible locations.**

- 10 1. In the case of cattle, brands that meet all other statutory requirements for recording
11 may be placed only on:
12 a. A designated shoulder;
13 b. A designated rib; or
14 c. A designated hip.
15 2. In the case of horses and mules, brands that meet all other statutory requirements for
16 recording may be placed only on:
17 a. A designated shoulder;
18 b. A designated hip; or
19 c. A designated jaw.
20 3. In the case of bison, brands that meet all other statutory requirements for recording
21 may be placed only on:
22 a. A designated rib; or
23 b. A designated hip.
24 4. In the case of any other livestock, brands that meet all other statutory requirements for
25 recording may be placed only on those locations designated by the chief brand
26 inspector. For purposes of this subsection, the designation of locations is not subject
27 to rulemaking under chapter 28-32.

SOURCE: Section 36-09-02(2).

1 **4.1-73-06. Recorded numerical brand - Impermissible placement.**

2 A person may not place a recorded brand that consists entirely of upright numbers on the
3 hips of cattle.

SOURCE: Section 36-09-02(3).

4 **4.1-73-07. Numerical brands - Applicability of designated placement provisions.**

5 The design and placement restrictions set forth in this chapter do not apply to:

- 6 1. A numerical brand that was first recorded before July 1, 1957, and which has been
7 continually rerecorded; or
- 8 2. An unrecorded numerical brand that is used for purposes such as herd or animal
9 identification or registration.

SOURCE: Section 36-09-02(3).

NOTE: At the request of North Dakota Stockmen's Association personnel, the reference to
tattoos was removed. A tattoo is not considered to be a "brand" for purposes of this
chapter.

10 **4.1-73-08. Chief brand inspector - Determination regarding brand.**

11 A determination by the chief brand inspector regarding the acceptability of a brand or the
12 permissibility of its location or placement, for purposes of recording, is final.

SOURCE: New section.

13 **4.1-73-09. Cancellation of brand.**

- 14 1. The chief brand inspector shall cancel a legally recorded brand if the chief brand
15 inspector:
 - 16 a. Receives for filing a bill of sale for the brand, properly executed by the owner, as
17 shown in the records of the chief brand inspector;
 - 18 b. Determines that the brand duplicates a previously recorded brand; or
 - 19 c. Determines that the brand was obtained through fraud, misrepresentation, or
20 other illegal means.
- 21 2. The chief brand inspector may cancel a legally recorded brand if the chief brand
22 inspector determines that the brand has been recorded in another state.

SOURCE: Section 36-09-06.

23 **4.1-73-10. Expiration of brands.**

24 On January 1, 2016, and every five years thereafter, each livestock brand recorded in this
25 state expires, unless:

1 1. The brand was issued within the six-month period immediately preceding the date of
2 expiration; or

3 2. The brand has been rerecorded in accordance with this chapter.

SOURCE: Section 36-09-09.1.

4 **4.1-73-11. Expiration of brand - Notice to owner.**

5 1. Before September 1, 2015, and every five years thereafter, the chief brand inspector
6 shall provide to each owner of record:

7 a. Written notice of the brand's expiration date;

8 b. Written notice of the owner's right to rerecord the brand; and

9 c. A written statement indicating that if the brand is allowed to expire, the person will
10 have lost ownership interest in the brand and may no longer use the brand.

11 2. The chief brand inspector shall send the notice and statement required by this section
12 to the owner:

13 a. Electronically; or

14 b. By first-class mail if requested by the owner.

SOURCE: Sections 36-09-09.1 and 36-09-11.

15 **4.1-73-12. Expiration of brands - Notice by publication.**

16 1. The chief brand inspector shall publish in the official newspaper of each county a
17 notice of the date by which livestock brands must be rerecorded in accordance with
18 this chapter.

19 2. The notice must be published at least once per week for three successive weeks. The
20 first publication must occur between the first and fifteenth day of September, before
21 the expiration of all brands.

SOURCE: Section 36-09-12.

22 **4.1-73-13. Brands authorized for rerecording.**

23 Notwithstanding any other provision of this chapter, the chief brand inspector shall accept
24 for rerecording:

25 1. Any brand that the owner previously recorded; and

26 2. A brand that consists of one letter, number, or symbol, provided the brand is to be
27 placed only on goats or sheep.

SOURCE: Section 36-09-02.1(3).

1 **4.1-73-14. Recording and rerecording brands - Fee.**

2 Each application for recording or rerecording a brand must be accompanied by a fee in the
3 amount of twenty-five dollars.

SOURCE: Section 36-09-13.

4 **4.1-73-15. Reassignment of expired brand.**

5 1. a. Except as provided in subdivision b, for a period of one year from the date of a
6 brand's expiration, the chief brand inspector may not reassign the expired brand
7 to any person other than the registered owner at the time of the brand's
8 expiration.

9 b. If the person who owned the brand at the time it expired provides the chief brand
10 inspector with written authorization, the chief brand inspector may reassign the
11 brand to a new owner, at any time during the one-year period.

12 2. Upon expiration of a brand and the passage of time or the procurement of
13 authorization, as set forth in subsection 1, the chief brand inspector may accept an
14 application to record the brand, provided the brand meets the requirements of this
15 chapter.

SOURCE: Section 36-09-10.

16 **4.1-73-16. Use of unrecorded brand - Penalty.**

17 A person is guilty of a class B misdemeanor if the person places upon an animal a brand
18 that has not been recorded in accordance with this chapter.

SOURCE: Section 36-09-13.1.

19 **4.1-73-17. Defacing brands - Unlawful branding - Penalty.**

20 A person is guilty of a class A misdemeanor for a first offense and a class C felony for a
21 second or subsequent offense if the person:

22 1. Alters, defaces, or attempts to alter or deface the brand on any animal owned by
23 another for the purpose of deceiving others as to the animal's ownership; or

24 2. Willfully brands, or causes to be branded, any animal owned by another for the
25 purpose of deceiving others as to the animal's ownership.

SOURCE: Section 36-09-17.

26 **4.1-73-18. Bill of sale - Copy with shipment - Effect - Penalty.**

27 1. A person may not sell any livestock carrying a recorded brand unless:

- 1 a. The seller is the owner of the recorded brand and delivers a bill of sale for the
2 livestock to the purchaser; or
- 3 b. The seller delivers to the purchaser a bill of sale executed by the owner of the
4 recorded brand and endorsed by the seller evidencing the later transaction.
- 5 2. The bill of sale must include:
- 6 a. The date;
- 7 b. The name, address, and signature of the seller;
- 8 c. The name, address, and signature of an individual who is at least eighteen years
9 of age and who can verify the name and signature of the seller;
- 10 d. The name and address of the buyer;
- 11 e. The total number of animals sold;
- 12 f. A description of each animal sold as to sex and color; and
- 13 g. A depiction of the recorded brand.
- 14 3. The buyer shall retain the bill of sale for as long as the buyer owns any animals
15 described in the bill of sale.
- 16 4. The seller shall provide a copy of the bill of sale to the individual hauling the livestock.
17 The individual shall ensure that the document remains with the livestock while in
18 transit.
- 19 5. The bill of sale or a copy of the bill of sale must be shown by the possessor on
20 demand to any law enforcement officer or brand inspector.
- 21 6. The bill of sale is prima facie evidence of the sale of the livestock described in the bill
22 of sale.
- 23 7. Subsections 1 through 6 do not apply to the sale of livestock for which a brand
24 inspector has issued a certificate of ownership.
- 25 8. Any person willfully violating this section is guilty of a class B misdemeanor for a first
26 offense and a class A misdemeanor for a second or subsequent offense.

SOURCE: Section 36-09-20.

4.1-73-19. Proof of ownership - Alteration or falsification - Penalty.

27 A person that knowingly makes, completes, alters, or in any way falsifies, any document
28 evidencing proof of livestock ownership, with the intent to deceive or harm another, is guilty of a
29 class B felony.

SOURCE: Section 36-09-20.2.

1 **4.1-73-20. False proof of ownership - Sale of livestock - Penalty.**

2 A person willfully providing false proof of ownership in conjunction with the sale of livestock
3 is guilty of a class B misdemeanor for a first offense and a class A misdemeanor for a second or
4 subsequent offense.

SOURCE: Section 36-09-20.1.

5 **4.1-73-21. Transportation of livestock from state - Brand inspection - Penalty.**

- 6 1. A person may not transport or attempt to transport cattle, horses, or mules from this
7 state unless a brand inspector has inspected the livestock and issued a certificate of
8 ownership. The certificate must remain with the livestock while in transit and be
9 presented to the purchaser upon arrival at the destination. This subsection does not
10 apply to a person that:
- 11 a. Transports cattle, horses, or mules from this state to obtain for the animals
12 emergency medical treatment by a licensed veterinarian; or
- 13 b. Transports cattle, horses, or mules from this state to a livestock auction market,
14 buying station, or packing plant, that is located in a bordering state and which is
15 provided with brand inspection services in accordance with section 4.1-73-24.
- 16 2. A person may not remove cattle, horses, or mules from a livestock auction market,
17 buying station, or packing plant until a brand inspector has inspected the livestock and
18 issued a certificate of ownership.
- 19 3. Any person willfully violating this section is guilty of a class A misdemeanor. Any
20 person willfully violating this section a second time within five years or willfully violating
21 this section three or more times is guilty of a class C felony.

SOURCE: Section 36-09-23.

22 **4.1-73-22. Request for reinspection - Cost.**

- 23 1. A person may request that a brand inspector conduct a reinspection if the person has
24 reason to believe that:
- 25 a. An error was made during the brand inspection; and
- 26 b. Cattle, horses, or mules were shipped to an unintended destination as a result of
27 the error.
- 28 2. If it is determined that an error was made during the brand inspection, the North
29 Dakota stockmen's association shall bear the cost of the reinspection. If it is
30 determined that a brand inspection error was not made, the person that requested the

1 reinspection shall reimburse the North Dakota stockmen's association for the cost of
2 the reinspection.

SOURCE: Section 36-09-27.

3 **4.1-73-23. Brand inspection services - Out-of-state facilities.**

- 4 1. The state board of animal health may authorize the provision of brand inspection
5 services at a livestock auction market, buying station, or packing plant, located outside
6 this state.
- 7 2. In order to obtain brand inspection services under this section, an entity shall file a
8 petition with the state board of animal health.
- 9 3. Before making a determination on the petition, the state board of animal health shall
10 provide the North Dakota stockmen's association with an opportunity to comment.
- 11 4. The state board of animal health shall establish by rule the criteria to be considered in
12 determining whether to authorize the services.

SOURCE: Section 36-09-26.

13 **4.1-73-24. Rules - Fees for brand inspection.**

- 14 1. The state board of animal health, after seeking advice from the North Dakota
15 stockmen's association, shall adopt rules regarding:
- 16 a. The provision of brand inspection services at livestock auction markets, packing
17 plants, and buying stations; and
- 18 b. The provision of brand inspection services at locations other than those listed in
19 subdivision a.
- 20 2. The rules must include:
- 21 a. The fees to be charged for the provision of the brand inspections;
- 22 b. The collection of fees by the brand inspectors; and
- 23 c. The time and manner in which the brand inspectors must submit the fees to the
24 North Dakota stockmen's association.

SOURCE: Section 36-22-03.

25 **4.1-73-25. Slaughtering of cattle - Records - Penalty.**

- 26 1. Any person slaughtering cattle on a custom basis or for the purpose of selling the
27 meat at retail or wholesale shall record:
- 28 a. The date each animal was purchased or accepted for custom slaughtering;

- 1 b. The name and address of:
- 2 (1) The seller; or
- 3 (2) The person for whom custom slaughtering is being performed;
- 4 c. The animal's age or estimated age;
- 5 d. The animal's sex; and
- 6 e. Any brand found on the animal.
- 7 2. Any person required to record information in accordance with this section shall:
- 8 a. Compile the information in the manner directed by the North Dakota stockmen's
- 9 association; and
- 10 b. Forward the information to the North Dakota stockmen's association at least
- 11 quarterly.
- 12 3. Until such time as the information is forwarded to the North Dakota stockmen's
- 13 association, any person required to record information in accordance with this section
- 14 shall make the information available for inspection by a representative of the
- 15 association, upon request.
- 16 4. Any information created, collected, or maintained by the North Dakota stockmen's
- 17 association under this section is confidential and not subject to the open record
- 18 requirements of section 44-04-18. The information may be released by the association
- 19 only:
- 20 a. Upon the written consent of every person identified or identifiable by the
- 21 information;
- 22 b. In accordance with federal law;
- 23 c. To any state or federal agency for the purposes of animal disease control or
- 24 animal disease traceback;
- 25 d. To the attorney general and any other law enforcement agency pursuing a
- 26 criminal investigation; or
- 27 e. Pursuant to an order issued by a court upon a showing of good cause.
- 28 5. Any person violating this section is guilty of an infraction.

SOURCE: Section 36-09-15.

NOTE: Because current law was not clear regarding the confidentiality of slaughter records, the committee asked that language comparable to that found in current law Section 36-09-28 (proposed Section 4.1-72-06) be included in this section.

1 **4.1-73-26. Record of brands.**

2 The chief brand inspector shall keep a record of all brands issued in this state. The record
3 must include:

- 4 1. The name and address of the person that owns the brand;
- 5 2. A depiction of the brand;
- 6 3. The type of livestock on which the brand is authorized for use; and
- 7 4. The location or placement of the brand as authorized by the chief brand inspector.

SOURCE: Section 36-09-04.

8 **4.1-73-27. Chief brand inspector to issue brand book.**

9 1. The chief brand inspector shall compile and issue a brand book from the records
10 required by section 4.1-73-27, as of the final date for rerecording and shall compile
11 and issue an annual supplement.

12 2. a. The chief brand inspector shall provide a paper or an electronic copy of the brand
13 book and each annual supplement, free of charge to:

14 (1) Each brand inspector; and

15 (2) Any other law enforcement officer located in this state upon request.

16 b. The chief brand inspector shall make paper copies of the brand books and
17 annual supplements available for purchase by all other persons. The purchase
18 price must be established by the North Dakota stockmen's association and
19 approved by the state board of animal health.

20 3. The chief brand inspector shall post the brand book and each annual supplement on
21 the North Dakota stockmen's association website.

SOURCE: Section 36-09-14.

22 **4.1-73-28. Official brand book - Presumptive evidence.**

23 The official brand book published by the chief brand inspector must be received in all courts
24 of this state as presumptive evidence of the recording and ownership of livestock brands.

SOURCE: Section 36-09-08.

25 **4.1-73-29. Effect of recorded brand - Bill of sale to be given and kept.**

26 A brand recorded in accordance with this chapter and properly located on livestock is prima
27 facie evidence that the animal bearing the brand is the property of the brand's owner, unless
28 covered by a bill of sale as provided by section 4.1-73-18.

SOURCE: Section 36-09-19.

1 **SECTION 3.** Chapter 4.1-74 of the North Dakota Century Code is created and enacted as
2 follows: **4.1-74-01. Registered livestock - Misrepresentation or falsification of**
3 **records - Penalty.**

- 4 1. A person may not willfully:
 - 5 a. Sell any livestock with a certificate of registration or breeding that does not
6 pertain to the livestock;
 - 7 b. Falsify a certificate of registration or breeding;
 - 8 c. Misrepresent or falsify any production or performance information referenced in a
9 certificate of registration;
 - 10 d. Change the markings of livestock with the intent of deceiving a purchaser; or
 - 11 e. Misrepresent the sire to which livestock has been bred.
- 12 2. A person violating this section is guilty of a class A misdemeanor for a first offense and
13 a class C felony for a second or subsequent offense.

SOURCE: Section 36-09-22.

NOTE: Because this section pertains to registered livestock and not commercial livestock, the committee asked that it be relocated to a more suitable chapter within the North Dakota Century Code.

14 **SECTION 4.** Chapter 4.1-75 of the North Dakota Century Code is created and enacted as
15 follows:

16 **4.1-75-01. Definition.**

17 In this chapter, unless the context otherwise requires, "estrays" means cattle, horses, or
18 mules, whether branded or unbranded, whose ownership has not been determined.

SOURCE: New section.

19 **4.1-75-02. Estrays - Possession.**

- 20 1. If an individual discovers an estray on property that the individual owns or controls, the
21 individual shall make a good-faith effort to:
 - 22 a. Take possession of the estray;
 - 23 b. Determine its ownership; and
 - 24 c. Facilitate its return.
- 25 2. If the individual is unable to determine its ownership, the individual shall:
 - 26 a. Notify the sheriff of the county in which the estray was found or the chief brand
27 inspector, and:

- 1 (1) Provide to the sheriff or the chief brand inspector any information that may
2 assist in determining ownership of the estray;
3 (2) Make the estray available for examination if requested by the chief brand
4 inspector; and
5 (3) Follow the directives of the chief brand inspector regarding the estray's care
6 and disposal; or
7 b. Deliver the estray to a livestock auction market in this state or to an out-of-state
8 livestock auction market that receives brand inspection services under section
9 4.1-73-24 and notify the brand inspector that it appears to be an estray.
10 3. Any person failing to comply with this section is liable to the owner of the estray for
11 treble damages and may not claim reimbursement for any expenses otherwise
12 allowed under this chapter.

SOURCE: Sections 36-13-01, 36-13-03.1, and 36-13-06.

13 **4.1-75-03. Notification - Record of date and time.**

14 A county sheriff or the chief brand inspector shall make a record of the date and time that
15 notification is received under section 4.1-75-02. The individual taking possession of the estray is
16 not entitled to reimbursement for expenses incurred before the recorded date and time.

SOURCE: Section 36-13-01.

17 **4.1-75-04. Estrays - Notification of chief brand inspector.**

18 If an individual notifies a county sheriff that the individual has taken possession of an estray,
19 the sheriff shall contact the chief brand inspector and relay any information regarding the estray.

SOURCE: Section 36-13-02.

20 **4.1-75-05. Claiming estrays.**

- 21 1. If before an estray is sold the chief brand inspector determines its owner, the individual
22 who took possession of the estray shall return it to its owner, provided the owner
23 reimburses the individual for all incurred expenses in accordance with the
24 reimbursement schedule developed by the North Dakota stockmen's association or in
25 any lesser agreed-to amount.
26 2. If the individual who took possession of the estray and its owner are unable to reach
27 an agreement regarding the return of the estray, as provided for in subsection 1, the
28 individual who took possession of the estray shall:

- 1 a. Deliver the estray to a livestock auction market in this state or to an out-of-state
2 livestock auction market that receives brand inspection services under section
3 4.1-73-24; and
- 4 b. Notify the brand inspector that the estray is to be sold and that reimbursement for
5 the individual's expenses must be paid from the proceeds of the estray's sale, in
6 accordance with the reimbursement schedule developed by the North Dakota
7 stockmen's association.

SOURCE: Section 36-13-04.

8 **4.1-75-06. Reimbursement for costs - Schedule.**

- 9 1. Except as otherwise provided in section 4.1-75-05, the individual taking possession of
10 an estray in accordance with this chapter is entitled to receive reimbursement for
11 incurred expenses in accordance with a reimbursement schedule developed by the
12 North Dakota stockmen's association.
- 13 2. The amount reimbursable under this section must be deducted from the proceeds of
14 the estray's sale. Any amount remaining thereafter must be forwarded to the North
15 Dakota stockmen's association and submitted to the state treasurer for deposit in the
16 North Dakota stockmen's association fund.

SOURCE: Sections 36-13-05 and 36-22-04.

17 **4.1-75-07. List of estrays - Publication - Proof of ownership.**

- 18 1. Each December, the North Dakota stockmen's association shall publish at least twice
19 in the official newspaper of each county, a list of all estrays found in the county and for
20 which the association received sale proceeds.
- 21 2. The association shall maintain and make available on its website an updated list of all
22 estrays for which the association received sale proceeds during the preceding
23 seventy-two months.
- 24 3. If a person demonstrates ownership of an estray to the satisfaction of the chief brand
25 inspector within seventy-two months of the date on which the proceeds of its sale were
26 distributed to the North Dakota stockmen's association, the association shall return to
27 the owner the amount it received but shall retain any income earned on the amount.

SOURCE: Sections 36-22-06, 36-22-07, and 36-22-08.

1 **4.1-75-08. Possession of estray - Immunity from liability.**

2 1. If an individual, without being negligent, takes possession of an estray and complies
3 with this chapter, that individual is not liable:

4 1. a. For any injury or damage caused by the estray while in the individual's
5 possession or in the event the estray escapes; or

6 2. b. For any economic loss incurred by:

7 a. (1) The owner of the estray, if later identified; or

8 b. (2) Any other person having a claim to the estray.

9 2. If an individual, without being negligent, attempts to take possession of an estray in
10 order to comply with this chapter, that individual is not liable:

11 a. For any injury or damaged caused by the estray during the attempt to take
12 possession; or

13 b. For any economic loss incurred by:

14 (1) The owner of the estray, if later identified; or

15 (2) Any other person having a claim to the estray.

SOURCE: Section 36-13-07.

NOTE: The committee asked that verbiage be added to ensure that an individual would not be liable for any injury, damage, or economic loss stemming from an attempt to take possession of the estray.

16 **4.1-75-09. Failure to comply with chapter - Penalty.**

17 Any individual who takes possession of an estray and willfully fails to comply with this
18 chapter is guilty of a class B misdemeanor.

SOURCE: Section 36-13-08.

19 **SECTION 5.** Chapter 4.1-83 of the North Dakota Century Code is created and enacted as
20 follows:

21 **4.1-83-01. Definition.**

22 In this chapter, unless the context otherwise requires, "livestock dealer" means a person
23 that buys horses, mules, cattle, hogs, goats, or sheep, from a producer or a livestock auction
24 market:

25 1. On the person's own account, more than once per year for the purpose of resale
26 within thirty days;

27 2. On commission; or

28 3. For slaughter.

SOURCE: Section 36-04-01.

1 **4.1-83-02. Livestock dealer - License required.**

- 2 1. Before a person may transact business as a livestock dealer, the person must be
3 licensed by the agriculture commissioner.
- 4 2. This section does not apply to:
- 5 a. A packing plant, provided the plant's annual purchases of cattle, goats, hogs,
6 horses, mules, or sheep do not exceed five hundred thousand dollars; or
- 7 b. The purchase of cattle, goats, hogs, horses, mules, or sheep:
- 8 (1) By a livestock cooperative from a member of the cooperative; or
- 9 (2) By one member of a livestock cooperative from another member.

SOURCE: Sections 36-04-02 and 36-04-04.

10 **4.1-83-03. Application for livestock dealer's license - Required information.**

11 To obtain a livestock dealer's license, a person must complete an application and submit it
12 to the agriculture commissioner. The application must include:

- 13 1. The applicant's name and:
- 14 a. The name of each partner if the applicant is a partnership;
- 15 b. The name of each corporate officer and the state of incorporation if the applicant
16 is a corporation; or
- 17 c. The name of each manager and the state of organization if the applicant is a
18 limited liability company;
- 19 2. The applicant's mailing address; and
- 20 3. The applicant's principal place of business.

SOURCE: Section 36-04-04.

21 **4.1-83-04. License - Fee - Expiration.**

- 22 1. The fee for a livestock dealer's license is fifty dollars.
- 23 2. A livestock dealer's license issued under this chapter expires on June thirtieth of each
24 year.
- 25 3. A livestock dealer's license is not transferable.

SOURCE: Section 36-04-07.

26 **4.1-83-05. Application for license - Posting of bond.**

- 27 1. As a condition of licensure, the applicant shall post a bond with the agriculture
28 commissioner. The bond must be:

- 1 a. A surety bond;
- 2 b. A cash bond; or
- 3 c. An irrevocable letter of credit.
- 4 2. The agriculture commissioner must be named as the obligee.
- 5 3. The bond required by this section must be:
- 6 a. In an amount and form required by this chapter;
- 7 b. Applicable to the period during which the livestock dealer's license is in effect;
- 8 c. For the benefit of any person selling livestock to the livestock dealer or the
- 9 dealer's agent; and
- 10 d. Conditioned for the payment of any financial obligation owed by a livestock
- 11 dealer to another person in conjunction with the sale of livestock.

SOURCE: Section 36-04-05.

12 **4.1-83-06. Bond requirements - Alternative.**

13 Any applicant having a bond on file with the United States department of agriculture
14 pursuant to the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.], may meet the
15 requirements of section 4.1-83-05 by filing a copy of that bond with the agriculture
16 commissioner, provided the commissioner is named as the trustee of the bond.

SOURCE: Section 36-04-05.

17 **4.1-83-07. Out-of-state applicant - Trustee.**

18 A bond posted by an out-of-state applicant for a livestock dealer's license may name as
19 trustee a financially responsible, disinterested person who is satisfactory to the commissioner.

SOURCE: Section 36-04-05.

20 **4.1-83-08. Bond - Minimum amount.**

- 21 1. The agriculture commissioner shall determine the amount of the bond required in
22 accordance with this chapter by using the same basis as that prescribed for livestock
23 dealers who are subject to the provisions of the Packers and Stockyards Act, 1921
24 [7 U.S.C. 181 et seq.].
- 25 2. Notwithstanding subsection 1, if at the time of licensure or at any point during the
26 period of licensure the agriculture commissioner has reason to believe that a bond is
27 inadequate to secure the performance of the livestock dealer's obligations, the
28 commissioner shall require an increase in the amount of the bond.

- 1 3. A bond required by this chapter may not be in an amount less than ten thousand
2 dollars.

SOURCE: Section 36-04-05.

3 **4.1-83-09. Release of records - Confidentiality.**

- 4 1. As a condition of licensure, the applicant shall agree to provide to the agriculture
5 commissioner, upon request, any financial record that the commissioner deems
6 relevant for purposes related to:

- 7 a. The issuance of a livestock dealer's license; or
8 b. An investigation after issuance of a livestock dealer's license.

- 9 2. As a condition of licensure, the applicant shall file a records release with the
10 agriculture commissioner, authorizing the commissioner to obtain, from any source,
11 any financial record that the commissioner deems relevant for purposes related to:

- 12 a. The issuance of a livestock dealer's license; or
13 b. An investigation after issuance of a livestock dealer's license.

- 14 3. Any information gained by the agriculture commissioner under this section is
15 confidential and may be provided only:

- 16 a. To federal authorities in accordance with federal law;
17 b. To the attorney general, state agencies, and law enforcement agencies, for use in
18 the pursuit of official duties; and
19 c. As directed by an order of a court pursuant to a showing of good cause.

SOURCE: Section 36-04-05.1.

20 **4.1-83-10. Dealer's license - Grounds for denial - Hearing.**

- 21 1. The agriculture commissioner shall deny an applicant a livestock dealer's license if:

- 22 a. The applicant's current assets do not exceed the applicant's current liabilities; or
23 b. The applicant submitted false or misleading information in connection with the
24 application.

- 25 2. The agriculture commissioner may deny an applicant a livestock dealer's license:

- 26 a. If after due investigation, the commissioner has reason to believe that the
27 applicant has failed to pay, in a timely manner and without reasonable cause,
28 prior obligations incurred in connection with livestock transactions;

- 29 b. If the applicant has failed to pay brand inspection fees or veterinary inspection
30 fees, as required by law, within sixty days of the date on which they were due;

- 1 c. If the applicant has violated any of the laws of this state governing the handling,
2 shipment, or transportation of livestock; or
3 d. For any other just and good cause.
4 3. Any applicant denied a license under this section may request a hearing before the
5 agriculture commissioner within thirty days of the denial.

SOURCE: Sections 36-04-04 and 36-04-10.

NOTE: The committee directed that the section include "any other just and good cause" as a ground for the denial of a livestock dealer's license. Because it is the policy of the Agriculture Commissioner to grant a hearing if requested in the case of a license denial, the committee also directed that the provision be included in this section.

6 **4.1-83-11. Change of circumstance - Notification of agriculture commissioner.**

7 A livestock dealer shall notify the agriculture commissioner of:

- 8 1. Any legal change to the name in which the livestock dealer's license is issued;
9 2. Any change to the legal status of the livestock dealer; and
10 3. Any change in the nature and scope of the livestock dealer's business, if that change
11 would warrant an increase in the amount of the bond posted by the dealer in
12 accordance with this chapter.

SOURCE: New concept.

13 **4.1-83-12. Records.**

14 Each livestock dealer shall keep records regarding all purchases and sales of livestock for a
15 period of two years. The records may be examined by the agriculture commissioner upon
16 request.

SOURCE: New section.

17 **4.1-83-13. Agent's license.**

18 Before an individual may serve as the agent of a livestock dealer, the individual must be
19 licensed by the agriculture commissioner. In order for an individual to obtain an agent's license,
20 the agent's principal must request the license, at the time and in the manner determined by the
21 agriculture commissioner.

SOURCE: Section 36-04-03.

22 **4.1-83-14. Agent's license - Requirements - Liability of principal.**

23 Before the agriculture commissioner issues an agent's license, the commissioner shall
24 verify that:

- 1 1. The agent's principal is a livestock dealer licensed in accordance with this chapter;
2 and
3 2. The principal has filed with the agriculture commissioner a signed statement indicating
4 that the principal is responsible for and will be held strictly liable for any acts and
5 omissions arising out of the agent's livestock dealings, even if the dealings were not
6 authorized by the principal.

SOURCE: Section 36-04-03.

7 **4.1-83-15. Agent's license - Grounds for denial.**

- 8 1. The agriculture commissioner may refuse to issue an agent's license:
9 a. If the individual seeking the license was previously denied a livestock dealer's
10 license or an agent's license;
11 b. If the individual seeking the license had a livestock dealer's license or an agent's
12 license revoked;
13 c. If the individual seeking the license has been convicted of an offense for which a
14 term of imprisonment or a fine is authorized by statute; or
15 d. For any other just and good cause.
16 2. Any applicant denied a license under this section may request a hearing before the
17 agriculture commissioner, within thirty days of the denial.

SOURCE: Section 36-04-03.

NOTE: The committee directed that the section include "any other just and good cause" as a ground for the denial of an agent's license. Because the committee directed that a provision be made for a hearing within 30 days if the Agriculture Commissioner denied a livestock dealer's license (see proposed Section 4.1-83-10), that same provision was included in this section (see subsection 2). The inclusion is subject to committee review.

18 **4.1-83-16. Agent's authority - Limitation.**

- 19 While acting as an agent, an individual may not conduct any transaction involving livestock
20 in the agent's own name.

SOURCE: Section 36-04-03.

21 **4.1-83-17. Order to cease and desist - Hearing.**

- 22 The agriculture commissioner may issue an order to cease and desist if the commissioner
23 has reason to believe that a person has committed or is about to commit a violation of this
24 chapter. If the agriculture commissioner issues a cease and desist order, the commissioner
25 shall hold a hearing within thirty days of the issuance and within sixty days of the issuance,
26 revoke the order or make it permanent.

SOURCE: Section 36-04-09.1.

1 **4.1-83-18. Investigation of livestock dealer - Hearing.**

- 2 1. a. The agriculture commissioner shall investigate the conduct of any livestock
3 dealer if the commissioner has reasonable cause to believe that the livestock
4 dealer may have violated this chapter or engaged in any activity that constitutes a
5 ground for license suspension or revocation under this chapter.
6 b. Subdivision 1 does not apply if an investigation is being conducted by the grain
7 inspection, packers and stockyards administration.
8 2. If after conducting an investigation the agriculture commissioner has probable cause
9 to believe that a violation of the chapter occurred or that the livestock dealer engaged
10 in any activity that constitutes a ground for license suspension or revocation under this
11 chapter, the commissioner may conduct a hearing to determine whether the license of
12 the livestock dealer should be suspended or revoked.

SOURCE: Section 36-04-09.2.

13 **4.1-83-19. Grounds for suspension or revocation of license.**

14 The agriculture commissioner may suspend or revoke the license of a livestock dealer if:

- 15 1. The livestock dealer has violated this chapter;
16 2. The livestock dealer has violated any of the laws of this state governing the handling,
17 shipment, or transportation of livestock;
18 3. The livestock dealer has been found guilty of deceit, fraud, dishonesty, forgery, or
19 theft, as a dealer in livestock;
20 4. The livestock dealer submitted false or misleading information in connection with the
21 application for licensure;
22 5. The livestock dealer has failed to maintain records that disclose all purchases and
23 sales of livestock, as required by section 4.1-83-12;
24 6. The livestock dealer has refused the commissioner's request to provide financial
25 records to the commissioner, as required by section 4.1-83-09;
26 7. The livestock dealer has failed to pay brand inspection fees or veterinary inspection
27 fees, as required by law, within sixty days of the date on which they were due;
28 8. The livestock dealer is convicted under section 4.1-03-13 of failing to submit beef
29 promotion assessments; or

- 1 9. The livestock dealer has failed to pay for livestock purchased in a timely manner and
2 without reasonable cause.

SOURCE: Section 36-04-10.

3 **4.1-83-20. License suspension or revocation - Hearing - Appeal.**

- 4 1. Before the agriculture commissioner may suspend or revoke a livestock dealer's
5 license, the commissioner shall:
6 a. Prepare a complaint;
7 b. Designate the time and place for a hearing; and
8 c. Serve a copy of the complaint and a notice of the hearing upon the livestock
9 dealer at least fifteen days before the date of the hearing.
10 2. The agriculture commissioner shall serve the required notice by registered mail or in
11 the manner provided by the North Dakota Rules of Civil Procedure for the service of a
12 summons.
13 3. At the hearing, the agriculture commissioner shall take and receive testimony and
14 evidence.
15 4. After the hearing, the agriculture commissioner shall issue an order to:
16 a. Dismiss the proceedings;
17 b. Suspend the livestock dealer's license; or
18 c. Revoke the livestock dealer's license.
19 5. The aggrieved party may appeal the order to the district court of the county in which
20 the party maintains its principal place of business.

SOURCE: Section 36-04-11.

21 **4.1-83-21. Bond - Claim for relief.**

- 22 If a livestock dealer defaults in the provisions of any bond required by this chapter, the
23 livestock dealer is deemed to be insolvent within the meaning of this chapter. The claim for relief
24 for damages upon the bond, and the amount recovered in any claim for relief for the conversion
25 of livestock purchased by the livestock dealer while the license is in force and effect, constitutes
26 a trust fund in the hands of the agriculture commissioner for all persons having a claim for relief
27 against the livestock dealer on the bond.

SOURCE: Section 36-04-12.

1 **4.1-83-22. Appointment of trustee.**

- 2 1. Upon the insolvency of a livestock dealer, the agriculture commissioner may apply to
3 the district court of the county in which the dealer maintains its principal place of
4 business for appointment as the trustee.
- 5 2. Upon notice to the livestock dealer, as the court shall prescribe but not exceeding ten
6 days, or upon a written waiver of notice by the dealer, the court shall hear and make a
7 determination regarding the application in a summary manner.
- 8 3. If the court determines that the livestock dealer is insolvent within the meaning of this
9 chapter and that it would be in the best interest of persons holding claims against the
10 dealer for the purchase price of livestock sold to the dealer or to the dealer's agent
11 that the agriculture commissioner execute the trust, the court shall issue an order
12 appointing the commissioner as the trustee, without bond.
- 13 4. Upon being appointed as the trustee, the agriculture commissioner shall perform the
14 duties of a trustee as set forth in this chapter.

SOURCE: Section 36-04-13.

15 **4.1-83-23. Possession of records and property - Notice to file claims.**

- 16 1. a. Upon being appointed trustee, the agriculture commissioner shall take
17 possession of all accounts and records pertaining to the livestock dealer's
18 business. After reviewing the records, the agriculture commissioner may return to
19 the dealer any records that are not necessary to the settlement of claims under
20 this chapter.
- 21 b. Upon being appointed trustee, the agriculture commissioner shall take
22 possession of all livestock purchased by the dealer under the dealer's license
23 and remaining in the dealer's possession.
- 24 2. The agriculture commissioner, as trustee, shall publish a notice once each week for
25 three consecutive weeks in the official newspaper of each county in which the
26 livestock dealer was conducting business, directing any person having a claim against
27 the dealer to file the claim and all supporting documentation with the commissioner no
28 later than forty-five days from the last date of publication. Any person failing to meet
29 the filing requirements set forth in the notice is barred from participating in any funds
30 marshalled by the agriculture commissioner under this chapter.

SOURCE: Section 36-04-14.

1 **4.1-83-24. Maintenance of action - Marshalling of assets.**

- 2 1. The agriculture commissioner, as trustee, may in the name of the state upon its own
3 relation but for the benefit of all claimants against the livestock dealer's bond, maintain
4 suits or special proceedings upon the bond and against any person who has
5 converted any of the livestock, for the purpose of marshalling all of the trust assets of
6 the insolvent dealer and distributing the assets among the claimants.
7 2. However, recourse must be had against the bond before recourse is had against a
8 person who knowingly and in good faith converted any of the livestock, unless the
9 agriculture commissioner determines it necessary that all of the remedies be pursued
10 at the same time.

SOURCE: Section 36-04-15.

11 **4.1-83-25. Remedy of claimants - Pursuit of separate action.**

- 12 1. A claimant may not pursue a separate claim for relief against the livestock dealer's
13 bond unless the agriculture commissioner fails or refuses to apply for appointment as
14 trustee.
15 2. A claimant may pursue concurrently with the agriculture commissioner, however, any
16 other remedy against the livestock dealer or the dealer's property that the claimant
17 may have for the entire claim or for any deficiency that occurs after all payments have
18 been made from the trust fund.

SOURCE: Section 36-04-16.

19 **4.1-83-26. Actions by agriculture commissioner - Exoneration.**

- 20 1. The agriculture commissioner may:
21 a. Prosecute an action for any claim arising under this chapter;
22 b. Appeal from any adverse judgment to the court of last resort; and
23 c. Settle and compromise any action if the commissioner determines that doing so
24 is in the best interests of the claimant.
25 2. When the agriculture commissioner receives a compromise payment or the full
26 amount of any bond or conversion claim, the commissioner may exonerate the person
27 compromising or paying the claim from further liability growing out of the action.

SOURCE: Section 36-04-17.

1 **4.1-83-27. Moneys collected on claims - Required deposit.**

2 All moneys collected and received by the agriculture commissioner as trustee must be
3 deposited in the Bank of North Dakota pending the marshalling of the fund.

SOURCE: Section 36-04-18.

4 **4.1-83-28. Report of amounts payable - Distribution of trust fund.**

5 1. Upon recovery of the trust fund, or so much of the fund as is recoverable or necessary
6 to pay the outstanding claims, the agriculture commissioner shall file with the court a
7 report showing the amount payable on each claim, after recognition of all proper liens,
8 pledges, assignments, and deductions.

9 2. If the trust fund is insufficient to pay all claims in full, the agriculture commissioner
10 shall prorate the fund among the claimants.

11 3. The court shall notify the claimants by mail regarding the proposed distribution and
12 direct that the claimants show cause why the report and distribution should not be
13 approved.

14 4. After holding a hearing on the matter, the court shall:

15 a. Approve or modify the report;

16 b. Issue an order directing that the trust fund be distributed; and

17 c. Discharge the agriculture commissioner from all duties as trustee.

SOURCE: Section 36-04-19.

18 **4.1-83-29. Court costs.**

19 The agriculture commissioner is not required to pay any filing fee or other court cost or
20 disbursement in connection with an application for appointment as trustee or with any action
21 brought under this chapter if the fee, cost, or disbursement accrues to the state or to a county in
22 this state.

SOURCE: Section 36-04-20.

23 **4.1-83-30. Violations of chapter - Criminal penalty - Civil penalty.**

24 1. Any person violating this chapter is guilty of a class A misdemeanor.

25 2. Any person violating this chapter is subject to a civil penalty in an amount not to
26 exceed five thousand dollars for each violation. The civil penalty may be adjudicated
27 by a court or by the agriculture commissioner through an administrative hearing.

SOURCE: Section 36-04-21.

NOTE: This section, like current law, imposes a penalty for the violation of this chapter. The committee wanted to further consider whether the penalty should apply only to a "willful" violation.

1 **SECTION 6.** Chapter 4.1-88 of the North Dakota Century Code is created and enacted as
2 follows:

3 **4.1-88-01. Definition.**

4 In this chapter, unless the context otherwise requires, "wool dealer" means a person that
5 buys wool from a producer.

SOURCE: Section 36-04-01.

6 **4.1-88-02. Wool dealer - License required.**

7 1. Before a person may transact business as a wool dealer, the person must be licensed
8 by the agriculture commissioner.

9 2. This section does not apply to the purchase of wool:

10 a. By a wool cooperative from a member of the cooperative; or

11 b. By one member of a wool cooperative from another member.

SOURCE: Sections 36-04-02 and 36-04-04.

12 **4.1-88-03. Application for wool dealer's license - Required information.**

13 To obtain a wool dealer's license, a person must complete an application and submit it to
14 the agriculture commissioner. The application must include:

15 1. The applicant's name and:

16 a. The name of each partner if the applicant is a partnership;

17 b. The name of each corporate officer and the state of incorporation if the applicant
18 is a corporation; and

19 c. The name of each manager and the state of organization if the applicant is a
20 limited liability company;

21 2. The applicant's mailing address; and

22 3. The applicant's principal place of business.

SOURCE: Section 36-04-04.

23 **4.1-88-04. License - Fee - Expiration.**

24 1. The fee for a wool dealer's license is ten dollars.

25 2. A wool dealer's license issued under this chapter expires on June thirtieth of each
26 year.

27 3. A wool dealer's license is not transferable.

SOURCE: Section 36-04-07.

1 **4.1-88-05. Application for license - Posting of bond.**

- 2 1. As a condition of licensure, the applicant must post a bond with the agriculture
3 commissioner. The bond must be:
4 a. A surety bond;
5 b. A cash bond; or
6 c. An irrevocable letter of credit.
7 2. The agriculture commissioner must be named as the obligee.
8 3. The bond required by this section must be:
9 a. In an amount and form required by this chapter;
10 b. Applicable to the period during which the wool dealer's license is in effect;
11 c. For the benefit of any person selling wool to the wool dealer or the dealer's agent;
12 and
13 d. Conditioned for the payment of any financial obligation owed by a wool dealer to
14 another person in conjunction with the sale of wool.

SOURCE: Section 36-04-05.

15 **4.1-88-06. Out-of-state applicant - Trustee.**

- 16 A bond filed by an out-of-state applicant for a wool dealer's license may name as trustee a
17 financially responsible, disinterested person who is satisfactory to the agriculture commissioner.

SOURCE: Section 36-04-05.

18 **4.1-88-07. Bond - Minimum amount.**

- 19 1. The agriculture commissioner shall determine the amount of the bond required in
20 accordance with this chapter, provided that the amount of the bond is not less than ten
21 thousand dollars.
22 2. If at the time of licensure or at any point during the period of licensure the agriculture
23 commissioner has reason to believe that a bond is inadequate to secure the
24 performance of the wool dealer's obligations, the commissioner shall require an
25 increase in the amount of the bond.

SOURCE: Section 36-04-05.

1 **4.1-88-08. Release of records - Confidentiality.**

- 2 1. As a condition of licensure, the applicant shall agree to provide to the agriculture
3 commissioner, upon request, any financial record that the commissioner deems
4 relevant for purposes related to:
- 5 a. The issuance of a wool dealer's license; or
6 b. An investigation after issuance of a wool dealer's license.
- 7 2. As a condition of licensure, the applicant shall file a records release with the
8 agriculture commissioner, authorizing the commissioner to obtain, from any source,
9 any financial record that the commissioner deems relevant for purposes related to:
- 10 a. The issuance of a wool dealer's license; or
11 b. An investigation after issuance of a wool dealer's license.
- 12 3. Any information gained by the agriculture commissioner under this section is
13 confidential and may be provided only:
- 14 a. To federal authorities in accordance with federal law;
15 b. To the attorney general, state agencies, and law enforcement agencies, for use in
16 the pursuit of official duties; and
- 17 c. As directed by an order of a court pursuant to a showing of good cause.

SOURCE: Section 36-04-05.1.

18 **4.1-88-09. Wool dealer's license - Grounds for denial - Hearing.**

- 19 1. The agriculture commissioner shall deny an applicant a wool dealer's license if:
- 20 a. The applicant's current assets do not exceed the applicant's current liabilities; or
21 b. The applicant submitted false or misleading information in connection with the
22 application.
- 23 2. The agriculture commissioner may deny an applicant a wool dealer's license:
- 24 a. If after due investigation, the commissioner has reason to believe that the
25 applicant has failed to pay, in a timely manner and without reasonable cause,
26 prior obligations incurred in connection with wool transactions; or
- 27 b. For any other just and good cause.
- 28 3. Any applicant denied a license under this section may request a hearing before the
29 agriculture commissioner, within thirty days of the denial.

SOURCE: Sections 36-04-04 and 36-04-10.

NOTE: The addition of any other just and good cause as a ground for license denial parallels proposed Section 4.1-83-10. The hearing provision in the case of a license denial was added in the same manner as for livestock dealers.

1 **4.1-88-10. Change of circumstance - Notification of agriculture commissioner.**

2 A wool dealer shall notify the agriculture commissioner of:

- 3 1. Any legal change to the name in which the wool dealer's license is issued;
4 2. Any change to the legal status of the wool dealer; and
5 3. Any change in the nature and scope of the wool dealer's business, if that change
6 would warrant an increase in the amount of the bond posted by the dealer in
7 accordance with this chapter.

SOURCE: New concept.

8 **4.1-88-11. Records.**

9 Each wool dealer shall keep records regarding all purchases and sales of wool for a period
10 of two years. The records may be examined by the agriculture commissioner upon request.

SOURCE: New section.

11 **4.1-88-12. Agent's license.**

12 Before an individual may serve as the agent of a wool dealer, the individual must be
13 licensed by the agriculture commissioner. In order for an individual to obtain an agent's license,
14 the agent's principal must request the licensure, at the time and in the manner determined by
15 the agriculture commissioner.

SOURCE: Section 36-04-03.

16 **4.1-88-13. Agent's license - Requirements - Liability of principal.**

17 Before the agriculture commissioner issues an agent's license, the commissioner shall
18 verify that:

- 19 1. The agent's principal is a wool dealer licensed in accordance with this chapter; and
20 2. The principal has filed with the agriculture commissioner a signed statement indicating
21 that the principal is responsible for and will be held strictly liable for any acts and
22 omissions arising out of the agent's wool dealings, even if the dealings were not
23 authorized by the principal.

SOURCE: Section 36-04-03.

24 **4.1-88-14. Agent's license - Grounds for denial - Hearing.**

- 25 1. The agriculture commissioner may refuse to issue an agent's license:

- 1 a. If the individual seeking the license was previously denied a wool dealer's license
- 2 or an agent's license;
- 3 b. If the individual seeking the license has had a wool dealer's license or an agent's
- 4 license revoked;
- 5 c. If the individual seeking the license has been convicted of an offense for which a
- 6 term of imprisonment or a fine is authorized by statute; or
- 7 d. For any other just and good cause.
- 8 2. Any applicant denied a license under this section may request a hearing before the
- 9 agriculture commissioner, within thirty days of the denial.

SOURCE: Section 36-04-03.

NOTE: The addition of any other just and good cause as a ground for license denial parallels proposed Section 4.1-83-09. The hearing provision in the case of a license denial was added in the same manner as for livestock dealers.

10 **4.1-88-15. Agent's authority - Limitation.**

11 While acting as an agent, an individual may not conduct any transaction involving livestock,
12 in the agent's own name.

SOURCE: Section 36-04-03.

13 **4.1-88-16. Order to cease and desist - Hearing.**

14 The agriculture commissioner may issue an order to cease and desist if the commissioner
15 has reason to believe that a person has committed or is about to commit a violation of this
16 chapter. If the commissioner issues a cease and desist order, the commissioner shall hold a
17 hearing within thirty days of the issuance and within sixty days of the issuance, revoke the order
18 or make it permanent, as the facts require.

SOURCE: Section 36-04-09.1.

19 **4.1-88-17. Investigation of wool dealer - Hearing.**

- 20 1. The agriculture commissioner shall investigate the conduct of any wool dealer if the
- 21 commissioner has reasonable cause to believe that the wool dealer may have violated
- 22 this chapter or engaged in any activity that constitutes a ground for license revocation
- 23 under this chapter.
- 24 2. If after conducting an investigation the agriculture commissioner has probable cause
- 25 to believe that a violation of the chapter occurred or that the wool dealer engaged in
- 26 any activity that constitutes a ground for license suspension or revocation under this

1 chapter, the commissioner may conduct a hearing to determine whether the license of
2 the wool dealer should be suspended or revoked.

SOURCE: Section 36-04-09.2.

3 **4.1-88-18. Grounds for suspension or revocation of license.**

4 The commissioner may revoke the license of a wool dealer if:

- 5 1. The wool dealer has violated this chapter;
- 6 2. The wool dealer has been found guilty of deceit, fraud, dishonesty, forgery, or theft, as
7 a dealer in wool;
- 8 3. The wool dealer submitted false or misleading information in connection with the
9 application for licensure;
- 10 4. The wool dealer has failed to maintain records that disclose all purchases and sales of
11 wool, as required by section 4.1-88-11;
- 12 5. The wool dealer has refused the commissioner's request to provide financial records
13 to the commissioner, as required by section 4.1-88-08; or
- 14 6. The wool dealer has failed to pay for wool purchased in a timely manner and without
15 reasonable cause.

SOURCE: Section 36-04-10.

16 **4.1-88-19. License suspension or revocation - Hearing - Appeal.**

- 17 1. Before the agriculture commissioner may suspend or revoke a wool dealer's license,
18 the commissioner shall:
 - 19 a. Prepare a complaint;
 - 20 b. Designate the time and place for a hearing; and
 - 21 c. Serve a copy of the complaint and a notice of the hearing upon the wool dealer at
22 least fifteen days before the date of the hearing.
- 23 2. The agriculture commissioner shall serve the required notice by registered mail or in
24 the manner provided by the North Dakota Rules of Civil Procedure for the service of a
25 summons.
- 26 3. At the hearing, the agriculture commissioner shall take and receive testimony and
27 evidence.
- 28 4. After the hearing, the agriculture commissioner shall issue an order to:
 - 29 a. Dismiss the proceedings;
 - 30 b. Suspend the wool dealer's license; or

1 c. Revoke the wool dealer's license.

2 5. The aggrieved party may appeal the order to the district court of the county in which
3 the party maintains its principal place of business.

SOURCE: Section 36-04-11.

4 **4.1-88-20. Bond - Claim for relief.**

5 If a wool dealer defaults in the provisions of any bond required by this chapter, the wool
6 dealer is deemed to be insolvent within the meaning of this chapter. The claim for relief for
7 damages upon the bond, and the amount recovered in any claim for relief for the conversion of
8 wool purchased by the wool dealer, while the license is in force and effect, constitutes a trust
9 fund in the hands of the agriculture commissioner for all persons having a claim for relief
10 against the wool dealer on the bond.

SOURCE: Section 36-04-12.

11 **4.1-88-21. Appointment of trustee.**

- 12 1. Upon the insolvency of a wool dealer, the agriculture commissioner may apply to the
13 district court of the county in which the dealer maintains its principal place of business
14 for appointment as the trustee.
- 15 2. Upon notice to the wool dealer, as the court shall prescribe but not exceeding ten
16 days, or upon a written waiver of notice by the dealer, the court shall hear and make a
17 determination regarding the application in a summary manner.
- 18 3. If the court determines that the wool dealer is insolvent within the meaning of this
19 chapter and that it would be in the best interest of persons holding claims against the
20 dealer for the purchase price of wool sold to the dealer or to the dealer's agent that the
21 agriculture commissioner execute the trust, the court shall issue an order appointing
22 the commissioner as the trustee, without bond.
- 23 4. Upon being appointed as the trustee, the agriculture commissioner shall perform the
24 duties of a trustee as set forth in this chapter.

SOURCE: Section 36-04-13.

25 **4.1-88-22. Possession of records and property - Notice to file claims.**

- 26 1. a. Upon being appointed trustee, the agriculture commissioner shall take
27 possession of all accounts and records pertaining to the wool dealer's business.
28 After reviewing the records, the agriculture commissioner may return to the

1 dealer any records that are not necessary to the settlement of claims under this
2 chapter.

3 b. Upon being appointed trustee, the agriculture commissioner shall take
4 possession of all wool purchased by the dealer under the dealer's license and
5 remaining in the dealer's possession.

6 2. The agriculture commissioner, as trustee, shall publish a notice once each week for
7 three consecutive weeks in the official newspaper of each county in which the wool
8 dealer was conducting business, directing any person having a claim against the
9 dealer to file the claim and all supporting documentation with the commissioner no
10 later than forty-five days from the last date of publication. Any person failing to meet
11 the filing requirements set forth in the notice is barred from participating in any funds
12 marshalled by the commissioner under this chapter.

SOURCE: Section 36-04-14.

13 **4.1-88-23. Maintenance of action - Marshalling of assets.**

14 1. The agriculture commissioner, as trustee, may in the name of the state upon its own
15 relation but for the benefit of all claimants against the wool dealer's bond, maintain
16 suits or special proceedings upon the bond and against any person who has
17 converted any of the wool, for the purpose of marshalling all of the trust assets of the
18 insolvent dealer and distributing the assets among the claimants.

19 2. However, recourse must be had against the bond before recourse is had against a
20 person who knowingly and in good faith converted any of the wool, unless the
21 agriculture commissioner determines it necessary that all of the remedies be pursued
22 at the same time.

SOURCE: Section 36-04-15.

23 **4.1-88-24. Remedy of claimants - Pursuit of separate action.**

24 1. A claimant may not pursue a separate claim for relief against the wool dealer's bond
25 unless the agriculture commissioner fails or refuses to apply for appointment as
26 trustee.

27 2. A claimant may pursue concurrently with the agriculture commissioner, however, any
28 other remedy against the wool dealer or the dealer's property that the claimant may
29 have for the entire claim or for any deficiency that occurs after all payments have been
30 made from the trust fund.

SOURCE: Section 36-04-16.

1 **4.1-88-25. Actions by agriculture commissioner - Exoneration.**

- 2 1. The agriculture commissioner may:
3 a. Prosecute an action for any claim arising under this chapter;
4 b. Appeal from any adverse judgment to the court of last resort; and
5 c. Settle and compromise any action if the commissioner determines that doing so
6 is in the best interests of the claimant.
7 2. When the agriculture commissioner receives a compromise payment or the full
8 amount of any bond or conversion claim, the commissioner may exonerate the person
9 compromising or paying the claim from further liability growing out of the action.

SOURCE: Section 36-04-17.

10 **4.1-88-26. Moneys collected on claims - Required deposit.**

11 All moneys collected and received by the agriculture commissioner as trustee must be
12 deposited in the Bank of North Dakota pending the marshalling of the fund.

SOURCE: Section 36-04-18.

13 **4.1-88-27. Report of amounts payable - Distribution of trust fund.**

- 14 1. Upon recovery of the trust fund, or so much of the fund as is recoverable or necessary
15 to pay the outstanding claims, the agriculture commissioner shall file with the court a
16 report showing the amount payable on each claim, after recognition of all proper liens,
17 pledges, assignments, and deductions.
18 2. If the trust fund is insufficient to pay all claims in full, the agriculture commissioner
19 shall prorate the fund among the claimants.
20 3. The court shall notify the claimants by mail regarding the proposed distribution and
21 direct that the claimants show cause why the report and distribution should not be
22 approved.
23 4. After holding a hearing on the matter, the court shall:
24 a. Approve or modify the report;
25 b. Issue an order directing that the trust fund be distributed; and
26 c. Discharge the agriculture commissioner from all duties as trustee.

SOURCE: Section 36-04-19.

1 **4.1-88-28. Court costs.**

2 The agriculture commissioner is not required to pay any filing fee or other court cost or
3 disbursement in connection with an application for appointment as trustee or with any action
4 brought under this chapter if the fee, cost, or disbursement accrues to the state or to a county of
5 this state.

SOURCE: Section 36-04-20.

6 **4.1-88-29. Violations of chapter - Criminal penalty - Civil penalty.**

- 7 1. Any person violating this chapter is guilty of a class A misdemeanor.
8 2. Any person violating this chapter is subject to a civil penalty in an amount not to
9 exceed five thousand dollars for each violation. The civil penalty may be adjudicated
10 by a court or by the agriculture commissioner through an administrative hearing.

SOURCE: Section 36-04-21.

NOTE: This section, like current law, imposes a penalty for the violation of this chapter. The committee wanted to further consider whether the penalty should apply only to a "willful" violation.

11 **SECTION 7. AGRICULTURAL LAW REWRITE - STUDY.** The legislative management
12 shall continue its study of North Dakota Century Code provisions that relate to agriculture for
13 the purpose of recommending changes to laws that are found to be irrelevant, inconsistent,
14 illogically arranged, or unclear in their intent and direction. The legislative management shall
15 report its findings and recommendations, together with any legislation required to implement the
16 recommendations, to the sixty-fourth legislative assembly.

17 **SECTION 8. REPEAL.** Chapters 36-04, 36-09, 36-13, and 36-22 of the North Dakota
18 Century Code are repealed.