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Sixty-fifth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2028

Introduced by

Legislative Management

(Agriculture and Natural Resources Committee)

A BILL for an Act to create and enact chapters 4.1-25, 4.1-27, 4.1-28, 4.1-30, 4.1-31, 4.1-32, 4.1-41, and 4.1-53 of the North Dakota Century Code, relating to revisions of agriculture laws regarding dairy products regulation, livestock auction markets, satellite video livestock auction markets, the purchase of livestock by packing plants, meat inspection, rendering plants, commercial feed laws, and livestock medicine; to amend and reenact sections 23-01-25, 36-21-01, 36-21-10, 36-21-11, 36-21-12, 36-21-13, 36-21-15, 36-21-18, and 36-21-19 of the North Dakota Century Code, relating to general livestock provisions; to repeal chapters 19-13.1, 19-14, 36-05, 36-05.1, 36-06, 36-07, section 36-21-05, and chapter 36-24 of the North Dakota Century Code, relating to commercial feed laws, livestock medicine, livestock auction markets, satellite video livestock auction markets, the purchase of livestock by packing plants, rendering plants, general livestock provisions, and meat inspection; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 4.1-25 of the North Dakota Century Code is created and enacted as follows:

4.1-25-01. Definitions.

1. "Cheese factory" means a facility that makes cheese for commercial purposes.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Condensery" means a facility where condensed or evaporated milk is produced.
4. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.
5. "Dairy farm" means a place where one or more dairy animals are kept.
6. "Dairy product" includes milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk,

cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

7. "Department" means the department of agriculture.

8. "Distributor" means a person that provides storage, transportation, delivery, or distribution of dairy products to any person who sells dairy products.

9. "Drying plant" means a facility that manufactures dry milk products by removing water from milk or milk products.

10. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination of them, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from those products, to which has been added, blended, or compounded with, any fat or oil, other than milk fat, to imitate a dairy product. "Filled dairy products" may not be construed to mean or include:

   a. Any distinctive proprietary food compound not readily mistaken for a dairy product, if the compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

   b. Any dairy product flavored with chocolate or cocoa or the vitamin content of which has been increased, or both, if the fats or oils other than milk fat contained in the product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredth per centum of the weight of the finished product, used as a carrier of such vitamins; or

   c. Margarine.

11. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a rating of the quality of the product.

12. "Ice cream plant" means a facility that makes ice cream for commercial purposes.

13. "Ice milk plant" means a facility that makes ice milk for commercial purposes.

14. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:

a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.

b. The packaging used resembles the packaging used for milk or for a milk product.

c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.

d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.

e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.

15. "Milk hauler" means a person that owns vehicles used to transport raw milk from a dairy farm to a dairy facility.

16. "Milk plant or bottling plant" means a facility where milk or milk products are collected, handled, processed, stored, and prepared for distribution.

17. "Milk solids or total solids" means the total amount of solids in milk.

18. a. "Pasteurization" as applied to milk or skim milk means either:

(1) The process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at that temperature continuously for at least thirty minutes; or

(2) Heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius],

and holding it at that temperature continuously for at least fifteen seconds in approved and properly operated equipment.

b. When applied to cream for butter making, "pasteurization" means the cream must be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds.

c. This subsection may not be construed as barring any other process that has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the commissioner.

19. "Pasteurized Milk Ordinance" means the ~~2013~~2015 revision of the Grade "A" Pasteurized Ordinance issued by the United States food and drug administration and by the United States department of agriculture's public health service.

20. "Peddler" means a person that purchases milk or milk products and sells the milk or milk products directly to consumers at any place other than from a store, stand, or other fixed place of business.

21. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.

22. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner that changes the natural, physical, or chemical properties of the original product.

23. "Producer dairy" means a dairy farm that sells milk or cream to a dairy plant for processing or manufacturing.

24. "Producer-processor" or "producer-distributor" means a producer that is also a processor or distributor.

25. "Raw milk or raw milk products" means products that have not been treated by the process of pasteurization.

26. "Retail" means the sale of milk or milk products directly to the consumer.

27. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use of raw milk or milk products from a dairy farm to a dairy facility.

28. "Sampling" means a procedure taking a portion of milk or milk products for grading or testing.

29. "Shared animal ownership agreement" means any contractual arrangement under which an individual:

a. Acquires an ownership interest in a milk-producing animal;

b. Agrees to pay another for, reimburse another for, or otherwise accept financial responsibility for the care and boarding of the milk-producing animal at the dairy farm; and

c. Is entitled to receive a proportionate share of the animal's raw milk production as a condition of the contractual arrangement.

30. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.

31. "Standard Methods" means the seventeenth edition of the Standard Methods for the Examination of Dairy Products published by the American public health association.

32. "Testing" means an examination of milk or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition of the product.

33. "Wholesale" means the sale of milk or milk products to a retail dealer for resale.

4.1-25-02. Licenses required - Fees - Term.

1. The license required by this section must be obtained for each place of business in this state owned or operated by:

a. A producer-processor, peddler, or distributor;

b. A person purchasing milk or milk products for processing or manufacturing;

c. A person owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant, or milk plant;

d. A person owning, operating, or leasing any other business engaged in the processing or manufacturing of milk or milk products; and

e. An organization acquiring milk or milk products on its own behalf or as an agent of others.

2. Application for a license must be made to the commissioner upon forms prescribed by the commissioner. An application for a license constitutes the implied consent of the applicant for department inspections. If the commissioner finds the applicant conforms to the North Dakota laws and the rules of the commissioner, the commissioner shall issue a license to conduct the operations listed on the license.

3. If a licensee wishes to conduct operations other than those listed on an existing license, the licensee may make an application to the commissioner for a license to conduct additional operations. If the commissioner finds the additional operations are in conformance with North Dakota laws and the rules of the commissioner, the commissioner shall approve them.

4. The license must be posted conspicuously in each licensed business.

5. All licenses issued under this section expire on the thirtieth day of June of each year and are not transferable.

6. The license fee is twenty-five dollars.

7. Every organization acquiring milk or milk products as an agent of others is deemed to be a purchaser of milk from a dairy producer.

4.1-25-03. Financial records release authorization with application for licensure.

A purchaser of milk in North Dakota shall file with the license application a release authorizing the commissioner to access the applicant's financial records held by financial institutions, accountants, and others. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing the applicant, conducting an investigation of a complaint against the applicant due to a complaint, or when evidence is obtained establishing probable cause of a violation of this chapter. Information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to any state agency and to any prosecutorial official requiring the information for use in performing official duties.

4.1-25-04. Financial condition - Assurance of prompt payment.

Each applicant for a license under section 4.1-25-02 who intends to purchase milk from dairy producers shall satisfy the department that the financial condition of the applicant is adequate to assure prompt payment to the dairy producers for purchased milk.

4.1-25-05. Statement of business operations or financial condition - Filing - Review by Bank of North Dakota - Confidential - Audited.

Each applicant for a license under section 4.1-25-02 who purchases milk from a dairy producer annually shall file with the department an audited financial statement prepared by an independent certified public accountant or licensed public accountant in accordance with generally accepted accounting practices and principles, verified by the accountant as accurately representing business operations and financial conditions of the applicant for which the statement is rendered, prepared as of the close of the most recent fiscal year of the applicant. In lieu of filing an audited financial statement, an applicant may file other forms of security as provided in section 4.1-25-06. All audited financial statements must be reviewed by the Bank of North Dakota. All statements under this section are confidential and not open for public inspection. The department may require additional statements to be audited by a certified public accountant or a licensed public accountant.

4.1-25-06. Surety bond, trustee agreement, or other security or assurances.

If it appears the financial condition of any applicant or licensee who purchases milk from a dairy producer is not adequate to reasonably assure payment to dairy producers when due for the milk to be purchased, or in lieu of annually filing with the department an audited financial statement as required in section 4.1-25-05, the department shall require from an applicant or licensee security or other assurances in one of the following forms:

1. The filing of a surety bond acceptable to the department. The amount of the surety bond must be determined on the basis of average purchases of milk from dairy producers during the previous year. If payment for milk purchased from dairy producers is made on a weekly basis, the amount of the surety bond must be at least in an amount equal to the average weekly purchases of milk. If payment for milk purchased from dairy producers is made on a semimonthly basis, the amount of the surety bond must be at least in an amount equal to the average semimonthly purchases of milk. If the period of payment for milk purchased from dairy producers is

made on a basis involving periods of time greater than semimonthly, the amount of the surety bond must be at least in an amount equal to the average purchases of milk for that greater period of time. The amount of the bond for each period of payment must also include an amount equal to at least the average purchases for three days following the close of the period of payment. The amount of the surety bond of any licensee who pays assignments to creditors of a producer of milk at a lesser frequency than the licensee pays the producer must also include an amount equal to the value of assignments from the prior payment period. The commissioner must be named as obligee, but the bond or draft must be held for the purpose of protecting, and for the benefit of, any dairy producer, and the full and complete payment to that dairy producer for all milk purchased by the licensee. The aggregate liability of the bonding company or the department to all dairy producers may not exceed the amount of the bond.

2. Providing an amount of protection for dairy producers equal to the amount of protection provided in subsection 1. The security must be held by the department solely for the protection of dairy producers, in one or more of the following forms:
   a. Cash deposited with a bank or trust company and held under an escrow agreement with the department;
   b. Bonds of the United States deposited with the department;
   c. Stocks, bonds, or other marketable securities at current market values, which have regularly reported quotations, deposited with the department; or
   d. A certified bank draft, certified check, irrevocable letter of credit, or certificate of deposit held in favor of the department.
3. The filing of an agreement providing complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the dairy producers. The trustee shall file a trustee's bond and contracts signed by the owner or operator and the purchaser of the dairy products requiring that payment for all dairy products sold be made to the trustee. The trustee shall maintain a separate bank account for that purpose and at least annually shall render a true and correct account of trustee dealings to the department and to the dairy producers.

4.1-25-07. Financial basis for license - Statement to producer - Notification to department.

All milk purchasers licensed under section 4.1-25-02 shall inform producers of the financial basis on which the license was issued, including the type and amount of security, if any, filed under section 4.1-25-06, by an annual written statement to each producer. A person may not receive milk that will increase the amount due and accrued beyond the amount represented as a basis for the issuance of a license without first notifying the department.

4.1-25-08. Additional security.

When the department determines the value of milk purchased or received from producers has increased or an increase reasonably may be anticipated, so the total amount of security does not comply with the amount required by subsection 1 or 2 of section 4.1-25-06, the department shall require additional security to afford producers the protection intended by section 4.1-25-06. The department may suspend or revoke any license if the licensee fails to provide the additional security required by the department under this section.

4.1-25-09. Filing of security before license year.

An applicant or licensee shall file bonds or other security for the license year with the department by the first day of June immediately preceding the beginning of each license year. If an applicant or licensee fails to file a surety bond or other security by July first of the license year and has not been relieved from filing a surety bond or other security, the department shall notify producers that the applicant or licensee has not filed any security or made other provisions for assuring payments for milk purchases for the license year.

4.1-25-10. Failure to file security - Notice to producers.

1. If an applicant or licensee fails to file a surety bond or other security within the time fixed by section 4.1-25-09 or fails to comply with a demand for additional security, the department shall publish in newspapers having circulation in the areas where the producers whose milk is sold or delivered to the applicant or licensee reside, a notice stating:
   a. The department made a demand for additional security from the applicant or licensee;
   b. The applicant or licensee has failed to comply;

c. The department does not have on file a surety bond or other security as demanded; and

d. Adequate security to protect producers may not be available to them.

2. In addition to a published notice to producers, the department shall send, by registered mail, a copy of the notice to each producer delivering milk to the applicant or licensee as determined from available records. The notice must be addressed to the producer's last-known address.

4.1-25-11. Out-of-state dealers, processors, or producers not exempt.

Sections 4.1-25-04 through 4.1-25-13 apply to all milk purchasers licensed under section 4.1-25-02 doing business in this state. The protection to producers afforded by sections 4.1-25-04 through 4.1-25-13 is available to the producers of any state selling milk to any licensee licensed under section 4.1-25-02, but the surety bond or other security required by sections 4.1-25-06 and 4.1-25-08 is payable only for the benefit of producers who are located within this state.

4.1-25-12. Entry, inspection, and investigation.

Authorized representatives of the department may enter, at reasonable hours, places of business where a licensee or license applicant maintains books, papers, accounts, records, or other documents related to the production, storage, processing, manufacturing, or sale of dairy products. The commissioner may subpoena, and the commissioner's authorized representative may inspect, audit, and make copies of relevant books, papers, records, accounts, or other documents of persons doing business with licensees. Any information gained by the department or by the commissioner under this section is confidential and may be used only for the administration of this chapter. The department or the commissioner may divulge the information when testifying in any departmental administrative hearing, in a duly noticed proceeding before the milk marketing board, or in any court proceeding in which the department or the commissioner is a party. This chapter does not prevent the department or the commissioner from using the information to compile or disseminate general statistical data so long as the data does not reveal individual information for any licensee or license applicant.

The commissioner may subpoena and take the testimony under oath of persons believed by the commissioner to have information needed in administering and enforcing this chapter.

4.1-25-13. Records and reports.

Licensees shall maintain the records the commissioner deems necessary to assure the financial condition of the licensee is adequate to assure prompt payment to producers.

4.1-25-14. Department to become trustee upon default in required security.

If a licensee defaults on any of the required security provisions, the licensee is deemed to be insolvent for purposes of this chapter. The claim for relief for damages and the amount recovered in any action for the conversion of milk or milk products, purchased by the licensee while the license is in effect, and the assets of the licensee not subjected to any claim in federal bankruptcy court by a secured or general creditor within four months of the appointment of the department as trustee under this chapter, constitute a trust fund in the hands of the department for all persons having a claim for relief against the licensee on the required security.

4.1-25-15. Application by department for appointment of trustee - Hearing - Appointment.

Upon the insolvency of a licensee as defined in section 4.1-25-14, the department shall apply to the district court of the county in which the licensee maintains its principal place of business for the appointment of the department as trustee. Upon notice to the licensee as the court prescribes, but not exceeding ten days, or upon waiver of such notice in writing by the licensee, the court shall proceed to hear and determine the application. If it appears to the court the licensee is insolvent within the meaning of this chapter and it is in the best interest of persons holding claims against the licensee that the department execute the trust, the court shall issue an order appointing the department as a trustee, without bond, and the department shall proceed in the manner set out in this chapter without further direction from the court.

4.1-25-16. Notice to file claims - When claims barred.

The department, as trustee, shall notify all persons having claims against the licensee personally by certified mail to file the claims with the department. Any person who fails to file a claim with the department and to surrender any receipts obtained from the licensee within thirty days after receiving notice is barred from pursuing the claim in any fund marshalled by the department as prescribed in this chapter. The department may proceed as prescribed by law when all producers have responded to the notification.

4.1-25-17. Remedy of claimants - Separate action by claimant permissible.

A claimant has no separate claim for relief against the required security of a licensee unless the department fails or refuses to apply for appointment as trustee under this chapter. Any claimant, either independently or in conjunction with other claimants, may pursue concurrently with the department any other remedy the claimant or claimants may have against the licensee, or against the property of the licensee, for the whole of their claim or claims or for any deficiency that occurs after payments have been made from the trust fund.

4.1-25-18. Appeal or compromising of action by department.

The department may prosecute an action for any claims arising under this chapter in any court, may appeal from any adverse judgment to the courts of last resort, and may settle and compromise the action whenever it is in the best interests of the claimants. Upon payment to the department of the amount of any compromise, or of the full amount of any required security, the department may exonerate the person compromising or paying from further liability growing out of the action.

4.1-25-19. Claims collections to be deposited in Bank of North Dakota.

All money collected and received by the department as trustee must be deposited in the Bank of North Dakota.

4.1-25-20. Trust fund report - Notice to claimants - Approving or modifying report.

Upon recovery of the trust fund, or so much as is possible to recover, or as is necessary to pay all outstanding claims, the department shall file a report in court showing the amount payable upon each claim, after recognizing any proper liens, pledges, assignments, or deductions with legal interest. If the fund proves insufficient to redeem all claims in full, the fund must be prorated among the claimants in a manner the department deems fair and equitable. Once the report is received from the department, the court shall notify all claimants by mail to appear on a day fixed in the notice and show cause why the report should not be approved and the funds distributed as outlined in the report. Upon such hearing the court shall approve or modify the report as justice may require and shall issue an order directing the distribution of the fund and discharging the department as trustee.

4.1-25-21. Attorney general to represent department and may employ assistants - Department need not pay court costs.

The attorney general shall represent the department in any action or proceeding brought under section 4.1-25-14, and may employ outside legal assistance when necessary. The attorney general may deduct the expense of retaining outside legal assistance from the trust fund. The department is not required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought under section 4.1-25-14 when the fee, cost, or disbursement accrues to the state or to a county of the state.

4.1-25-22. License needed to sample, haul, or test - Training - Examination - Term - Fee.

A person may not sample, haul, or test milk or milk products for the purpose of determining the value or grade without obtaining a license from the department. In case of illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six days in one calendar year, unless specific approval for a longer period is obtained from the commissioner. The licensee is responsible for the acts of the substitute. An applicant shall file an application with the department stating the type of sampling, hauling, or testing for which the applicant wishes to be licensed. Before a license is issued, the applicant shall receive training in the sampling of milk or milk products as may be required by the department, and shall pass a written examination prepared and administered by the department. The applicant must show knowledge of the requirements of this chapter and must prove by actual demonstration that the applicant is competent and qualified to perform each type of sampling and testing listed on the application. The commissioner shall issue a license which states the types of sampling, hauling, or testing for which the applicant is qualified. Additions may be added to the application form and license, without charge, after the license has been issued, upon the request of the licensee, after receiving additional training and passing the required examinations. Examinations must be given by the department at times and places as the department shall determine. A licensee is not required to take additional examinations when renewing a license unless required by the commissioner. All testers and samplers shall attend a training session sponsored by the department every two years. Retraining or retesting or both may be required when the commissioner reasonably determines it to be necessary. Licenses issued under this section

expire on December thirtieth of each year. Testers' licenses must be posted conspicuously in the licensee's place of operation, and are not transferable. Samplers' licenses must be carried by the sampler at all times during sampling activities and are not transferable. The annual license fee is ten dollars. A five dollar penalty fee is applied if renewals are not paid by January thirty-first.

4.1-25-23. Commissioner to investigate complaint.

The commissioner shall investigate any complaint claiming any provision of this chapter or the rules of the commissioner have been violated. If the commissioner finds a provision of this chapter or the rules of the commissioner have been violated, the commissioner may take any action deemed appropriate.

4.1-25-24. Inspections.

Upon notification, the commissioner shall have free access to all places of business, buildings, vehicles, and equipment used in the production, storage, handling, processing, manufacturing, transporting, and marketing of milk and milk products, and their substitutes. The commissioner may open and inspect any container suspected of containing a substance produced, stored, handled, processed, manufactured, transported, sold, or offered for sale under the provisions of this chapter. It is a violation of this chapter to refuse to allow inspections of any dairy facilities licensed under this chapter. The commissioner may suspend a license for failure to comply with this section.

4.1-25-25. Suspension or revocation of license - Judicial review - Emergency order.

Any proceedings under this chapter for the suspension or revocation of a license, or to determine compliance with this chapter or the rules and orders of the commissioner, must be conducted in accordance with the provisions of chapter 28-32 and appeals may be made as provided. When an emergency exists requiring immediate action to protect the public health and safety, without notice or hearing, the commissioner may issue an order reciting the existence of the emergency and requiring action be taken to protect the public health and safety. Notwithstanding any provision of this chapter, the order is effective immediately, but on application to the department an interested person must be afforded a hearing before the department within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing.

4.1-25-26. Sampling and testing procedures - Equipment - Supplies.

The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, hauling, or testing of milk or milk products must conform to those described in the Standard Methods, a copy of which must be kept on file in the department. Any equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or milk products not conforming to the requirements of this chapter may not be sold or offered for sale. The commissioner, through the adoption of rules, may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, hauling, or testing procedures or equipment. The commissioner, when appropriate, may check calibration of farm bulk milk tanks and equipment.

4.1-25-27. Sampling of milk.

Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the Standard Methods. Records must be kept, which readily identify the sample, with those items used to determine payment for the milk. Those items must include weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk.

4.1-25-28. Standards for the production of manufacturing grade milk - Minimum standards of rules.

At a minimum, rules governing the production and processing of milk for manufactured dairy products must comply with United States department of agriculture minimum standards for manufacturing grade dairy products.

4.1-25-29. Standards for dairy manufacturing or processing - Minimum standards of rules.

At a minimum, rules governing the approval of dairy processing and manufacturing plants and standards for grades of dairy products must comply with United States department of agriculture general specifications for approved dairy plants and standards for grades of dairy products. A plant may not be operated or any dairy products sold in violation of these rules.

4.1-25-30. Standards for grade A milk and milk products - Adoption of rules.

Only grade A milk may be sold as a fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum

requirements of the Pasteurized Milk Ordinance which includes provisions from the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the Grade A PMO". The commissioner may adopt rules imposing other standards in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, saleability, and promotion of grade A milk and milk products.

4.1-25-31. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines.

The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - ~~2013~~2015 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines in the Standard Methods.

4.1-25-32. Milk laboratory evaluations officer - Duties - Guidelines.

The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the Standard Methods and the procedures outlined in the public health service food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~2013~~2015 Edition".

4.1-25-33. Grade A Pasteurized Milk Ordinance.

Dairy producers, processors, and manufacturers shall comply with the Pasteurized Milk Ordinance and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ~~2013~~2015 Revision".

4.1-25-34. Quality records to be kept - Term.

Adequate records for testing and grading in conformance with this chapter and the rules of the commissioner must be kept by each business sampling or testing milk for at least twelve months in a manner approved by the commissioner.

4.1-25-35. Milk haulers - License required - Commissioner to adopt rules.

A person may not own or operate any tank truck, bulk milk truck, or other vehicle used or designed to carry bulk raw milk without a license issued by the department. The commissioner

shall adopt rules governing the operation, inspection, design, and licensure of such persons. The license of any person operating a vehicle in violation of this section or the rules of the commissioner is subject to revocation or suspension in accordance with procedure established by law. A license to haul milk issued under this section may be issued in conjunction with or as part of any license to sample or test milk or milk products issued pursuant to section 4.1-25-22.

4.1-25-36. Adulterated, impure, or unwholesome milk or milk products not to be transported, stored, sold, or offered for sale.

Any milk or milk products produced or kept under unclean or unsanitary conditions or; produced from animals that are diseased or fed unwholesome, impure, or toxic feed; or milk that tastes from colostrum, must be deemed impure and unwholesome. Milk or milk product that is deemed to be adulterated, impure, or unwholesome may not be transported, stored, sold, or offered for sale in this state.

4.1-25-37. Sale of milk or milk products in violation of this chapter prohibited.

A person may not sell, or offer for sale, any milk or milk product, their imitations or substitutes, that is produced, processed, manufactured, transported, or stored, in violation of the laws of this state or the rules of the commissioner, or which do not subscribe to the definition as stated in this chapter or defined by the commissioner.

4.1-25-38. Exception for uses as directed by physicians.

This chapter does not prohibit the manufacture or sale of filled dairy products or imitation milk and imitation milk products when those products are prominently labeled to show their composition and the fact the products are sold customarily for use as directed by order of a physician and are prepared and designed for medicinal or special dietary use.

4.1-25-39. Sale of foods not imitation milk, imitation milk products, or filled dairy products.

This chapter does not prohibit the manufacture or sale of proprietary foods that are clearly not imitation milk, imitation milk products, or filled dairy products; which do not contain imitation milk, imitation milk product, or filled dairy product; and which are not conducive to substitution, confusion, deception, and fraud upon the purchasers of milk, milk products, or filled dairy products by their manufacture or sale.

4.1-25-40. Shared animal ownership agreement - Raw milk.

It is not a violation of this chapter to transfer or obtain raw milk under a shared animal ownership agreement. A person may not resell raw milk or raw milk products obtained under a shared animal ownership agreement.

4.1-25-41. Labeling and identity standards.

A person who sells milk or milk products at retail in the state shall comply with the labeling standards and standards of identity set forth in 21 U.S.C. 343(q)(r) and in rules adopted by the commissioner.

4.1-25-42. Reports - Blanks - When made - Contents.

The commissioner shall furnish blanks to all licensed creameries, cheese factories, condenseries, drying plants, ice cream plants, ice milk plants, milk plants, and producer-distributors for the purpose of making a report of the amount of milk and milk products handled. Each proprietor or manager of those businesses shall report to the commissioner on the last days of June and of December of each year, or immediately upon cessation of operation, the pounds [kilograms] of butterfat in cream, the pounds [kilograms] of manufacturing grade milk, and the pounds [kilograms] of bottling milk purchased during the period covered by the report, the aggregate amount paid for each, the number of pounds [kilograms] of butter and cheese, and the number of gallons [liters] of ice cream and ice milk manufactured during such period.

4.1-25-43. Test results disputes.

If a disagreement between a seller and a buyer or the legal representatives of both or either arises over the percentage of butterfat contained in any quantity of milk sold or offered for sale at the request of the owner and in the owner's presence, a sample of the milk obtained as provided in section 4.1-25-27 and mutually agreed upon by the interested parties as being a representative sample must be sealed and mailed by the buyer to the office of the commissioner. Each sample mailed to the commissioner must include a statement giving the name and address of the seller and the buyer of the milk in question, the net weight, the percentage and amount of butterfat contained, the price per pound [.45 kilogram] for butterfat, and the amount of money paid or offered in payment for the same and bearing the signature of the seller and the buyer. The commissioner shall determine the percentage of butterfat contained in the sample and shall report of the result in triplicate, the original to be filed in the

commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk. The percentage of butterfat determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the official butterfat test and any other tests required must be in an amount as set by rule of the commissioner, considering the actual costs of the test, and the fee must be mailed to the commissioner at the time of forwarding the sample for the official butterfat or other test.

4.1-25-44. Test sample disputes.

If the buyer and seller do not agree upon a sample of milk as provided in section 4.1-25-43, the party selling or offering for sale that milk may require that the buyer or prospective buyer to forward the sample taken to the department in compliance with section 4.1-25-27. Each sample so forwarded must include an affidavit from the buyer or prospective buyer, stating that the sample was taken in compliance with the provisions of section 4.1-25-27, and the statement must contain all information required in section 4.1-25-43, except that the signature of the seller is not required. Each sample must be tested and reported on as prescribed in section 4.1-25-43, and the percentage of butterfat determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made.

4.1-25-45. Standards considered minimum - Municipality may provide more stringent standards.

The standards in this chapter constitute only minimum standards. This chapter may not be construed to prevent any municipality from providing, by ordinance, more stringent or comprehensive standards than are contained within this chapter. Neither this chapter nor in the rules of the commissioner may be construed to prevent any person concerned with the dairy business from using standards, inspections, or other practices or procedures that are more stringent or comprehensive.

4.1-25-46. Fees and penalties collected to be placed in general fund.

All fees and penalties collected under this chapter must be deposited with the state treasurer and credited to the general fund.

4.1-25-47. Disposal of illegal milk or milk products - Seizure.

Any milk or cream offered for sale in violation of any provision of this chapter or the rules of the commissioner must be colored with a harmless food coloring and returned to the seller. In addition, any milk or milk product that is in violation of any provision of this chapter or the rules

of the commissioner may be seized or ordered held by the commissioner and must be disposed of as any other illegal food or drug as provided in chapter 19-02.1.

4.1-25-48. Penalty for violation of chapter - Additional civil penalty - Failure to pay civil penalty.

A person violating any provision of this chapter or any rule or order of the commissioner, for which another criminal penalty is not specifically provided is guilty of a class B misdemeanor. In addition, a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation may be imposed. The civil penalty may be imposed by the courts in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32. If a civil penalty is imposed by the commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil proceeding in any appropriate court. The commissioner may suspend or revoke a license issued under this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed. The commissioner may refuse to renew or issue a license if the licensee or license applicant has repeatedly violated the provisions of this chapter or rules or orders of the commissioner.

4.1-25-49. State's attorney's endorsement to complaint unnecessary upon violation of chapter.

A complaint made for a violation of this chapter does not require the endorsement of the state's attorney, but when the court hearing a complaint made is satisfied of the truthfulness of the complaint, the court shall issue a warrant.

4.1-25-50. Rules.

The commissioner may adopt rules under chapter 28-32 to implement this chapter.

4.1-25-51. Shared animal ownership agreement rules limitation.

Notwithstanding chapter 28-32, the commissioner may not adopt any rule that restricts, limits, or imposes additional requirements on any person transferring or obtaining raw milk in accordance with the terms of a shared animal ownership agreement.

4.1-25-52. Enforcement.

The commissioner shall administer and supervise the enforcement of this chapter, provide for periodic inspections and investigations deemed necessary to ensure compliance with this chapter or the rules under this chapter, receive and provide for the investigation of complaints;

and provide for the institution and prosecution of civil or criminal actions or both. This chapter and the rules under this chapter may be enforced by injunction in any court having jurisdiction to grant injunctive relief. Filled dairy products, imitation milk, or imitation milk products, illegally held or otherwise in violation of this chapter may be seized and disposed under an appropriate court order.

SECTION 2. Chapter 4.1-27 of the North Dakota Century Code is created and enacted as follows:

4.1-27-01. Definitions.

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

1. "Commissioner" means the agriculture commissioner.
2. "Livestock" means horses, mules, asses, bison, cattle, swine, sheep, farmed elk, and goats.
3. "Livestock auction market" means a place or establishment conducted or operated for compensation or profit as a public market or a private buying station, consisting of pens or other enclosures and their appurtenances; in which livestock is received, held, or kept for sale; and where that livestock is sold or offered for sale, at either public auction or private sale.

4.1-27-02. Premises excluded from application of chapter.

The provisions of this chapter do not apply to:

1. Any place used solely for the dispersal sale of the livestock of a farmer, dairy producer, livestock breeder, or feeder who is discontinuing the person's business.
2. The premises of any butcher, packer, or processor who receives animals exclusively for immediate slaughter.
3. Any place where any individual or duly constituted association of breeders of livestock of any class assembles and offers for sale and sells under the individual's or association's management registered livestock or breeding sires owned by the individual or members of the association if the individual or association:
   a. Assumes all responsibility of the sale;
   b. Guarantees title of the livestock; and
   c. Makes proper provision for the inspection of all animals sold.

4. Any place where a duly constituted association of breeders of livestock of any class assembles and offers for sale and sells under its management, at an annual production sale not exceeding twenty-one calendar days, livestock raised or held for at least one year by producers affiliated with the association, if the association:
   a. Assumes all responsibility of the sale;
   b. Guarantees title of the livestock; and
   c. Makes proper provision for the inspection of all animals sold.

4.1-27-03. License requirements - Application - Fee - Commission schedule - Facilities.

A person may not establish or operate a livestock auction market within this state without procuring a license to do so from the commissioner. The commissioner may not approve any application without written permission from the state veterinarian. An applicant for a license shall:

1. Make a written application in the form prescribed by the commissioner;
2. File evidence required by the state board of animal health or the commissioner to show the person is financially responsible to operate an auction market and the person will own or control adequate facilities for the care, sorting, feeding, loading and unloading, and shipment of livestock;
3. Pay to the commissioner a license fee of two hundred dollars;
4. File with the commissioner a schedule of fees and commissions that will be charged to owners, sellers, or their agents. The schedule must be posted conspicuously at the auction market. The schedule may not be altered except upon notification to the commissioner. The altered schedule must be reposted upon notification to the commissioner;
5. State the location where the applicant proposes to operate a livestock auction market;
6. Make a complete and detailed description of the property and facilities proposed to be used in connection with the livestock auction market; and
7. Make a showing of public convenience and necessity to the satisfaction of the commissioner.

4.1-27-04. Bond to accompany application for license - Amount - Approval - Conditions - Exemptions.

1. An applicant for a license to operate a livestock auction market shall file a surety bond of at least ten thousand dollars with the application for license or renewal of a license. The bond must be approved by the commissioner as to the amount, form, and surety. The commissioner must be named the obligee in the bond. The bond must be for the benefit of, and for the purpose of protecting, any person selling to or through the licensed livestock auction market, or buying livestock through or from the licensed livestock auction market or the licensee's agent. The commissioner may require an additional bond of the licensee when the commissioner deems the volume of the business of the licensee warrants the additional bond. The bond must be conditioned for:
   a. The payment of all money received by the licensee and the operator of the livestock auction market, less reasonable expenses and agreed commissions;
   b. The faithful performance by the licensee of the duties of a livestock auction market operator; and
   c. The faithful performance by the licensee of all duties imposed by law relating to the purchase, sale, or holding of livestock.
2. The bond must cover the entire license period. If the commissioner is the trustee or obligee of a surety bond in which the auction market operator is the principal and is operating and is bonded under the Packers and Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.], the commissioner may accept that bond in lieu of the one required under this section, except that the minimum bond requirements of ten thousand dollars will be continued.

4.1-27-05. Records release required with application for licensure.

A livestock auction market shall file with the license application a release in a form approved by the commissioner authorizing the commissioner to access financial records of the livestock auction market held by financial institutions, accountants, and other sources. The commissioner may use the release in the course of licensing or relicensing a livestock auction market or in the course of an investigation of a livestock auction market. Any information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use

of the records release to the attorney general, other state agencies, and any prosecuting officials requiring the information for use in pursuit of official duties.

4.1-27-06. Expiration and renewal of license - Fee returned upon failure to issue or renew license.

Each license issued under this chapter expires on the thirty-first day of March following the date of issuance. Each license must be renewed annually on or before March thirty-first. The fee for a renewal license is the same as for an original license. If the commissioner does not issue a requested original license or renewal license, the fee paid must be refunded to the applicant.

4.1-27-07. Investigation of auction market - Hearing to determine whether license should be issued or revoked.

1. The commissioner, upon the commissioner's own motion or upon a complaint by any person, may enter an investigation of the sales and transactions of any livestock auction market and of the conditions under which the business of the livestock auction market is conducted. The commissioner may conduct a hearing to determine whether the license of any auction market should be revoked or whether the application of the owner or operator of a livestock auction market for an original or renewal license should be denied.
2. The commissioner shall conduct an investigation of an alleged violation of this chapter when:
   a. A complaint, allegation, or order to show cause, alleging an act which would constitute a violation of this chapter, is filed by the packers and stockyards administration of the United States;
   b. The commissioner has information sufficient to form a reasonable belief that a violation of this chapter has occurred; or
   c. The commissioner has received a sworn statement, affidavit, or other evidence from any person alleging a violation of this chapter.
3. The commissioner shall conduct a hearing to determine whether a violation has occurred when, pursuant to an investigation, probable cause exists that a violation of this chapter has occurred.

4. The commissioner shall conduct an audit, or cause an audit to be conducted, when probable cause exists that any livestock auction market has violated any of the financial provisions of this chapter, when it reasonably appears that the liabilities of the livestock auction market exceed its assets, or when the auction market has refused to pay a proper claim without reasonable cause.

4.1-27-08. Cease and desist authority.

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

4.1-27-09. Injunctive authority.

The commissioner may seek an order from the district court of Burleigh County to enjoin a prohibited act when the commissioner believes any auction market or person is violating this chapter or is pursuing a course of action which may lead to a violation of this chapter.

4.1-27-10. Sanitary regulations of livestock auction market.

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

4.1-27-11. Scales maintained by auction market to be inspected.

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

4.1-27-12. Records to be kept by operator of auction market - Contents - Examination - Report.

1. The operator of each livestock auction market shall keep on file an accurate record of the following:
   a. The date on which each consignment of animals was received and sold;
   b. The name and address of the buyer and seller of the consigned animals;
   c. The number and species of the animals received and sold; and
   d. The marks and brands on each such animal.
2. The records, together with the gross selling price, commission, and other proper care, handling, and sales charges on each consignment of livestock must be available for inspection by the commissioner, or authorized inspectors. A copy of the information required in this section must be supplied to the owner of the livestock. All records of sales during the preceding twelve months must be kept readily accessible for immediate examination by the commissioner.

4.1-27-13. Notice - Nonsufficient funds checks.

A livestock auction market that receives a check for the sale of livestock which is returned unpaid with a notation that the payment has been refused because of nonsufficient funds shall notify the commissioner within two business days after receipt of the returned check.

4.1-27-14. Inspection of livestock - Fees and rules governing.

Before it is offered for sale, each animal that enters a livestock auction market must be inspected for health by a veterinarian licensed in this state and approved by the state board of animal health. Cattle also must be inspected for brands by a trained brand inspector, acting under rules adopted by the North Dakota stockmen's association and the state board of animal health. Veterinary inspection must include all livestock, whether it is to be moved interstate or intrastate. The veterinary inspector must be recommended by the livestock auction market and approved by the state board of animal health. The veterinarian must be a local veterinarian or a veterinarian of the vicinity, unless there is no such veterinarian available. If the livestock auction agency fails to recommend a veterinarian within a reasonable time, the board may approve a veterinarian, if qualified and willing to accept the position at the market, and provide notice to the market agency of the appointment. The services and duties of the veterinary inspector are under the supervision of the state board of animal health and the inspector must be relieved of

office when the inspector fails to perform the required services and duties. Fees for the inspection must be paid to the veterinarian by the livestock auction market company and must be in an amount agreed upon by the auction market company and the veterinarian.

4.1-27-15. Livestock unfit for sale.

1. Livestock may not be offered for sale or sold at any licensed public livestock auction market if the livestock has a condition including the following:
   a. Is infected with a disease that permanently renders the livestock unfit for human consumption;
   b. Has severe neoplasia;
   c. Has severe actinomycosis;
   d. Is unable to rise to its feet by itself; or
   e. Has a fractured long bone or other fractures or dislocation of a joint that renders the livestock unable to bear weight on the affected limb without the limb collapsing.
2. If, in the judgment of a veterinarian licensed in this state and approved by the state board of animal health, the livestock consigned and delivered to the premises of a livestock auction market is affected by any of the conditions described above, the veterinarian shall humanely euthanize the livestock or direct the consignor to immediately remove the livestock from the premises of the livestock auction market. All expenses incurred for euthanasia and disposal of the livestock under this section are the responsibility of the consignor. Collection of expenses is not the responsibility of the consignee.

4.1-27-16. Treatment administered to livestock before removal from auction market - Fees for inspection and treatment.

An operator of a livestock auction market may not permit the removal of any livestock from the establishment until the livestock has been treated in accordance with the rules adopted by the state board of animal health. If livestock is destined to be shipped interstate, the authorized veterinarian of the board shall furnish to each purchaser a certificate showing that inspection has been made and treatment administered in accordance with the requirements of the state of destination. All fees for veterinary inspection, treatment, and services, including brand

inspection, must be collected by the operator of the livestock auction market and paid to the inspector.

4.1-27-17. Grievance committee.

1. Any livestock auction market who has a complaint against the veterinarian assigned to the livestock auction market, or any veterinarian that has a complaint against the auction market to which the veterinarian is assigned, may submit a written complaint to the grievance committee. The grievance committee consists of:
   a. The president of the North Dakota stockmen's association or the president's designee;
   b. The president of the livestock auction market association or the president's designee; and
   c. The president of the North Dakota veterinary medical association or the president's designee.
2. The members of the committee shall choose one member to serve as chairman. The committee shall meet at the call of the chairman. The committee shall take all complaints under consideration and report a recommendation of the committee to the state board of animal health within thirty days after receipt of the complaint.

4.1-27-18. Operator to warrant title to purchaser - Dispute in title of animal sold.

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

4.1-27-19. Use of fees - Grounds for refusal or revocation of license - Procedure on default of licensee.

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

4.1-27-20. Review by the court.

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

4.1-27-21. Unlawful acts.

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

1. Make or cause any false entry or statement of fact to be made in any application, financial statement, or report filed with the department under this chapter;
2. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse to allow any authorized agent of the department to have access, during reasonable hours, to inspect and to copy any or all of the records relating to the dealer's business;
3. Fail or refuse to furnish the information required under this chapter as prescribed by the department;
4. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 4.1-27-13;
5. Fail to pay brand inspection fees or veterinarian fees as required by law;
6. Fail to collect beef promotion assessments pursuant to chapter 4.1-03; or

7. Fail to pay for livestock purchased, including the issuance of a check or payment for livestock purchased, when the check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

4.1-27-22. Penalties - Criminal - Civil.

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

4.1-27-23. Public livestock markets or commission firms - Duplicate scale tickets.

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

SECTION 3. Chapter 4.1-28 of the North Dakota Century Code is created and enacted as follows:

4.1-28-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Internet livestock auction" means a place or establishment conducted or operated for compensation or profit as a public market where livestock located in this state is sold or offered for sale at a facility or website within or outside the state through the use of the internet.
3. "Livestock" means horses, mules, cattle, swine, sheep, farmed elk, and goats.
4. "Representative" means a dealer licensed under chapter 4.1-83 or a livestock auction market licensed under chapter 4.1-27.
5. "Video livestock auction market" means a place or establishment conducted or operated for compensation or profit as a public market where livestock located in this state is sold or offered for sale at a facility within or outside the state through the use of video at a public auction.

4.1-28-02. Video livestock auction market and internet auction - Authority to transact business.

A video livestock auction market or internet livestock auction market may not transact business in this state unless the market transacts business through a representative licensed under this chapter.

4.1-28-03. Application for license - Contents.

1. Before entering business with a video livestock auction market or internet livestock auction market, each representative must obtain a license to transact business with a video livestock auction market or internet livestock auction market by filing an application with the commissioner on a form prescribed by the commissioner. A license issued under this section expires June thirtieth after issuance and must be renewed by filing of a renewal application at the time and on a form prescribed by the commissioner. The application must show:
   a. The nature of the business applying for a license;
   b. The name of the representative applying for the license on behalf of the business;
   c. The name and address of the video livestock auction market or internet livestock auction market through which the applicant proposes to transact business; and
   d. Any other information the commissioner may require.
2. The application for a license or for a renewal of a license must include:
   a. A license fee of one hundred dollars;
   b. Evidence the commissioner may require showing the video livestock auction market or internet livestock auction market the representative proposes to do business through is financially responsible and bonded to transact such business;
   c. A schedule of the fees and commissions that will be charged to owners, sellers, or their agents; and
   d. A copy of the contract between the representative and the video livestock auction market or internet livestock auction market through which the representative proposes to transact business. The contract must:

(1) Contain a provision authorizing the commissioner to have access to the books; papers; accounts; financial records held by financial institutions, accountants, or other sources;

(2) Contain other documents, as determined by the commissioner, relating to the activities of the video livestock auction market or internet livestock auction market; and

(3) Provide that the video livestock auction market or internet livestock auction market and its representative are jointly and severally liable, with the right of contribution, for all business transacted within this state by the representative on behalf of the video livestock auction market or internet livestock auction market.

3. If the contract between the representative and the video livestock auction market or internet livestock auction market is terminated, rescinded, breached, or otherwise materially altered, the representative and the video livestock auction market or internet livestock auction market shall immediately notify the commissioner. Failure to notify the commissioner of termination, rescission, breach, or material alteration of the contract between the representative and the video livestock auction market or internet livestock auction market is deemed to be a failure to keep and maintain suitable records with the department and is deemed to be a false entry or statement of fact in an application filed with the department.

4.1-28-04. Use of fees - Grounds for refusal or revocation of license - Review by court.

All fees collected by the commissioner under this chapter must be deposited in the general fund of the state treasury. A license may be refused or revoked for any reason specified in subdivision c or d of subsection 2 of section 4.1-83-10 or section 4.1-83-15, or if the contract required by this chapter between the representative and the video livestock auction market or internet livestock auction market is extinguished, rescinded, or canceled, or is breached by either party. The action of the commissioner in denying an application for a license or revoking or suspending a license may be appealed as provided in section 4.1-27-20.

4.1-28-05. Inspection of livestock.

Before any livestock sold pursuant to this chapter is delivered, whether interstate or intrastate, the livestock must be inspected for health by a veterinarian licensed in this state and approved by the state board of animal health and, in the case of cattle, for brands by a trained brand inspector, acting under rules adopted by the North Dakota stockmen's association and the state board of animal health. The inspection must take place at the time of the initial delivery of the livestock. If livestock is destined to be shipped interstate, the authorized veterinarian shall furnish to each purchaser a certificate showing that the inspection has been made and treatment administered in accordance with the requirements of the state of destination. The services and duties of the veterinary inspector are under the supervision of the state board of animal health. Fees for the veterinary inspection must be an amount agreed upon by the representative and the veterinarian. All fees for veterinary inspection, treatment, and services must be collected by the representative and paid to the inspector.

4.1-28-06. Method of payment.

Payment to the seller for livestock sold through a video livestock auction market or internet livestock auction market must be made in United States currency, with an instrument payable on demand drawn on a financial institution chartered and regulated by a state or the federal government, or by wire transfer or other electronic form of payment from a financial institution chartered and regulated by a state or the federal government.

4.1-28-07. Sale of livestock by weight - Scales to be inspected.

Notwithstanding section 36-21-15, all livestock sold by weight through a video livestock auction market or internet livestock auction market must be sold based on the weight of the livestock on the day of delivery. All livestock sold by weight must be weighed on scales that have been tested and inspected by the department of weights and measures in the manner provided by law.

SECTION 4. Chapter 4.1-30 of the North Dakota Century Code is created and enacted as follows:

4.1-30-01. Packing plant defined.

The term "packing plant" as used in this chapter means a place where livestock, exclusive of poultry, is purchased for the purpose of slaughtering, dressing, curing, or processing the same for storage and distribution at wholesale for human consumption.

4.1-30-02. Livestock purchased by weight to be graded - Penalty.

An officer or employee of a packing plant within this state may not purchase any livestock by weight unless such livestock has been graded and sorted in the yard and the price per pound [.45 kilogram] for each grade fixed and determined before the livestock is weighed. Any officer or employee of a packing plant who violates this section is guilty of an infraction.

4.1-30-03. Penalty for purchase of livestock by weight without grading.

Each purchase of livestock in violation of section 4.1-30-02 is a separate offense and constitutes an infraction upon the part of every owner of a packing plant in which such violation occurs.

SECTION 5. Chapter 4.1-31 of the North Dakota Century Code is created and enacted as follows:

4.1-31-01. Definitions.

1. "Adulterated" means a carcass or meat food product:
   a. That includes a poisonous or harmful substance that may render it injurious to health;
   b. That includes a chemical pesticide that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
   c. That includes a food or color additive that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
   d. That includes a filthy, putrid, or decomposed substance or is for any other reason unfit for human food;
   e. That has been prepared, packed, or held under unsanitary conditions;
   f. That includes the product of an animal that has died in a manner other than slaughter or includes the product of an animal condemned by reason of disease that existed at the time of slaughter;
   g. The container of which includes a poisonous or harmful substance that may make the contents harmful to health;
   h. That has been intentionally subjected to radiation, unless the use of the radiation conformed with a regulation or exemption in effect under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
   i. That is damaged or inferior and that damage or inferiority has been concealed; or

j. That has had a substance added to it or mixed or packed with it so as to increase its bulk or weight, or make it appear better or of greater value than it is.

2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, horses, equines, bison, other large domesticated animals, and poultry.

3. "Carcass" includes all or any part of an animal carcass.

4. "Container" means a receptacle of a meat food product.

5. "Custom processing" means slaughtering, eviscerating, dressing, or processing an animal carcass or meat food products for the owner of the animal carcass or the meat food products, if all meat food products derived from the custom processing are returned to that owner.

6. "Inspector" means an inspector appointed by the commissioner to perform duties under this chapter.

7. "Intrastate commerce" means commerce within this state.

8. "Meat food product" means a product usable as human food which contains any part of an animal carcass. The term does not include any product that contains any part of an animal carcass in a relatively small proportion or which historically has not been considered by consumers as a product of the meat food industry, and which is not represented as a meat food product.

9. "Poultry" includes domesticated fowl bred for the primary purpose of producing eggs or meat, or both, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, but excluding doves and pigeons.

10. "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

4.1-31-02. Inspectors - Appointments - Duties.

1. The commissioner shall appoint inspectors to examine and inspect meat food products prepared solely for intrastate commerce in a slaughtering, meat canning, salting, packing, or similar establishment. The inspections must take place at any time during which the slaughtering of animals or the preparation of meat food products is being conducted. Upon completing an inspection, the inspector shall mark, stamp, tag, or label the product "North Dakota inspected and passed" if it is unadulterated or as "North Dakota inspected and condemned" if the product is found to be adulterated.

2. The commissioner shall appoint inspectors to examine and inspect each slaughtering, meat canning, salting, packing, or similar establishment in which meat food products are prepared solely for intrastate commerce. The commissioner shall adopt rules of sanitation applicable to these establishments. The commissioner may not allow any meat food product from any facility not meeting the sanitary conditions required by those rules to be labeled, marked, stamped, or tagged as "North Dakota inspected and passed".

3. Meat food products inspected and passed under this chapter may be sold at retail in this state.

4. Neither the commissioner, nor any inspector appointed by the commissioner, may undertake any activity that is duplicative of an activity performed by meat inspectors of the United States department of agriculture.

4.1-31-03. Access by inspectors - Penalty.

1. For purposes of enforcement of this chapter, the commissioner may enter and inspect:
   a. Any place where food or any other product, the manufacture, sale, use, or transportation of which is restricted, regulated, or prohibited by a law of this state, is or may be manufactured, prepared, stored, sold, used, transported, offered for sale or transportation, or possessed with intent to use, sell, or transport;
   b. Any place where an animal is pastured or stabled;
   c. Any vehicle used to transport a meat food product or an animal;
   d. Any place where food is or may be cooked, prepared, sold, or kept for sale to or for the public or distributed as a part of the compensation of an employee or agent; and
   e. Any place where a meat food product may be manufactured, sold, used, offered for sale or transportation, or possessed with intent to use, sell, or transport.
2. The commissioner may inspect any container believed to hold food, a food ingredient, or some other product, the manufacture, use, sale, or transportation of which is restricted, regulated, or forbidden by state law, and may take samples from it for analysis.
3. It is a class A misdemeanor for any person to obstruct entry or inspection under this chapter or to fail, upon request, to assist in an inspection authorized by this chapter.

4.1-31-04. Marks and labels.

1. If a meat food product that is inspected and marked "North Dakota inspected and passed" is being placed or packed in a container, the person preparing the product shall attach to the container, under supervision of an inspector, a label indicating that the product has been "North Dakota inspected and passed". An inspection under this chapter is not complete until the product has been sealed or enclosed in the container, under the supervision of an inspector.
2. A meat food product inspected under this chapter and found not to be adulterated must bear, directly or on its container, a legible label or official mark as required by the commissioner.
3. The commissioner shall prescribe by rule the style and size of type to be used in labeling meat under this chapter and standards of identity, composition, and fill of container for meat food products inspected under this chapter, but the standards must be consistent with those established under federal law.

4.1-31-05. False or misleading marks, labels, and containers.

A person may not sell in intrastate commerce any meat food product subject to inspection under this chapter under a name, mark, or label that is false or misleading, or in a container of a misleading form or size. If the commissioner has reason to believe that a mark, label, or container is false or misleading, the commissioner may direct that its use be withheld unless the mark, label, or container is modified in a manner approved by the commissioner. If the person using or proposing to use the mark, label, or container does not accept the determination of the commissioner, the person may request a hearing. The commissioner may direct that the mark, label, or container not be used pending a hearing and final determination by the commissioner. A determination by the commissioner is conclusive unless the person adversely affected appeals to the district court within thirty days after receiving the notice of final determination.

4.1-31-06. Prohibitions.

A person may not:

1. Slaughter an animal or prepare an article usable as human food at any establishment preparing articles solely for intrastate commerce, unless the person complies with this chapter;

2. Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce any article that is usable as human food and which is adulterated or misbranded or any article that has not been inspected and passed under this chapter; or
3. Alter an article that is usable as human food while the article is being transported in intrastate commerce or held for sale after transportation, if the alteration is intended to cause or has the effect of causing the article to be adulterated or misbranded.

4.1-31-07. Official marks and certificates - Required authorization.

A person may not:

1. Cast, print, or otherwise make a device containing an official mark, simulation of an official mark, label bearing a mark or simulation, or form of official certificate or simulation, without authorization from the commissioner;
2. Forge an official device, mark, or certificate;
3. Use a real or simulated official device, mark, or certificate, or alter, detach, deface, or destroy an official device, mark, or certificate, without authorization from the commissioner;
4. Fail to use an official device, mark, or certificate if appropriate;
5. Knowingly possess, without promptly notifying the commissioner, a counterfeit, simulated, forged, or improperly altered official certificate, device, or label, or a carcass bearing a counterfeit, simulated, forged, or improperly altered official mark;
6. Knowingly make a false statement in a certificate; or
7. Knowingly represent falsely that an article has been inspected and passed, or exempted, under this chapter.

4.1-31-08. Horse meat - Requirements.

A person may not sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce carcasses of horses, mules, or other equines or meat food products derived from them, unless they are plainly and conspicuously marked, labeled, or otherwise identified to show the kinds of animals from which they were derived. The commissioner by rule may require that the preparation of equine carcasses and equine meat food products take place in establishments separate from those in which cattle, sheep, swine, or goats are slaughtered or in which their carcasses or meat food products are prepared.

4.1-31-09. Bribery.

A person may not give or receive anything of value to influence the performance of an inspector under this chapter.

4.1-31-10. Individual and custom processing - Exemption from inspection requirements.

1. This chapter does not apply to an individual processing the individual's own animals and the individual's preparation and transportation in intrastate commerce of the carcasses and meat food products provided the animals are for the exclusive use of the individual, members of the individual's household, the individual's nonpaying guests, and employees.
2. The provisions of this chapter requiring inspection of the slaughter of animals, the preparation of the carcasses and meat and meat food products at establishments conducting those operations do not apply to the custom processing by a person of animals delivered by the owner for processing, and the preparation or transportation in intrastate commerce of the carcasses and meat food products of the animals, provided the products are to be used exclusively in the household of the animal's owner by the owner and members of the owner's household, nonpaying guests, and employees.
3. A custom processor may not engage in the business of buying or selling carcasses or meat food products of animals, other than poultry, usable as human food unless the carcasses or meat food products have been inspected and passed and are identified as inspected and passed by the commissioner or the United States department of agriculture.
4. The provisions of this chapter requiring inspection of the preparation of poultry carcasses and poultry food products at establishments conducting those operations do not apply to any retailer with respect to poultry products sold in commerce directly to consumers in an individual retail store, provided the retailer does not engage in the business of custom slaughter, and provided the poultry products sold in commerce are derived from poultry inspected and passed by the commissioner or the United States department of agriculture.

4.1-31-11. Storing and handling conditions.

The commissioner shall adopt rules regarding the manner in which all carcasses and meat food products of animals usable as human food and subject to this chapter must be stored, handled, and transported.

4.1-31-12. Articles not intended as human food.

The commissioner may not provide inspection under this chapter at an establishment for the slaughter of animals or the preparation of carcasses or parts or products of animals which are not intended for use as human food. Before these articles are offered for sale or transportation in intrastate commerce, the articles must be denatured or otherwise identified, as prescribed by rules of the commissioner, to deter the articles use for human food, unless the articles are naturally inedible by humans. A person may not buy, sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses or meat food products of animals which are not intended for use as human food, unless the articles are denatured or otherwise identified.

4.1-31-13. Records.

The following persons shall keep records that fully and accurately disclose the transactions described:

1. A person in the business of slaughtering animals or preparing, freezing, packaging, or labeling animal carcasses or products of carcasses for use as human or animal food.
2. A person buying, selling, transporting, or storing animal carcasses or products of animal carcasses.
3. A person rendering or buying, selling, or transporting dead, dying, disabled, or diseased animals or the carcasses of animals that died other than by slaughter.

4.1-31-14. Records - Examination.

Upon notice by the commissioner, any person subject to the record keeping requirements of this chapter shall give the commissioner and the United States department of agriculture access to the person's place of business at all reasonable times and an opportunity to examine the facilities, inventory, and records of the business, to copy business records, and to take reasonable samples of the person's inventory upon payment of the fair market value of the samples.

4.1-31-15. Records - Retention.

Any person subject to the record keeping requirements of this chapter shall maintain the records for the period prescribed by the commissioner.

4.1-31-16. Registration of business.

A person may not engage in intrastate business as a meat broker, renderer, or animal food manufacturer; a wholesaler of animal carcasses intended for human food or other purposes; a public warehouse operator storing carcasses of animals in or for intrastate commerce; or a buyer, seller, or transporter of dead, dying, disabled, or diseased animals, or the carcasses of animals that died other than by slaughter, unless the person first provides the commissioner with the person's name, the address of each place of business under which the person conducts business, and all trade names under which the person conducts business.

4.1-31-17. Dead, dying, disabled, or diseased animals - Rules.

The commissioner shall adopt rules to ensure dead, dying, disabled, or diseased animals are not used as human food.

4.1-31-18. Cooperation with federal government.

The commissioner shall cooperate with the United States department of agriculture to develop and administer the state meat inspection program provided for under this chapter and to ensure its requirements are at least equal to those imposed by federal law. The commissioner may accept, from the United States department of agriculture, advice and assistance in planning and otherwise developing the state meat inspection program; technical and laboratory assistance and training, including necessary curricular and instructional materials and equipment; and financial and other assistance for the administration of the program.

4.1-31-19. Refusal or withdrawal of inspection.

1. For the length of time the commissioner considers necessary to carry out the purposes of this chapter, the commissioner may refuse to provide, or may withdraw, inspection services from an establishment if after a hearing the commissioner determines that the recipient or potential recipient is unfit to engage in any business requiring inspection under this chapter because the recipient, potential recipient, or anyone responsibly connected with the recipient or potential recipient has been convicted of:

a. An offense determined by the commissioner to have a direct bearing on the person's ability to serve the public in a business requiring inspection under this chapter, or the commissioner determines the person is not sufficiently rehabilitated under section 12.1-33-02.1;

b. More than one violation of a law based on the acquisition, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food; or

c. Fraud in connection with transactions involving food.

2. For the purpose of this section anyone responsibly connected with a business means an individual who is a partner, officer, director, holder, or owner of ten percent or more of its voting stock or an employee in a managerial or executive capacity.

4.1-31-20. Detention of animals or products.

1. An inspector may detain an article or animal for up to twenty days pending a hearing or notification of authorities having jurisdiction over the article or animal if the inspector finds the article or animal on premises where it is held for purposes of, during, or after distribution in intrastate commerce and the inspector reasonably believes:

a. The article or animal is adulterated or misbranded and would otherwise be usable as human food;

b. The article or animal has not been inspected, in violation of this chapter or federal law; or

c. The article or animal has been or is intended to be distributed in violation of this chapter or federal law.

2. Until it is released by the commissioner, a detained article or animal may not be moved by any person from the place at which it was located when detained. The commissioner may require all official marks to be removed from the detained article or animal before it is released unless the commissioner is satisfied the article or animal is eligible to retain the official marks.

4.1-31-21. Seizure and condemnation.

The commissioner may initiate action to seize and condemn a carcass or meat food product, or a dead, dying, disabled, or diseased animal that is being transported in intrastate commerce, or is held for sale in this state after transportation in intrastate commerce if:

1. The article is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter;
2. The article is adulterated or misbranded and not suitable for use as human food; or
3. The article is in any other way violative of this chapter.

4.1-31-22. Destruction or sale of condemned items.

If an article or animal is condemned, it must be disposed of by destruction or sale, as directed by a court. If an article or animal is sold, the proceeds must be paid to the state, less the court costs, fees, storage, and reasonable expenses, but the article or animal must not be sold contrary to this chapter or federal law. If a bond is delivered conditioned that the article or animal not be sold or otherwise disposed of contrary to this chapter or federal law, the court may direct the article or animal be delivered to its owner subject to supervision by the commissioner.

4.1-31-23. Types of proceedings - Award of costs.

If a decree of condemnation is entered against an article or animal and it is released under bond or destroyed, a court may award costs, fees, storage, and other reasonable expenses against any person intervening as a claimant of the article or animal. Either party to a proceeding may demand trial by jury of any issue of fact joined in the case, and all proceedings must be in the name of the state. Nothing in this section changes the authority for condemnation or seizure otherwise conferred by law.

4.1-31-24. Powers of commissioner.

For the purposes of this chapter, the commissioner may:

1. Gather and compile information concerning and investigate the organization, business, conduct, practices, and management of a person in intrastate commerce and the person's relation to other persons.
2. Require a person engaged in intrastate commerce file with the commissioner, in the form and manner prescribed by the commissioner, annual and special reports or written answers to specific questions, giving the commissioner the information the commissioner requires about the organization, business, conduct, practices, management, and relation to other persons, of the person filing the reports or answers.

3. Examine and copy documentary evidence of a person being investigated or being proceeded against. A person may not refuse to submit to the commissioner, for inspection and copying, any documentary evidence of a person subject to this chapter in the person's possession or control.
4. Fix the time of filing for a person required by this chapter to file an annual or special report. A person required by this chapter to file an annual or special report may not continue the failure for thirty days after notice of failure to file.
5. Adopt rules to implement this chapter, including establishing inspection fees for providing inspection services under this chapter.

4.1-31-25. Interstate shipment.

Meat and meat products inspected under this chapter may be shipped in interstate commerce when federal law permits state-inspected meat and meat products to be marketed interstate.

4.1-31-26. Penalties.

1. A person who willfully violates a provision of this chapter is guilty of a class A misdemeanor.
2. A person willfully violating this chapter or a rule adopted under this chapter is subject to a civil penalty not to exceed two hundred fifty dollars for each violation. The civil penalty may be imposed by a court or by the agriculture commissioner in an administrative proceeding.
3. Imposing a penalty allowed in subsection 1 or 2 does not preclude the commissioner from seeking to impose other sanctions or from seeking other remedies for violation of this chapter or rules adopted under this chapter.

SECTION 6. Chapter 4.1-32 of the North Dakota Century Code is created and enacted as follows:

4.1-32-01. License required to operate rendering plant.

A person may not operate a rendering plant or other establishment using the carcasses of domestic or wild animals, not intended for human consumption, for processing without first obtaining a license from the agriculture commissioner. A license to operate a rendering plant may be issued only upon a written application filed with the commissioner in accordance with this chapter and rules adopted by the board.

4.1-32-02. Inspection of rendering plant of applicant by state veterinarian.

The state veterinarian shall inspect an establishment for which a license is requested to operate a rendering plant, including its equipment and vehicles and the manner in which its business is conducted, with reference and due regard to the danger of animal disease transmission and dissemination, upon the receipt of an application for a license to operate a rendering plant or other establishment for processing the carcasses of domestic or wild animals, not intended for human consumption.

4.1-32-03. Granting of license - Fee - Term.

The agriculture commissioner shall issue a license to operate a rendering plant, if the inspection does not reveal any danger of animal disease transmission, upon payment of a fee of fifty dollars. The license is valid for a period of one year from the date of issuance unless it is revoked for cause by the commissioner before expiration.

4.1-32-04. Unloading chutes and vehicles used by rendering plant - Regulations governing.

1. Any unloading places or chutes used by a rendering plant or establishment must be on cement floors that can be cleaned and disinfected. Every vehicle used for transporting carcasses of dead animals to a rendering plant or establishment must:
   a. Have a bed or tank not less than fifty inches [127 centimeters] in width which is all metal, metal lined, or watertight for at least six inches [15.24 centimeters] above the floor of the box or bed of the vehicle.
   b. Have a metal-lined endgate that is hinged at the bottom of the bed or box of the vehicle and is fastened firmly to the top of the bed or box of the vehicle when closed.
   c. Have sides, a top, and an endgate that will prevent flies and other insects from entering the vehicle.
   d. Carry a tank filled with a solution approved by the state veterinarian for use as a disinfectant.
   e. Be disinfected with the solution described in subdivision d after it has been used for collecting a dead animal and before it enters upon any public highway of this state. Special attention must be given to all those parts of the vehicle which came in contact with the ground while upon the premises.

f. Be thoroughly washed and disinfected with the solution described in subdivision d or with live steam, or both, after the dead animal has been unloaded at the rendering plant.

2. The operator of any vehicle used for transporting the carcasses of dead animals to a rendering plant shall wash with disinfectant, paying special attention to disinfecting the operator's hands and footwear, with the solution described in subdivision d of subsection 1 immediately after leaving any farm at which the operator has collected the carcass of a dead animal.

4.1-32-05. Removal of carcasses from vehicle - Prohibition.

A carcass collected at any farm in this state may not be removed from the vehicle except at a rendering plant or other establishment using the carcasses of domestic or wild animals, not intended for human consumption, for processing and final disposal.

4.1-32-06. Operator of vehicle for rendering plant to have certificate.

Any person operating a vehicle for an establishment licensed under this chapter must have an authorized certificate from the establishment which has been approved by the agriculture commissioner.

4.1-32-07. Inspection of plant authorized.

The operator of any establishment licensed under this chapter shall permit an official authorized by the state veterinarian or any health officer to inspect the licensed establishment at any time.

4.1-32-08. Rendering done by packing plants operating under federal inspection - Exception.

All rendering done by a packing plant operating under federal inspection in a building adjacent to or on the same premises as the packing plant is exempt from the provisions of this chapter, except that the transportation by the packing plant or any establishment licensed under this chapter of carcasses and other animal substances on any public highway or street is subject to the sanitary requirements of this chapter and the rules adopted by the state board of animal health.

4.1-32-09. Money collected - Where credited.

Money collected under this chapter must be deposited in the general fund by the state treasurer.

4.1-32-10. Restrictions on locating rendering plants.

An establishment licensed under this chapter may not be constructed within three miles [4.83 kilometers] of the limits of any municipality or within one mile [1.61 kilometers] of any farmstead unless the owner of the farmstead gives written consent.

4.1-32-11. Penalty.

Any person violating any provision of this chapter is guilty of a class B misdemeanor.

SECTION 7. Chapter 4.1-41 of the North Dakota Century Code is created and enacted as follows:

4.1-41-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Brand name" means any word, name, symbol, or device, used singly or in combination, that identifies commercial feed and distinguishes it from that of all others.
2. "Commercial feed" means any materials, used singly or in combination, which are distributed, or are intended to be distributed, for use as feed or for mixing in feed, except:
   a. Unmixed whole seeds and unmixed physically altered seeds, provided the seeds are not chemically changed or adulterated;
   b. Commodities such as hay, straw, stover, silage, cobs, husks, and hulls, provided the commodities are:
      (1) Not intermixed or mixed with other materials;
      (2) Not adulterated; and
      (3) Specifically exempted by the agriculture commissioner;
   c. Individual chemical compounds or substances, provided the chemical compounds or substances are:
      (1) Not intermixed or mixed with other materials;
      (2) Not adulterated; and
      (3) Specifically exempted by the agriculture commissioner; and
   d. Unprocessed grain screenings or unprocessed mixed grain screenings, provided:
      (1) The distributor does not make oral or written reference to the nutritional value of the screenings;
      (2) The screenings are not adulterated; and

(3) The screenings are specifically exempted by the agriculture commissioner.

3. "Contract feeder" means an independent contractor that feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to the independent contractor and the independent contractor's remuneration is determined in whole or in part by feed consumption, mortality, profits, or the amount or quality of the product.

4. "Customer-formula feed" means a commercial feed that is manufactured according to the specific instructions of the final purchaser.

5. "Distribute" means to:

   a. Offer for sale, sell, exchange, or barter commercial feed or customer-formula feed; or

   b. Supply, furnish, or otherwise provide commercial feed or customer-formula feed to a contract feeder.

6. "Drug" means any article:

   a. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in an animal other than a human; and

   b. Other than feed, intended to affect the structure or function of an animal's body.

7. "Feed ingredient" means each of the constituent materials making up a commercial feed.

8. "Label" means any printed or stamped information on or attached to a commercial feed container or its wrapper and written information accompanying the distribution of a commercial feed or customer-formula feed.

9. "Manufacture" means to grind, mix, blend, or further process a commercial feed for distribution.

10. "Official sample" means any feed taken by the agriculture commissioner in accordance with section 4.1-41-13.

11. "Pet food" means any commercial feed prepared and distributed for consumption by dogs or cats.

12. "Product name" means a term that identifies a commercial feed as to its kind, class, or specific use and which distinguishes that feed from all other products bearing the same brand name.

13. "Specialty pet food" means a commercial feed prepared and distributed for consumption by canaries, finches, gerbils, goldfish, hamsters, mynahs, psittacine birds, snakes, turtles, and any other domesticated animal normally maintained in a cage or a tank.

4.1-41-02. Manufacturer's license - Retailer's license.

1. a. A person shall obtain a commercial feed manufacturer's license for each facility at which the person manufactures commercial feed if the person distributes the feed within this state.
   b. A person shall obtain a commercial feed manufacturer's license if the person's name appears on the label of a commercial feed as a guarantor.
   c. This subsection does not apply to a person that manufactures or guarantees pet food or specialty pet food.
2. A person shall obtain a commercial feed retailer's license for each facility at which the person sells commercial feed other than pet food or specialty pet food. This subsection does not apply to a person licensed as a commercial feed manufacturer.
3. In order to obtain an initial license required by this section, a person shall submit an application form at the time and in the manner required by the agriculture commissioner and:
   a. If the person is applying for a manufacturer's license, a fee in the amount of one hundred twenty dollars for a manufacturer's license; or
   b. If the person is applying for a retailer's license, a fee in the amount of sixty dollars.
4. To renew a license required by this section, a person shall submit an application form at the time and in the manner required by the commissioner and:
   a. If the person is applying for a manufacturer's license renewal, a fee in the amount of one hundred dollars; or
   b. If the person is applying for a retailer's license renewal, a fee in the amount of fifty dollars.
5. A license issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.

6. If a person fails to renew a license within thirty-one days of its expiration, that person must apply for an initial license.

4.1-41-03. Product registration.

Each commercial feed manufacturer required to be licensed under this chapter shall register all feeds distributed in this state with the agriculture commissioner, at the time and in the manner required by the commissioner. This section does not apply to customer-formula feeds.

4.1-41-04. License - Registration - Hearing.

1. a. The agriculture commissioner may refuse to issue a license to an applicant that is not in compliance with this chapter.
   b. The commissioner may revoke an existing license if the licensee is not in compliance with this chapter.
   c. The commissioner may refuse to register any feed and may cancel the registration of any feed if the registrant is not in compliance with this chapter.
2. Before the commissioner may act under this section, the commissioner shall provide the affected person with an opportunity for an informal hearing.

4.1-41-05. Pet food - Specialty pet food - Registration - Penalty.

1. Before being distributed in this state, each pet food product and each specialty pet food product must be registered with the agriculture commissioner. This requirement does not apply to a distributor, provided the pet food or specialty pet food is registered by another person.
2. To register pet food and specialty pet food, a person shall submit:
   a. An application form at the time and in the manner required by the agriculture commissioner; and
   b. A fee in the amount of one hundred twenty dollars.
3. To renew a registration required by this section, a person shall submit:
   a. An application form at the time and in the manner required by the commissioner; and
   b. A fee in the amount of one hundred dollars.

4. A registration issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.
5. If a person fails to renew a registration within thirty-one days of its expiration, that person must apply for an initial registration.
6. Upon approving an application for an initial registration or a renewed registration, the commissioner shall furnish a certificate of registration to the applicant. A certificate of registration is not transferable.
7. Any person violating this section is subject to a penalty of twenty-five dollars for each product that must be registered.

4.1-41-06. Commercial feed - Label - Content.

Except as provided in section 4.1-41-07, any commercial feed that is distributed in this state must be labeled. The label must include:

1. The product's name, including any brand name under which the product is distributed;
2. The product's weight, volume, or quantity, as appropriate;
3. A guaranteed analysis expressed on an "as is" basis;
4. Unless waived by the agriculture commissioner in the interest of consumers, the commonly accepted name of each ingredient or, if permitted by the commissioner, a collective term for a group of ingredients that perform a similar function;
5. The name and principal mailing address of the manufacturer or the distributor;
6. Directions for use of any commercial feed containing drugs; and
7. Any precautionary statements recommended by the commissioner to ensure the safe and effective use of the feed.

4.1-41-07. Customer-formula feed - Label - Content.

Any customer-formula feed that is distributed in this state must be labeled.

1. The label must include:
   a. The name and address of the manufacturer;
   b. The name and address of the purchaser;
   c. The date of delivery;
   d. The product's name;

e. The weight, volume, or quantity, as appropriate, of each ingredient, including commercial feed; and

f. Any precautionary statement recommended by the agriculture commissioner to ensure the safe and effective use of the feed.

2. If the feed contains drugs, the label must also include:

a. The purpose of each drug;

b. The weight, volume, or quantity, as appropriate, of each drug; and

c. The name of each active ingredient.

4.1-41-08. Inspection fee.

1. An inspection fee at the rate of twenty cents per ton [907.18 kilograms] is required for all commercial feed distributed in this state. The minimum fee payable under this section is ten dollars.

2. Subsection 1 does not apply if:

a. The fee was paid earlier in the year by another person;

b. The commercial feed is to be used in the manufacturing of a registered commercial feed;

c. The feed is a customer-formula feed and the fee has been paid on the commercial feeds used as ingredients; or

d. The manufacturer produces only customer-formula feed.

4.1-41-09. Inspection fee - Responsibility for payment - Penalty.

1. The person responsible for payment of the inspection fee is:

a. The manufacturer listed on the label;

b. The guarantor listed on the label; or

c. The distributor listed on the label.

2. Before the close of business on each February fifteenth, the person responsible for the payment of the inspection fee shall provide to the agriculture commissioner:

a. A sworn statement indicating the number of net tons [kilograms] of commercial feed, by class, which the person distributed in this state during the immediately preceding calendar year; and

b. The inspection fees due in accordance with this chapter.

3. If the person responsible for the payment of the inspection fee fails to submit the assessments as required by this section, the commissioner may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date. If imposed, a penalty under this section may not be less than ten dollars nor more than two hundred fifty dollars.

4.1-41-10. Inspection fee - Records.

1. The person responsible for payment of the inspection fee shall maintain, for a period of three years, records of all transactions necessary to verify the statement of tonnage required by section 4.1-41-09.
2. The person shall make the records required by this section available to the agriculture commissioner for examination upon request.
3. If the commissioner determines the records required by this section were not maintained accurately, the commissioner may cancel all licenses on file for the distributor.

4.1-41-11. Adulteration.

A person may not distribute any commercial feed that is adulterated.

1. Commercial feed is adulterated if it contains any poisonous or harmful substance that may render the feed injurious to health. However, if the substance naturally occurs in the feed, the commercial feed may be considered adulterated under this subsection only if the substance is present in sufficient quantity to render it injurious to health.
2. Commercial feed is adulterated if it contains any added substance that is poisonous, harmful, or nonnutritive, and unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346]. This subsection does not apply to any pesticide in or on a raw agricultural commodity or to a food additive.
3. Commercial feed is adulterated if it contains any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].
4. a. Commercial feed is adulterated if it is a raw agricultural commodity and it contains a pesticide that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].

b. However, if a pesticide has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a] and if the raw agricultural commodity has been subjected to a process such as canning, cooking, dehydration, freezing, or milling, any pesticide residue remaining in or on the processed feed may be deemed safe, provided:

(1) The residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice; and

(2) The concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity.

c. The exception set forth in subdivision b does not apply if the consumption of the processed feed may result in the edible product of the animal evidencing a pesticide residue that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].

5. Commercial feed is adulterated if it contains any color additive that is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 379e].

6. Commercial feed is adulterated if it contains any new animal drug that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 360b].

7. In addition to the foregoing subsections, commercial feed is adulterated if:

a. Any valuable constituent has been omitted, in whole or in part, thereby providing a lower nutritive value in the finished product;

b. The composition or quality of the feed falls below or differs from that which is stated on its label;

c. The feed contains added hulls, screenings, straw, cobs, or other high fiber material, unless each material is stated on the label;

d. The feed contains viable weed seeds in amounts exceeding the limits the commissioner establishes by rule;

e. The feed contains a drug and the methods used in or the facilities or controls used for its manufacturing, processing, or packaging do not conform to current good manufacturing practice rules adopted by the commissioner;

f. The feed consists in whole or in part of any filthy, putrid, or decomposed substance, or if the feed is otherwise unfit for its intended use;

g. The feed has been prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health;

h. The feed consists in whole or in part of the product of a diseased animal or of an animal that has died otherwise than by slaughter which is unsafe within the meaning of section 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 342];

i. The feed's container is composed, in whole or in part, of any poisonous or harmful substance that may render the contents injurious to health;

j. The feed has been packaged in bags or totes that previously contained pesticide products, treated seeds, or other hazardous materials; or

k. The feed has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].

4.1-41-12. Misbranding.

A person may not distribute any commercial feed that is misbranded. Commercial feed is misbranded if:

1. Its label is false or misleading;
2. It is distributed under the name of another commercial feed;
3. It is not labeled in accordance with this chapter;
4. It purports to be or is represented as being a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by rules of the agriculture commissioner; or

5. Any information required on the label is not prominently placed, with conspicuousness, so as to render it readable and comprehensible by an individual under customary conditions of purchase and use.

4.1-41-13. Inspection, sampling, analysis.

1. a. For purposes of enforcing this chapter, designated officers and employees of the agriculture commissioner may enter and inspect, during normal business hours, any factory, warehouse, or establishment in this state, in which commercial feeds are manufactured, processed, packed, or held for distribution, provided the individuals first present their credentials and written notice to the owner or manager.

   b. For purposes of enforcing this chapter, designated officers and employees of the commissioner may enter and inspect any vehicle being used to transport or hold commercial feed, provided the individuals first present their credentials and written notice to the owner, manager, or driver.

2. Any inspection authorized under this section must take place at reasonable times, within reasonable limits, and in a reasonable manner. The inspection may include the verification of records and production and control procedures, as necessary to determine compliance with this chapter and rules implemented under this chapter.

3. A separate notice must be given for each authorized inspection. However, a separate notice is not required for each entry made during the period covered by the inspection. Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the individual in charge of the facility or the individual in charge of the vehicle must be notified.

4. If the officer or employee making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give to the owner or manager a receipt describing the samples obtained.

5. If an officer or employee of the commissioner is denied entry as authorized by this section, the commissioner may obtain a warrant directing the owner or manager to submit the premises described in the warrant to inspection.

6. Any officer or employee of the commissioner authorized to enter any structure or vehicle in accordance with this section, may obtain samples and examine records relating to distribution of commercial feeds.

7. Sampling under this section must be conducted in accordance with generally recognized methods and any analysis of the samples taken must be conducted in accordance with generally recognized laboratory methods.

8. The commissioner shall forward the results of any sample analysis to the person named on the label and to the purchaser.

9. If an analysis indicates that a commercial feed has been adulterated or misbranded, within thirty days following receipt of the analysis, the person named on the label may request that the commissioner provide a portion of the sample.

10. In determining for administrative purposes whether a commercial feed is deficient in any component, the commissioner must be guided by the official sample.

4.1-41-14. Detained commercial feeds.

1. If the agriculture commissioner has reasonable cause to believe a lot of commercial feed is being distributed in violation of this chapter or any rules implementing this chapter, the commissioner may issue a "withdrawal from distribution" order, prohibiting the distributor from disposing of the lot until written permission is given by the commissioner or by a court. The commissioner shall release the lot of commercial feed when there has been compliance with this chapter and the rules implementing this chapter. If compliance is not obtained within thirty days, the commissioner may begin, or upon request of the distributor shall begin, proceedings for condemnation.

2. Any lot of commercial feed not in compliance with this chapter or rules implementing this chapter is subject to seizure on complaint of the commissioner to a court of competent jurisdiction. If the court finds the commercial feed to be in violation of this chapter or rules implementing this chapter and orders the condemnation of the commercial feed, it must be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. A court may not order disposition of the commercial feed without first giving the claimant an opportunity to apply for its release or for permission to process or relabel the commercial feed to bring it into compliance with this chapter and rules implementing this chapter.

4.1-41-15. Penalties.

1. It is a class A misdemeanor for any person to violate this chapter, the rules implementing this chapter, or impeding, obstructing, hindering, preventing, or attempting to prevent the agriculture commissioner from performing the commissioner's duties in connection with this chapter. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the person performing the analysis, or that person's authorized agent, must be accepted as prima facie evidence of the composition.
2. This chapter does not require the commissioner to seek prosecution or take any other legal action based on minor violations of the chapter if the commissioner deems the public interest will be best served by a suitable written warning.
3. Each state's attorney to whom any violation is reported shall institute appropriate proceedings to be prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for prosecution, the commissioner shall provide an opportunity for the distributor to show cause why the violation should not be reported for prosecution.
4. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule implementing this chapter. An injunction must be issued without bond.
5. Any person adversely affected by an act, order, or ruling made pursuant to this chapter may within forty-five days appeal the action to the district court for Burleigh County.

4.1-41-16. Publications.

1. The agriculture commissioner may publish information regarding commercial feeds, including their production, sales, and use, and publish a comparison of the analyses of official samples of commercial feeds sold in this state with the analyses guaranteed in their registration and on their label.
2. Information regarding the production and use of commercial feeds may not disclose the operations of any person.

4.1-41-17. Cooperation with other entities.

The commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, the federal government, and private associations to carry out this chapter.

4.1-41-18. Certificates - Fees.

The agriculture commissioner may:

1. Implement a program to inspect, audit, and certify commercial feed manufacturing and distribution facilities, at the request of an owner;
2. Issue commercial feed export certificates; and
3. Establish a schedule of fees for the services provided under this section.

4.1-41-19. Deposit of fees.

The commissioner shall forward all inspection fees, license fees, and registration fees received under this chapter to the state treasurer. The state treasurer shall deposit the first seven hundred twenty-seven thousand five hundred dollars of fees received under this chapter each biennium in the environment and rangeland protection fund and any remaining fees in the general fund.

SECTION 8. Chapter 4.1-53 of the North Dakota Century Code is created and enacted as follows:

4.1-53-01. Definitions.

As used in this chapter:

1. "Livestock medicine" means all devices, remedies, cures, tonics, powders, proprietary medicines, type A medicated articles, and similar preparations for the treatment or prevention of any disease of livestock, poultry, or other domestic animals which are administered internally for their stimulating, invigorating, curative, or other than nutritive powers, and also all powders, sprays, dips, and other preparations for external use in the curing of scab or the eradication of ticks, lice, and other mites and parasites on livestock, poultry, or other domestic animals. The term does not include medicines that are manufactured, sold, or recommended primarily for human use.
2. "Type A medicated article" means a product with standardized potency containing one or more new animal drugs intended for use in the manufacture of another medicated article or a medicated feed.

4.1-53-02. Registration of livestock medicine.

The commissioner shall register any livestock medicine that does not violate this chapter, upon the completion of an application by the manufacturer or distributor of the livestock medicine and the payment of the registration fee prescribed in section 4.1-53-04. Registration of livestock medicine is valid for a two-year period beginning July first and ending June thirtieth of every even-numbered year unless it is canceled by the commissioner because a change is made in the ingredients or formula of the livestock medicine or in the name, brand, or trademark under which the medicine is sold. In the event of any change, the medicine must be registered once again through an original application with the commissioner.

The certificate of registration must include a disclosure of the name and quantity or proportion of each active ingredient and the names of the inert ingredients or fillers.

4.1-53-03. Regulations for sale.

A person may not sell, offer for sale, expose for sale, or possess with the intent to sell, any livestock medicine:

1. That is sold under a name, brand, trademark, or labeling that is misleading, deceptive, false, or dangerous to animals under the conditions of use prescribed in the labeling or advertising;
2. That purports to cure any infectious disease of domestic animals for which no genuine cure is known;
3. That has not been registered by the commissioner for sale in this state;
4. That does not have printed or written upon the label of each package sold at retail, in type not less than one-fourth the size of the largest type on the package:
   a. The common name, in English, of all active ingredients in the order of their predominance in the product;
   b. A statement of the actual percentage or relative amounts of each ingredient active and inert, unless exemptions are established by rules adopted by the commissioner;
   c. The net contents, by weight, measure, or numerical count of the package;
   d. The name and principal address of the manufacturer or person responsible for placing the livestock medicine on the market; and
   e. Complete and explicit directions for use of the medicine.

5. If the contents of the package as originally manufactured have been removed in whole or in part, and other contents have been placed in the package.

4.1-53-04. Registration fee.

A registration fee of forty dollars must be paid to the commissioner for each livestock medicine that is registered prior to each two-year registration ending June thirtieth of every even-numbered year. An application for registration which is received by the commissioner after July thirty-first of the year in which the application is due must be assessed an additional late registration fee of ten dollars.

4.1-53-05. Commissioner may cancel registration.

The commissioner may cancel the registration of any livestock medicine that is sold in violation of this chapter.

4.1-53-06. Commissioner may adopt rules, take testimony, grant public hearings.

The commissioner may adopt rules under chapter 28-32, governing applications for registration, the submission of samples for analysis, and all other matters necessary to give effect to this chapter. The commissioner may take expert and other testimony and, upon request, shall grant a public hearing prior to the cancellation of a registration and also to any manufacturer or distributor whose request for registration of any livestock medicine has been denied.

4.1-53-07. Enforcement.

The commissioner shall enforce this chapter through inspection, chemical analysis, and any other appropriate method. All samples for analysis must be taken from stocks held within, or intended for sale in, this state. The commissioner may require any manufacturer or distributor applying for registration of a livestock medicine to supply samples of the medicine for analysis. The commissioner may institute any action at law or in equity as may appear necessary to enforce compliance with the provisions of this chapter, and in addition to any other remedy, may apply to the district court for relief by injunction, mandamus, or any other appropriate remedy in equity. In such actions, the commissioner is not required to give or post bond in any action to which the commissioner is a party whether upon appeal or otherwise.

4.1-53-08. Penalty - Criminal - Civil.

It is a class B misdemeanor for any person to willfully violate a provision of this chapter or any rule adopted under this chapter, or who willfully and falsely represents that any livestock

medicine is registered for sale in this state. A person who violates a provision of this chapter or a rule adopted under this chapter is subject to a civil penalty not to exceed five hundred dollars per violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32.

SECTION 9. AMENDMENT. Section 23-01-25 of the North Dakota Century Code is amended and reenacted as follows:

23-01-25. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function.

Notwithstanding any other provision of law, any laboratory test or analysis required under chapter ~~19-13.1~~4.1-41, 19-18, or 19-20.1 must be performed by the state department of health for the agriculture commissioner at no charge.

SECTION 10. AMENDMENT. Section 36-21-01 of the North Dakota Century Code is amended and reenacted as follows:

36-21-01. ~~Regulations governing fraudulent~~Fraudulent registration or representation of purebred livestock - Penalty.

~~Any~~It is a class B misdemeanor for a person ~~who shall~~to:

1. Fraudulently represent any animal ~~to be~~as purebred;
2. Post or publish, or cause to be posted or published, any false pedigree or certificate;
3. Procure by fraud, false pretense, or misrepresentation, the registration of any animal ~~which is~~ to be used for service, sale, or exchange in this state, for the purpose of deception as to the animal's pedigree ~~thereof~~;
4. Sell, or otherwise dispose of, any animal as a purebred when the person knows or has reason to believe that the animal is not the offspring of a regularly registered purebred sire and dam; or
5. Sell, or otherwise dispose of, any animal as a registered purebred ~~by the use of~~using a false pedigree or certificate of registration~~,~~

~~is guilty of a class B misdemeanor~~.

SECTION 11. AMENDMENT. Section 36-21-10 of the North Dakota Century Code is amended and reenacted as follows:

36-21-10. Dogs, wolves, and coyotes worrying livestock or poultry may be killed.

Any person ~~may kill~~who kills any dog, wolf, or coyote kept as a domestic animal is not liable in any civil action to the owner of the animal:

1. When the person sees such animal in the act of killing, chasing, worrying, or damaging any livestock or poultry; or
2. When the person discovers ~~such animal under circumstances which satisfactorily show~~evidence that the animal recently ~~it has been engaged in killing~~killed or ~~chasing~~chased sheep.

~~A person who kills any dog, wolf, or coyote under conditions specified in this section is not liable in any civil action to the owner of such animal.~~

SECTION 12. AMENDMENT. Section 36-21-11 of the North Dakota Century Code is amended and reenacted as follows:

36-21-11. ~~Owners of dogs liable~~Liability for damages ~~done~~ to livestock ~~- Procedure when damages done~~ by ~~pack of~~ dogs.

The owner of any dog ~~which~~that kills, wounds, or chases any sheep or other domestic animal or poultry belonging to another person is liable to ~~such other~~that person for all resulting damages ~~caused thereby~~. If ~~one or~~ more ~~of several dogs which are~~than one dog, owned by different persons, participates in the killing, wounding, or chasing of sheep or other domestic animals or poultry ~~while running together~~, the owners of the ~~respective~~ dogs ~~so running together~~ may be sued jointly, and a joint verdict and judgment may be rendered against ~~the owners of such dogs~~the owners. If one or more of the defendants pays ~~such~~ a joint judgment and if the damages committed by the dogs may be prorated, the payor or payors may ~~have~~receive contribution from the defendants who have not paid ~~in an appropriate action in which the respective damages committed by the several dogs running together may be prorated~~. ~~No exemption is allowed to any person against whom a judgment is entered under the provisions of this section.~~

SECTION 13. AMENDMENT. Section 36-21-12 of the North Dakota Century Code is amended and reenacted as follows:

36-21-12. Killing of livestock by railroad is prima facie evidence of negligence.

The killing or damaging of any livestock by a railroad car or locomotive is prima facie evidence of ~~carelessness and~~ negligence ~~on the part of~~by the railway company or corporation.

SECTION 14. AMENDMENT. Section 36-21-13 of the North Dakota Century Code is amended and reenacted as follows:

36-21-13. Exemplary damages for ~~wrongful~~ injuries to domestic animals.

Exemplary damages may be ~~given to the owner of any animal~~applied for any wrongful injury ~~thereto when such injury is~~to an animal committed willfully or by gross negligence.

SECTION 15. AMENDMENT. Section 36-21-15 of the North Dakota Century Code is amended and reenacted as follows:

36-21-15. Sale of livestock by weight.

All livestock sold by weight at any public market must be sold subject to the weight at the place of sale on the day sold by the auctioneer.

SECTION 16. AMENDMENT. Section 36-21-18 of the North Dakota Century Code is amended and reenacted as follows:

36-21-18. Title to property to remain ~~in market~~with seller until settlement made.

~~Before any~~Any person~~, association, copartnership, firm, corporation, or limited liability company may become a purchaser~~ that purchases livestock at any sale conducted by an auction market established under the laws of this state~~, such prospective purchaser~~ must ~~file satisfactory evidence with the operator of such auction market that any~~pay for the livestock with cash, check, ~~draft,~~ or ~~bill of exchange issued and delivered to such auction market in payment of any livestock purchased shall be honored by the drawee bank~~any other method of payment generally accepted by financial institutions in this state. For a noncash purchase and transfer of title to be valid, the financial institution of the purchaser shall honor the payment at the time of presentation ~~for payment, and until such check, draft, or other bill of exchange has been duly honored and paid, the title to the livestock so purchased is in the auction market making such sale~~.

SECTION 17. AMENDMENT. Section 36-21-19 of the North Dakota Century Code is amended and reenacted as follows:

36-21-19. Equine processing assessment - Continuing appropriation - Provision of grants.

1. For each equine processed at an equine processing facility in this state, the owner of the facility shall ~~submit~~remit to the agriculture commissioner, at the time and in the manner directed by the commissioner, an assessment in the amount of five dollars.

The commissioner shall forward the assessment to the state treasurer for deposit of the first fifty thousand dollars in the state general fund and any additional amount in the equine processing fund.

2. All moneys in the equine processing fund are appropriated on a continuing basis to the agriculture commissioner to be used ~~as follows~~to:

a. ~~The agriculture commissioner shall return to the state general fund the fifty thousand dollars appropriated to the department of commerce for the equine processing facility feasibility study.~~

~~b.~~ ~~Upon completion of the requirement set forth in subdivision a, the commissioner shall:~~

~~(1)~~ Provide an annual grant equaling forty percent of any assessments collected to Dickinson state university in support of the equine management program;

~~(2)~~b. Provide an annual grant equaling forty percent of any assessments collected to North Dakota state university in support of the equine studies program; and

~~(3)~~c. Provide an annual grant equaling twenty percent of any assessments collected to public or private entities conducting equine research or offering hippotherapy to individuals with disabilities.

SECTION 18. REPEAL. Chapters 19-13.1, 19-14, 36-05, 36-05.1, 36-06, and 36-07 and section 36-21-05 and chapter 36-24 of the North Dakota Century Code are repealed.