

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-16 of the North Dakota Century Code, relating
2 to beekeeping; to amend and reenact section 4.1-08-03 of the North Dakota Century Code,
3 relating to the submission of assessments by beekeepers; and to repeal chapter 4-12.2 of the
4 North Dakota Century Code, relating to beekeeping.

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

6 **SECTION 1. AMENDMENT.** Section 4.1-08-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4.1-08-03. Submission of assessments - Civil penalty.**

- 9 1. Each beekeeper shall submit the assessment required by section 4.1-08-02 to the
10 commissioner at the same time the beekeeper submits the license application required
11 by section ~~4-12.2-04~~4.1-16-02.
- 12 2. If a beekeeper fails to submit the assessment as required by this section, the
13 commissioner may impose a penalty equal to five percent of the amount due, plus
14 interest at the rate of six percent per annum from the due date.

15 **SECTION 2.** Chapter 4.1-16 of the North Dakota Century Code is created and enacted as
16 follows:

17 **4.1-16-01. Definitions.**

18 In this chapter, unless the context otherwise requires:

- 19 1. "Apiary" means the site at which one or more colonies of bees are kept.
- 20 2. "Bee" means a honey-producing insect of the genus Apis, including all stages of its
21 life.
- 22 3. "Beekeeper" means a person who by virtue of ownership or a lease is responsible for
23 the maintenance of bees located in or placed in this state.

1 4. "Colony" means a familial group of adult bees consisting of drones, workers, and a
2 queen.

3 5. "Hive" means a manmade structure that houses a colony.

SOURCE: Section 4-12.2-01

4 **4.1-16-02. Beekeeper's license required.**

5 1. Before a person may act as a beekeeper in this state, the person must be licensed by
6 the agriculture commissioner.

7 2. To obtain a beekeeper's license, a person must complete an application and submit it
8 to the commissioner.

9 3. The application must include:

10 a. The applicant's name, address, and telephone number;

11 b. The maximum number of colonies to be located in or placed in this state; and

12 c. The name, address, and telephone number of a resident agent who is authorized
13 to accept service of process.

SOURCE: Section 4-12.2-04

14 **4.1-16-03. Beekeeper's license - Application of minor - Liability.**

15 An individual who is less than eighteen years of age may be licensed as a beekeeper, if that
16 individual's application for license is signed by the individual's parent. Any civil or administrative
17 liability for a violation of this chapter by a beekeeper who is less than eighteen years of age is
18 imputed to the parent who signed the application. The parent is jointly and severally liable with
19 the beekeeper.

SOURCE: Section 4-12.2-04.1

20 **4.1-16-04. Beekeeper's license - Transferability - Expiration.**

21 1. A beekeeper's license issued under this chapter is not transferable.

22 2. A beekeeper's license issued under this chapter expires on December thirty-first.

SOURCE:

(Subs. 1) Section 4-12.2-04

(Subs. 2) New law. Current law is not clear with respect to the date on which an existing
license expires.

23 **4.1-16-05. License - Grounds for denial.**

24 The agriculture commissioner may refuse to grant a license to any person who:

25 1. Has repeatedly violated this chapter;

- 1 2. Failed to pay an adjudicated civil penalty for violating this chapter, within thirty days
2 after a final determination that the civil penalty is owed; or
3 3. Provided false or misleading information in connection with any application or
4 notification required by this chapter.

SOURCE: 4-12.2-22

NOTE: Under current law, a person who provides false information, as set forth in subsection 3, is subject to the penalties provided in this chapter--i.e., a Class A misdemeanor and/or a \$5000 civil penalty. In other licensure situations, the Legislative Assembly has opted to provide for the denial of a license or for the revocation of a license. The committee may wish to clarify its position in this regard.

5 **4.1-16-06. License fee.**

6 The fee for a beekeeper's license is five dollars.

SOURCE: Section 4-12.2-05

7 **4.1-16-07. Colony assessment.**

8 In addition to the license fee required by section 4.1-16-06, an applicant for a license must
9 submit a colony assessment in an amount equal to fifteen cents multiplied by the maximum
10 number of colonies listed in the application.

SOURCE: Section 4-12.2-06

11 **4.1-16-08. Apiary location - Notification.**

- 12 1. Before placing or locating hives in this state, a beekeeper shall notify the agriculture
13 commissioner of:
14 a. (1) The location of each apiary to the nearest section, quarter section,
15 township, and range, and, if within the corporate limits of a city, the number
16 or name of the lot, block, and addition in the city; or
17 (2) The location of each apiary using satellite navigation system coordinates;
18 and
19 b. The name of the person who owns or leases the property on which the apiary is
20 located.
21 2. The notification required by this section may be provided to the commissioner in
22 written or in electronic format.

SOURCE: Section 4-12.2-07

23 **4.1-16-09. Identification of apiary.**

- 24 1. Each apiary must be identified with a multidigit number assigned by the agriculture
25 commissioner. The number must:

- 1 a. Be displayed on at least one hive in the apiary;
- 2 b. Be in a color that contrasts to that of the hive;
- 3 c. Be visible upon approaching the apiary's main entrance; and
- 4 d. Consist of digits that are at least three inches [7.62 centimeters] in height.
- 5 2. The commissioner may require that the letters "ND" precede the assigned number.
- 6 3. Any apiary that is not identified, as required by this section, is subject to seizure by the
- 7 commissioner.

SOURCE: Section 4-12.2-14

NOTE: An earlier version of this bill draft provided that "[a]t the request of a beekeeper, the agriculture commissioner may approve an alternate form of apiary identification." The committee may wish to discuss whether this authority is to be included.

8 **4.1-16-10. Unidentified apiary - Notice - Seizure.**

- 9 1. If the agriculture commissioner determines that an apiary is not identified, as required
- 10 by section 4.1-16-09, and if after making a reasonable effort the commissioner fails to
- 11 identify the beekeeper responsible for the apiary, the commissioner shall publish in the
- 12 official newspaper of the county in which the apiary is located, a notice indicating that
- 13 at a time certain, all of the colonies, the hives, including their content, and all
- 14 beekeeping equipment present at the apiary, will be seized and sold at auction or
- 15 destroyed, unless the beekeeper or other responsible person appears to claim the
- 16 property and pay for any costs incurred by the commissioner under this section.
- 17 2. A seizure under this section may not occur until at least the sixth day after the date of
- 18 the published notice.

SOURCE: Section 4-12.2-21

19 **4.1-16-11. Confiscation and disposal.**

20 Except as provided for in section 4.1-16-10, the agriculture commissioner or a law

21 enforcement officer may confiscate bees, hives, or beekeeping equipment, being transported or

22 maintained in violation of this chapter. Any bees, hives, or beekeeping equipment, confiscated

23 under this section, must be disposed of pursuant to a court order or an administrative order

24 issued by the commissioner.

SOURCE: Section 4-12.2-23

25 **4.1-16-12. Agriculture commissioner - Powers.**

26 The agriculture commissioner may:

- 27 1. Assist farmers in identifying beekeepers who provide pollination services; and

- 1 2. Enter upon private land during daylight hours, for the purpose of enforcing this
2 chapter, provided the commissioner first makes a good faith effort to notify the owner
3 of the land or a lessee regarding the entry.

SOURCE: Section 4-12.2-16

NOTE: At the committee meeting on April 15, 2014, it was suggested that the authority of the State Bee Inspector to enter private land for state purposes include the requirement for a good faith effort to first notify the landowner or a lessee regarding the entry.

4 **4.1-16-13. Agriculture commissioner - Inspection of apiary - Issuance of certificate.**

- 5 At the request of a beekeeper, the agriculture commissioner shall inspect an apiary for the
6 purpose of issuing a certificate of inspection or other official document or validation.

SOURCE: Sections 4-12.2-16 and 4-12.2-18

NOTE: Current law requires the State Bee Inspector to facilitate the interstate movement of bees. This requirement was omitted because Agriculture Department personnel found it to be unclear in its intent and direction.

Current law requires the State Bee Inspector to work with institutions of higher education to promote the apiary industry. This was omitted due to concerns about the propriety of having a state agency promote an industry that it regulates.

7 **4.1-16-14. Agriculture commissioner - Inspection of apiary - Noncertification**

8 **purposes.**

9 The agriculture commissioner may:

- 10 1. At the request of a beekeeper, inspect apiaries for any purpose other than the
11 issuance of a certificate of inspection or other official document or validation; and
12 2. Charge a fee to cover the costs of inspecting an apiary under subsection 1.

SOURCE: New law

NOTE: This section articulates services that the State Bee Inspector routinely provides, if time and resources allow. Inspections under this section are distinct from those required by proposed Section 4.1-16-13.

13 **4.1-16-15. Quarantine - Declaration - Hearing - Penalty.**

- 14 1. a. If the agriculture commissioner determines that a quarantine of this state or any
15 portion thereof may be necessary to eradicate or control the spread of disease,
16 insects, or pests, within the apicultural industry, the commissioner shall schedule
17 a public hearing on the matter and provide notice of the hearing by publishing its
18 time, place, and date in the official newspaper of each county having land within
19 the proposed quarantine area.

- 1 b. If after the hearing the commissioner orders the imposition of a quarantine, the
2 order must include the date by which or the circumstances under which the
3 commissioner shall lift the quarantine order.
- 4 2. If the commissioner determines that the imposition of an emergency quarantine is
5 necessary to eradicate or control the spread of disease, insects, or pests, within the
6 apicultural industry, the commissioner may impose such an order for a period not
7 exceeding fourteen days. Within the fourteen-day period, the commissioner shall hold
8 a public hearing as provided for in subsection 1 and determine whether a quarantine
9 order under subsection 1 should be imposed.
- 10 3. Following the establishment of a quarantine, the movement of any colonies, hives, or
11 other beekeeping equipment, described in the quarantine order, is subject to the order.
- 12 4. For purposes of this section, "insects" include Africanized honeybees.

SOURCE: Section 4-12.2-18.1

NOTE: Subsection 4, was inserted as a clarifying measure at the request of Representative Larson.

SOURCE: Section 4-12.2-21

13 **4.1-16-16. Service of process.**

14 If neither the beekeeper nor the beekeeper's registered agent can be located for the
15 purpose of serving process, in connection with a violation of this chapter or rules adopted to
16 implement this chapter, the agriculture commissioner becomes the statutory agent for service of
17 process and any service upon the commissioner is deemed to be complete.

SOURCE: Section 4-12.2-24

18 **4.1-16-17. Penalties.**

- 19 1. A person violating this chapter is guilty of a class A misdemeanor.¹
- 20 2. In addition to criminal sanctions that may be imposed pursuant to subsection 1, a
21 person found to have violated this chapter is subject to a civil penalty not to exceed
22 five thousand dollars per violation. The civil penalty may be adjudicated by a court or
23 by the agriculture commissioner through an administrative hearing pursuant to chapter
24 28-32.
- 25 3. The commissioner may maintain a civil action in the name of the state against any
26 person violating this chapter.

SOURCE: Section 4-12.2-22

¹Current law would extend the Class A misdemeanor to any rules adopted to implement this chapter. The apiary division currently has minimal rules and has not issued new rules or amended any rules since 1992. At its April 15, 2014 meeting, the interim committee suggested that the Class A misdemeanor should be reserved for statutory violations and not extended to rules that may or may not yet exist.

Current law also provides that the Agriculture Commissioner may refuse to grant a license to any person who has repeatedly violated this chapter or rules adopted under this chapter and to any person who has failed to pay a civil penalty. This concept has been moved to Section 4.1-16-05, which addresses grounds for the denial of a license.

1 **4.1-16-18. Relocation of apiary - Petition - Hearing.**

- 2 1. An individual may petition the agriculture commissioner for an order requiring the
3 relocation of an apiary if:
- 4 a. The individual resides on land contiguous to that on which the beekeeper has
5 placed an apiary; and
- 6 b. The individual's health or welfare is endangered as a result of the apiary's
7 location.
- 8 2. Upon receipt of a petition, as set forth in subsection 1, the commissioner may provide
9 notice and schedule a hearing regarding the matter.
- 10 3. If after considering any testimony and documentary evidence offered at the hearing,
11 the commissioner determines that any threat to the individual's health or welfare would
12 be eliminated or significantly mitigated through the relocation of the apiary, the
13 commissioner may order that the beekeeper, on or before a date certain, remove the
14 apiary from its current location.
- 15 4. The commissioner may not preclude the beekeeper from relocating the apiary to any
16 other location on land:
- 17 a. That the beekeeper owns;
- 18 b. That the beekeeper leases; or
- 19 c. That the beekeeper utilizes, with the permission of the land's owner or lessee, for
20 the placement of an apiary.
- 21 5. The commissioner may not require that the beekeeper remove the apiary from its
22 current location, if:
- 23 a. The removal would negatively affect the level of honey production reasonably
24 anticipated from the current location; or
- 25 b. The land's owner or lessee does not agree to a relocation of the apiary.

- 1 6. If the beekeeper can demonstrate that labor costs will be incurred as a result of an
2 order issued under this section, the commissioner may direct that the labor costs are
3 to be the responsibility of the petitioner or that they are to be shared equally between
4 the petitioner and the beekeeper.
- 5 7. An order under this section is not appealable.
- 6 8. An order under this section expires on December thirty-first.
- 7 9. If a beekeeper relocates an apiary in accordance with this section, the commissioner
8 may not, during the same calendar year, consider any additional petition regarding the
9 relocated apiary.

SOURCE: Section 4-12.2-08.1

NOTE: Section 4-12.2-08.1 provides that the "agriculture commissioner may cancel the registration of an apiary when the bees located on the apiary site are causing a nuisance as defined in chapter 42-01."

The concept of apiary registration has been replaced with a notification proposal. Ergo, the current language allowing for the cancellation of an apiary registration if the bees are deemed to be a nuisance is no longer appropriate.

The elimination of this section does not impact the effect of Chapter 42-01, which addresses public and private nuisances.

At the April 15, 2014 meeting of the interim Agriculture Committee, it was suggested that consideration be given to alternative ways in which apiary relocation could be achieved. This section sets forth an opportunity for a petition and a hearing. It also highlights, for the committee's review, a number of the legal and practical considerations that appear to be inherent in the current language.

10 **SECTION 3. REPEAL.** Chapter 4-12.2 of the North Dakota Century Code is repealed.

THE FOLLOWING SECTIONS ARE PROPOSED FOR OMISSION:

- **4-12.2-02. Rulemaking authority.** Pursuant to chapter 28-32, the commissioner may adopt rules and orders necessary to implement this chapter.
- **4-12.2-08. Revocation of location by property owner.** The property owner on which an apiary is located may revoke the permission granted a beekeeper to place an apiary at that location by providing written notice to the department and the beekeeper. This section does not relieve the property owner from any liability to the beekeeper for the violation of rights granted by a lease or other legal agreement between the beekeeper and the property owner.
- **4-12.2-15. State bee inspector - Appointment - Qualifications.** The commissioner shall appoint a person qualified by scientific training or practical experience as state bee inspector. The bee inspector must be furnished with all supplies, equipment, and support necessary to carry out this chapter. The commissioner shall, on the recommendation of the inspector, appoint and dismiss deputy inspectors to assist the inspector in performing the inspector's duties.

- **4-12.2-18.2. Africanized honeybees.** The department in cooperation with the North Dakota beekeeper's association shall develop a voluntary certification plan consistent with the model state Africanized honeybee management plan developed at the United States department of agriculture and national association of state departments of agriculture meeting in St. Louis, Missouri, in October 1991.
- **4-12.2-20. Shipment into state - Permit - Fees.** Before any person transports any bees or used equipment into this state, that person must obtain an entrance permit from the bee inspector. Entrance permits for applicants whose applications are received after March first are effective sixty days after the date of the application for a license. Immediately upon the arrival in this state of any bees or equipment, the beekeeper shall comply with this chapter. Upon showing of good cause, the commissioner may on a case-by-case basis waive the sixty-day waiting period.
- **4-12.2-25. Beekeeping considered agricultural enterprise.** Beekeeping is an agricultural enterprise for all purposes under the laws of this state.