

# AGRICULTURE

## CHAPTER 73

HOUSE BILL NO. 1109  
(Committee on State and Federal Government)  
(At the request of the State Auditor)

### STATE FAIR ASSOCIATION AUDIT REPORTS

AN ACT to amend and reenact section 4-02.1-18 of the North Dakota Century Code, relating to audits of the state fair association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-02.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02.1-18. ~~State auditor to examine premiums—~~ Certified audit of state fair association. It shall be the duty of the state auditor to biennially audit the general fund moneys appropriated to the North Dakota State Fair Association and to report thereon to the governor and to the legislative audit and fiscal review committee. The state fair association shall submit annually to the governor and the legislative audit and fiscal review committee an audit report prepared by a certified public accountant based upon an audit of all records and accounts of the association.

Approved March 9, 1989  
Filed March 9, 1989

## CHAPTER 74

HOUSE BILL NO. 1328  
(Representatives Martin, R. Anderson, Kolbo)  
(Senators Maixner, Richard, Stromme)

### RESERVATION YOUTH ACHIEVEMENT DAYS

AN ACT to amend and reenact section 4-08-10.1 of the North Dakota Century Code, relating to achievement days held by extension agents on Indian reservations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-08-10.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-08-10.1. Achievement days - Premiums - Report of county extension agent. The county extension agent of each organized county ~~of or tribal government within~~ the state conducting boys' and girls' achievement days, upon a voucher duly executed by the county extension agent and filed with the office of management and budget, shall receive out of moneys appropriated for boys' and girls' clubwork an amount not to exceed five hundred dollars each year to be used exclusively for the payment of premiums at the boys' and girls' achievement days. Within thirty days following the boys' and girls' achievement days, the county extension agent shall file with the office of management and budget a full and complete itemized statement showing the disposition of the premium payments, and any balance not expended must be remitted to the state treasurer and placed to the credit of the general fund.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 75

SENATE BILL NO. 2111  
(Tallackson)

### SEED SALES AND SEED COMMISSION

AN ACT to create and enact a new section to chapter 4-09 and two new subdivisions to subsection 1 of section 4-09-14 of the North Dakota Century Code, relating to prohibitions regarding the sale of seeds; and to amend and reenact sections 4-09-01, 4-09-02, subsections 2 and 3 of section 4-09-03, sections 4-09-06, 4-09-07, 4-09-08, 4-09-10, subsection 2 of section 4-09-15, sections 4-09-16, 4-09-17, 4-09-18, 4-09-20, subsections 6 and 7 of section 4-25-02, and section 4-25-04 of the North Dakota Century Code, relating to seed and the state seed department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Advertisement" means any representation, other than representations made on labels, ~~made in any manner or by any means which relate relates~~ to seed ~~within the scope of this chapter~~.
2. "Agent" ~~or its plural form~~, when used in connection with the state seed commissioner, means the commissioner's deputies, inspectors, analysts, specialists, and any other aides, agents, and employees of the commissioner and the seed department, when they are acting officially for the commissioner or performing any duty or duties as provided in this chapter or in the ~~regulations rules~~ rules duly ~~made thereunder~~ adopted under this chapter.
3. "Agricultural seeds" means the seeds of grass, forage, cereal, fiber, oil crops, Irish potato seed tubers, and any other kind of seeds commonly recognized within this state as agricultural seeds, lawn seeds, and mixture of such seeds.
4. "Commissioner" means the state seed commissioner.
5. "Foundation seed", "registered seed", and "certified seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the rules of an officially recognized seed-certifying agency.
6. "Germination" means the percentage of seed capable of producing normal seedlings under ordinarily favorable conditions as determined by methods prescribed under the rules established by the

association of official seed analysts, but not including seed which produces weak, malformed, or obviously abnormal sprouts.

6- 7. "Hard seed" means the percentage of seed which, because of hardness or impermeability, does not absorb moisture or germinate under prescribed test but remains hard during the period prescribed for germination of the kind of seed concerned as determined by methods prescribed under the rules established by the association of official seed analysts.

7- 8. "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:

- a. Two or more inbred lines;
- b. One inbred or a single cross with an open pollinated variety; or
- c. Two varieties or species, except open pollinated varieties of corn (*Zea Mays mays*).

The second generation or subsequent generations from such crosses must not be regarded as hybrids. Hybrid designations must be treated as variety names.

8- 9. "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, such as corn, oats, alfalfa, timothy.

9- 10. "Labeler" means the person who furnishes the information required in sections 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2.

10- 11. "Labeling" means all labels and other written, printed, or graphic representation in any form ~~whatsoever~~ accompanying or pertaining to any seed, whether in bulk or in containers, including representations on invoices.

11- 12. "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.

12- 13. "Noxious weed seeds" means the seeds of either of the following classifications:

- a. "Prohibited noxious weed seeds" means the seeds of perennial weeds which reproduce by seed or spread by underground roots, stems, and other reproductive parts and which, when established, are highly destructive and difficult to control by ordinary good cultural practice. ~~Included herein are including~~ the seeds of leafy spurge (*euphorbia esula* l.), field bindweed or creeping jenny (*convolvulus arvensis* l.), Canada thistle (*cirsium arvense* l.), perennial sow thistle (*sonchus arvensis* l.), Russian knapweed (*centaurea picris* pall), absinth wormwood (*artemisia absinthim*), hemp (*cannabis sativa*), musk thistle (*carduus nutans*), spotted knapweed (*centaurea maculosa* lam) and perennial pepper grass hoary cress (*cardaria draba* l. ~~cardaria repens schrenk, cardaria pubescens meyer~~).

- b. "Restricted noxious weed seeds" means the seeds of weeds which are highly objectionable in fields, lawns, and gardens, but which can be controlled by good cultural practices or other means, including the seeds of dodder (cuscuta species), wild mustard (sinapsis arvensis syn. brassica kaber), field pennycress (thlaspi arvense), hedge bindweed (convolvulus sepium), wild oats (avena fatua), and quackgrass (agropyron repens L. Beauv.).
- ~~13-~~ 14. "Official seed certifying agency" means:
- a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or
  - b. An agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subdivision a.
- ~~14-~~ 15. "Person" means any individual, partnership, corporation, company, society, or association.
- ~~15-~~ 16. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism causing or capable of causing injury or damage to any plant or part of a plant or any processed, manufactured, or other product of a plant.
- ~~16-~~ 17. "Phytosanitary certificate" means a document issued or authorized by the commissioner indicating that the seed or tubers were inspected and considered to be free from quarantine pests and practically free from injurious pests according to the sanitary requirements of the importing country.
- ~~17-~~ 18. "Pure seed" means agricultural and vegetable seed, exclusive of inert matter, and all other seed not of the kind or variety being considered.
- ~~18-~~ 19. "Record" means all information relating to lot identification, source, origin, variety, amount, processing, testing, labeling, distribution, and file sample of the seed.
- ~~19-~~ "Registered seed" and "certified seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of an officially recognized seed-certifying agency.
20. "Restricted noxious weed seeds" means the seeds of weeds which are highly objectionable in fields, lawns, and gardens, but which can be controlled by good cultural practices or other means. Included herein are the seeds of dodder (cuscuta species), wild mustard (sinapsis arvensis syn. brassica kaber), frenchweed (thlaspi arvense), hedge bindweed (convolvulus sepium), wild oats (avena fatua), and quack grass (agropyron repens L. Beauv.); provided, however, that the commissioner may, through promulgation of

regulations; add to or delete from the list of seeds included under either classification in subsection 12 and this subsection whenever he finds, after due consideration, that such additions or deletions are within the respective classifications.

- ~~21-~~ 21- "Seed department" means the seed department of ~~the~~ this state of North Dakota.
- ~~22-~~ 21. "Seizure" means the legal process carried out by court order against a definite amount of seed.
- ~~23-~~ 22. "Stop-sale" means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount of seed.
- ~~24-~~ 23. "Treated" means that the seed has received an application of a ~~substance or process~~ seed protectant pesticide which ~~substance or process~~ is designed to reduce, control, or repel certain disease organisms, insects, or other pests attacking such seeds or seedlings growing therefrom.
- ~~25-~~ 24. "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristic by which it can be differentiated from other plants of the same kind.
- ~~26-~~ 25. "Vegetable seeds" means the seeds of those crops which are grown in gardens and on truck farms, and which are generally known and sold under the name of vegetable seeds within this state.
- ~~27-~~ 26. "Weed seeds" means the seeds of all plants generally recognized as weeds within this state, including noxious weed seeds.

SECTION 2. AMENDMENT. Section 4-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-02. Seed department - Offices and laboratories. There must be maintained a state department ~~of the state~~ to be known as the "seed seed department of the state of North ~~Dakota"~~ Dakota. Its headquarters, main offices, and other principal operating facilities and equipment must be located at the North Dakota state university of agriculture and applied science. The state seed ~~commissioner, with the approval of the commissioner of agriculture,~~ commission may locate and establish branch offices and laboratories at such other locations in this state as in his the commissioner's judgment are necessary to carry out properly and effectively the provisions of this or other chapters in which he the seed department is charged with duties and responsibilities.

SECTION 3. AMENDMENT. Subsections 2 and 3 of section 4-09-03 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. The state seed commission; ~~hereafter referred to as commission;~~ must be a seven-member board consisting consists of the president a representative of the North Dakota crop improvement association, ~~the president~~ a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota

potato council selected by the North Dakota potato council, ~~the highest elected officer~~ a representative of the red river valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association who also operates a state-approved seed conditioning plant selected by the board of directors of the North Dakota grain dealers association, and the commissioner of agriculture, or the commissioner's designee, who shall serve as chairman. The dean of the ~~school~~ college of agriculture of the North Dakota state university of agriculture and applied science is an advisory, nonvoting member of the commission.

3. The commission shall meet during the months of November and June of each calendar year and may hold special meetings at the call of the chairman or by request of any two members of the commission. ~~The secretary of the commission must be elected for a term of one year at the June meeting by a majority vote of all members of the commission.~~ Members of the commission must be reimbursed for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for attendance at regular and special meetings. A commission member unable to attend a meeting of the commission may be represented by a proxy who has written authorization from such commission member.

SECTION 4. A new section to chapter 4-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Noxious weed seeds - Classifications. The commissioner may, by rule, add to or delete from the lists of noxious weed seeds defined in section 4-09-01.

SECTION 5. AMENDMENT. Section 4-09-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-06. Examination of seed by commissioner - Right of access to premises - Publication of reports - "Stop-sale" order. The commissioner, ~~either by himself or his~~ or the commissioner's agents, shall inspect, examine, make analysis of, and test any seed sold, offered, or exposed for sale, held, or distributed within this state for ~~sowing or~~ planting purposes, at such time and place, and to such extent, as ~~he~~ the commissioner may determine. The commissioner and ~~his~~ the commissioner's agents, at all reasonable times, have the right of free access to the premises or structures controlled, owned, or operated by any person who may be, or whose seed, or the seed ~~he~~ the person may be holding or storing or transporting, may be, investigated or proceeded against, and to any premises or structures or any kind of vehicle or conveyance where any seed may be located or in the process of transportation within the state, when not prohibited by interstate commerce laws and ~~regulations~~ rules, for the purpose of inspecting, examining, and sampling any seed or seed plants. Any person involved in any way in the handling, transportation, storage, buying, or selling of seed shall cooperate with the commissioner and ~~his~~ the commissioner's agents and shall render all possible assistance to aid the commissioner and ~~his~~ the commissioner's agents in the carrying out and enforcement of ~~the provisions~~ of this chapter and the ~~regulations duly made thereunder~~ rules adopted under this chapter. The commissioner may publish, or cause to be published, the results of the examination, analyses, and tests of any samples of seed or

mixtures of seed, together with any information he the commissioner may deem advisable.

The commissioner or his the commissioner's agent may issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seed which the commissioner or his the commissioner's agent finds to be in violation of any of the provisions of this chapter, which order shall prohibit further sale, processing conditioning, and movement of such seed until the commissioner or his the commissioner's agent has evidence that the law has been complied with and a release from such "stop-sale" order has been issued. Provided, that in respect to seeds which have been denied sale, processing conditioning, and movement as provided in this paragraph section, the owner or custodian of such seeds has the right to appeal from said the order to a court of competent jurisdiction in the locality in which the seeds are found, praying for a judgment as to the justification of such the order and for the discharge of such the seed from the order prohibiting the sale, processing conditioning, and movement in accordance with the findings of the court; and provided further; that the provisions of this paragraph may. This section does not be construed as limiting limit the right of the commissioner or his the commissioner's agent to proceed as authorized by other sections of this chapter.

SECTION 6. AMENDMENT. Section 4-09-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-07. Official laboratories - Location - Certificates and reports - Publication. The state seed commissioner, subject to the approval and supervision of the state seed commission described in section 4-09-03, shall provide and maintain under his the commissioner's direction necessary laboratories and facilities properly equipped to make analyses, tests, and variety and disease determinations of seeds and plants, and to effect such other results and work as may be necessary to carry out the provisions of this chapter. For these purposes, he the commissioner may utilize such premises, space, and equipment at the North Dakota state university of agriculture and applied science as may be assigned to him the commissioner by the state board of higher education. The state seed commissioner, subject to the approval of the state board of higher education, shall permit the facilities and services of the official laboratories to be used by such the university at convenient times. When a report or certificate relating to the findings and determinations made in a laboratory is issued and signed by the state seed commissioner or a duly authorized agent, it must be accepted as prima facie evidence of the statements therein contained, but the state seed commissioner or his the commissioner's analysts are subject to court order for a review of findings as set forth by such certificates or reports. The state seed commissioner may publish reports or explanatory material concerning seed or inspections, tests, analyses, or other determinations made by him the commissioner and may enlarge the same with material setting forth the value or condition of the seed stocks which are produced in this state or in which North Dakota persons are interested. He The commissioner also may publish lists of registered or certified seed.

SECTION 7. AMENDMENT. Section 4-09-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-08. Public laboratory service - Free tests - Fees for additional tests. Any resident of this state may send samples of cereals, flax,



sunflower, alfalfa, soybean, and edible bean seed to the commissioner for ~~examination, analysis, or~~ germination tests. No more than three samples per year per person ~~shall~~ may be examined and reported on free of charge. The commissioner, by rule, shall ~~through promulgation of regulations~~ prescribe the time of year when seed samples will be accepted for free tests, the fees which will apply to samples submitted by any resident of the state in excess of three, and the fees which will be charged for all other laboratory tests and services.

SECTION 8. AMENDMENT. Section 4-09-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-10. Labeling requirements for agricultural seed. Each container of agricultural seed which is sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent to sell for ~~sowing~~ planting purposes within this state must bear thereon or have attached thereto in a conspicuous place, or there must be properly delivered with bulk sales or movements of said seed, a plainly written or printed label or tag in the English language giving the following information, which statement may not be modified or denied in the labeling or on another label attached to the container:

1. a. In seeds of wheat, durum, barley, oats, rye, soybeans, edible beans, and flax the commonly accepted name of the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. ~~If the variety is unknown that fact must be stated.~~
  - b. In all other seeds not named in subdivision a of ~~subsection~~ subsection the commonly accepted name of the kind or the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage of weight of each.
  - c. When more than ten percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding five percent of the whole, each component in excess of one percent of the whole must be named together with the percentage by weight of each. All components must be listed in the order of their predominance. Where more than one component is named, the word "mixture", or the word "mixed", must be shown conspicuously on the label.
2. Lot number or other lot identification.
3. Origin, state or foreign country where grown. If the origin is unknown, that fact must be stated.
4. Percentage by weight of all weed seeds, ~~which may not exceed one percent.~~
5. The name and rate of occurrence per pound [453.59 grams] of each kind of restricted noxious weed seeds present, if the restricted noxious weed seeds are present singly or collectively in amounts:
  - a. In seeds of grasses and small seeded legumes, in excess of thirteen seeds per pound [453.59 grams]; and

- b. In other agricultural seeds including the cereals, oil seed crops, millets, and seeds of similar size, in excess of five seeds per pound [453.59 grams].
6. Percentage by weight of agricultural seed which may be designated as crop seed, other than those required to be named on the label.
7. Percentage by weight of inert matter.
8. For each agricultural seed:
  - a. Percentage of germination, exclusive of hard seed. Total germination and hard seed may be stated as such, if desired.
  - b. Percentage of hard seed, if present. Total germination and hard seed may be stated as such, if desired.
  - c. The calendar month and year the test was completed to determine such percentages.
9. The full name and address of the person who labeled said seed, or who sells, offers for sale or exposes said seed for sale within this state.
10. ~~The relative maturity in number of days, in the case of hybrid corn.~~
- ~~11.~~ For treated seeds as defined in this chapter, for which a separate label may be used:
  - a. A word or statement indicating that the seed has been treated;
  - b. The commonly accepted, coined, chemical or abbreviated chemical (generic) name of the applied substance seed protectant pesticide; and
  - c. If the substance in the amount present with the seed is harmful to human or other vertebrate animals a caution statement such as "Do not use for food or feed or oil purposes". The caution for mercurials and similar toxic substances must be a poison statement or symbol.
- ~~11.~~ That the seed container itself is a hermetically sealed container. ~~For the purposes of this subsection, the words "hermetically sealed container" have the meaning ascribed to them as defined by regulation promulgated rule adopted by the state seed commissioner.~~
- ~~12.~~ A disease test result for seed borne diseases. For the purpose of this subsection the words "disease test result" have the meaning ascribed to them by regulations promulgated rules adopted by the state seed commissioner.

SECTION 9. AMENDMENT. Two new subdivisions to subsection 1 of section 4-09-14 of the North Dakota Century Code are hereby created and enacted to read as follows:

Such seed contains restricted noxious weed seeds in excess of ninety seeds per pound [453.59 grams].

The percentage by weight of all weed seeds in the seed exceeds one percent.

SECTION 10. AMENDMENT. Subsection 2 of section 4-09-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Grain ~~which that~~ is not intended for sowing planting purposes.

SECTION 11. AMENDMENT. Section 4-09-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-16. ~~Registered and certified~~ Certified seed. The commissioner shall:

1. Establish a seed ~~registration and certification~~ certification system for ~~North Dakota this state and make and promulgate~~ North Dakota this state adopt rules and ~~regulations~~ governing application for service, acceptance of suitable seed stocks for the production of a foundation, registered, certified, or inspected crop, field inspection, bin inspections, harvesting, handling, storage, ~~cleaning, and grading~~ conditioning, and preparation and handling of such seed for market.
2. Designate kinds, varieties, ~~strains~~, and names of seed stocks, and establish ~~the grades and~~ standards of quality, degree of disease infection, and amounts of any admixtures, foreign seeds, noxious weeds, or other weed seeds that are allowed in any lot or stock of seed, which may be or become eligible for field registration inspection or for ~~registration or final~~ certification of the seed crop.
3. Prescribe all labels, seals, certificates, or similar statements that must be used for, or in relation to, any seed, or the various kinds, ~~grades~~, and qualities grown, handled, stored, held for sale, sold, or offered or exposed for sale in ~~North Dakota this state~~ as "breeders", "foundation", "registered", "certified", "~~elite~~", "~~foundation seed~~", or "~~inspected seed~~" "inspected" seed, and shall specify what ~~written or printed~~ words, terms, or figures such labels, seals, certificates, or the containers of such seed must bear.
4. Cooperate with the managers of any seed ~~cleaning, seed treating, or processing~~ conditioning plants, or any commercially established seed firm, or any ~~individual or~~ person within or outside of the state having proper facilities and equipment to store, ~~clean, grade, process~~ condition, and otherwise handle seed which is eligible for ~~registration or~~ certification, for the purposes of handling and marketing "~~breeders~~", "~~foundation~~", "~~registered~~", "~~certified~~", "~~pedigreed~~", "~~elite~~", "~~foundation seed~~" or "~~inspected seed~~" "inspected" seed.
5. Cooperate in the selection, testing, and growing of seed for ~~registration and~~ certification purposes and in the arrangement for

increase and distribution of improved and of foundation seed stocks suitable for the production of registered and certified seed.

6. Establish an equitable schedule of fees and charges, which must be uniform throughout the state, for inspecting, testing, analyzing, and recording such seed, and for other work and duties incident to the growing, handling, marketing, ~~registering~~, and certifying of North Dakota seed, and shall collect all such fees and charges.

SECTION 12. AMENDMENT. Section 4-09-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-17. Certified seed - Regulations governing labeling and representing. ~~No seed~~ Seed grown in North Dakota, or grown elsewhere and transported into this state, which is sold, offered or exposed for sale, stored, transported, or distributed, or held with intent to sell or plant the same, may not be represented, advertised, labeled, or characterized in any way, either orally or in writing, with or by the use of the term "breeders", "foundation", "registered", "certified", "pedigreed", "elite", "foundation seed", or "inspected seed" "inspected" seed, or any term or terms conveying a meaning substantially equivalent to the meaning of any of said terms, without the approval and authorization of the commissioner, who may ~~make~~ adopt such rules and regulations as ~~he~~ the commissioner finds necessary for the proper regulation and protection of the pure seed growing and marketing certified seed industry.

SECTION 13. AMENDMENT. Section 4-09-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-18. ~~Registered and certified~~ Certified seed standards - Fees. The rules, requirements, and fees for certification of crop seeds, other than potatoes, must be those prescribed and set forth in the state seed department bulletin number 51, published in March 1945, and subsequent announcements and revisions ~~thereof~~ of the bulletin.

The rules, requirements, and fees for seed potato certification must be those prescribed and set forth in the state seed department bulletin number 49 as revised in August 1950, and subsequent announcements and revisions ~~thereof~~ of the bulletin.

\* SECTION 14. AMENDMENT. Section 4-09-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-20. Fees and collections - Disposition. All moneys arising from the collection of fees and other charges under ~~the provisions of~~ this chapter must be deposited by the ~~state seed~~ commissioner with the state treasurer and credited to the seed department revolving fund, and must be disbursed, within the limits of legislative appropriations ~~therefrom~~, upon vouchers signed by the ~~state seed~~ commissioner and warrant-checks prepared by the office of management and budget, ~~after approval of such expenditures by the office of the budget.~~ The state treasurer shall, at the direction of the commission, provide for the investment of available moneys from the revolving fund. The state treasurer shall deposit income from the investment of the moneys in the seed department revolving fund.

\* NOTE: Section 4-09-20 was also amended by section 2 of House Bill No. 1021, chapter 20.

SECTION 15. AMENDMENT. Subsections 6 and 7 of section 4-25-02 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

6. The kind and variety of seed for wheat, durum, barley, oats, rye, flax, soybeans, and edible beans. ~~If variety is unknown that fact must be stated.~~
7. The grade or quality class of the seed to be delivered, ~~the grade in the case of registered or certified seed~~ and if the seed is not registered or certified, then the minimum germination and seed purity percentages must be stated. If the seed is ~~registered or certified~~ the words "breeders", "foundation", "registered", or "certified" as the case may be, must be shown ~~in addition to the grade.~~

SECTION 16. AMENDMENT. Section 4-25-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-25-04. Repurchase contracts - Bonding requirement for nonresident seed dealers. Any nonresident person or ~~his that person's~~ agent shall pay an annual license fee of twenty-five dollars to the ~~state seed~~ commissioner before engaging in the business of selling any agricultural grain or grass seed ~~or and~~ entering into any contract with a purchaser whereby ~~he that person~~ agrees to purchase or retains an option to purchase the grain or grass seed or feed grain produced. The license is renewable annually on January first of each year. ~~In addition, at~~ At the time of ~~making application~~ applying for ~~such a~~ license, the applicant shall furnish a corporate surety bond to be approved by the commissioner in the penal sum of ten thousand dollars running to the state of North Dakota for the use and benefit of any such purchaser of seed or seller under a repurchase contract or option, who may have a claim for relief against any seller or repurchaser who fails to comply with the terms of the purchase or repurchase contract. All fees collected under this section must be ~~disposed of~~ deposited in the ~~manner provided in section 4-09-20~~ seed department revolving fund.

Approved March 17, 1989  
Filed March 17, 1989

## CHAPTER 76

HOUSE BILL NO. 1485  
(Representatives Watne, Nowatzki)  
(Senator Nalewaja)

## OILSEED COUNCIL

AN ACT to amend and reenact sections 4-10.2-01, 4-10.2-02, 4-10.2-03, 4-10.2-08, 4-10.2-09, 4-10.2-10, subdivision c of subsection 1 of section 4-14.2-02, sections 4-24-07, and 4-24-09 of the North Dakota Century Code, relating to changing the name and membership of the sunflower council and assessments relating to sunflower, safflower, rapeseed or canola, crambe, and flax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-01. Legislative policy. It is hereby declared that the production, development, marketing, and promotion of sunflowers in North Dakota sunflower, safflower, rapeseed or canola, crambe, and flax is important to the general welfare of the people of North Dakota this state; that it is in the public interest that better methods of production, processing, and marketing of sunflowers sunflower, safflower, rapeseed or canola, crambe, and flax and that advertising and promoting of sunflowers grown in North Dakota sunflower, safflower, rapeseed or canola, crambe, and flax be fostered, encouraged, developed, and improved so the sunflower industry, safflower, rapeseed or canola, crambe, and flax industries within the state, the people directly or indirectly employed by said industry these industries and the people of North Dakota this state should be benefited thereby, the accomplishment of which requires and demands the establishment of a North Dakota sunflower council for the purposes and with the objectives of contributing to the stabilization and improvement of the agricultural economy of this state. This chapter must does not be construed to abrogate or limit in any way the rights, powers, duties, and functions of the office of the commissioner of agriculture or any other agency of the state, but is supplementary thereto and in aid and cooperation therewith; nor shall does this chapter be construed to authorize the North Dakota sunflower council to engage in competitive business enterprises, it being the intended purpose of this chapter that the council, through research and advertising, shall promote North Dakota grown sunflowers sunflower, safflower, rapeseed or canola, crambe, and flax produced or marketed for sale in this state.

SECTION 2. AMENDMENT. Section 4-10.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-02. Definitions. Whenever used in this chapter:

1. "Commissioner" means commissioner of agriculture or the commissioner's designated representative.

2. "Council" means the North Dakota sunflower oilseed council.
3. "Designated handler" means any person who initially places sunflowers sunflower, safflower, rapeseed or canola, crambe, or flax, whether as an owner, agent, or otherwise, into the channels of trade and commerce, or who is engaged in the processing of sunflowers sunflower, safflower, rapeseed or canola, crambe, or flax into any form. A grower selling his the grower's unharvested sunflowers sunflower, safflower, rapeseed or canola, crambe, or flax, or delivering his sunflowers the grower's sunflower, safflower, rapeseed or canola, crambe, or flax from the farm on which they are produced to storage facilities, packing shed, or processing plant, within the state, is not considered to be a designated handler.
4. "Grower" means any person who plants, raises, and harvests sunflowers sunflower, safflower, rapeseed or canola, crambe, or flax from more than ten acres [4.05 hectares].
5. "Hundredweight" means a one hundred pound unit [45.36 kilograms] or a combination of packages making a one hundred pound unit [45.36 kilograms] or any shipment of sunflowers sunflower, safflower, rapeseed or canola, or crambe based on invoices or bills of lading records.
6. "Participating grower" means a grower who has not exempted himself from the payment of taxes assessments on sunflower, safflower, rapeseed or canola, crambe, or flax production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes assessments on sunflower, safflower, rapeseed or canola, crambe, or flax production under this chapter.
7. "Person" means an individual, partnership, corporation, association, grower, cooperative, or any other business unit.
8. "Sunflowers" "Sunflower" means any and all varieties every variety of sunflowers sunflower harvested within the state.

SECTION 3. AMENDMENT. Section 4-10.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-03. North Dakota state sunflower oilseed council - Membership - Election - Term. There is hereby established a North Dakota sunflower oilseed council. The council is composed of one participating sunflower grower elected from each of the districts established in section 4-10.2-04, one participating safflower grower appointed by the governor, one participating rapeseed or canola grower appointed by the governor, one participating flax grower appointed by the governor, and one member appointed by the director of the agricultural experiment station. The members appointed by the governor must be selected from a list of at least three names for each industry submitted by the commissioner. The chairman of the council must be a member of the council elected by a majority vote of the council. The commissioner of agriculture is an ex officio member of the council. Every elected and appointed council member must be a citizen of the state and. Every elected member must be a bona fide resident of and participating sunflower grower in the district the member represents. The term of each elected member is three years and begins on April first of the

year of election, except that initially two members must be elected for a three-year term; two members must be elected for a two-year term; and two members must be elected for a one-year term as designated by the commissioner. The term of the representative for district seven must coincide with the term of the representative for district six. The term of each appointed member is three years and begins on April first of the year of the appointment, except that initially the flax grower member must be appointed for a three-year term, the member designated by the director of the agriculture experiment station and the safflower grower member must be appointed for a two-year term, and the rapeseed or canola grower must be appointed for a one-year term. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the remaining members of the council shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. The first election must be held within forty-five days after April 9, 1977, and all All elections thereafter must be conducted within seventy-five days prior to April first. No elected or appointed member of the council is eligible to serve more than ~~two~~ three consecutive three-year terms.

SECTION 4. AMENDMENT. Section 4-10.2-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-08. Fax Assessments levied. Effective July 1, 1977, an An assessment at the rate of ~~ten mills~~ two cents per hundredweight [45.36 kilograms] must be levied and imposed upon all ~~sunflowers~~ sunflower, safflower, rapeseed or canola, and crambe grown in the state or sold to a designated handler and an assessment at the rate of two cents per bushel [35.24 liters] must be levied and imposed upon all flax grown in the state or sold to a designated handler. This assessment is due upon any identifiable lot or quantity of ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax.

A designated handler of ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the designated handler, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax until it has secured a certificate as required by this section.

Every designated handler of ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of ~~ten mills per hundredweight (45.36 kilograms)~~ specified in this section by deducting the assessment from the purchase price of all ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax subject to the assessment and purchased by the designated handler.



Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw sunflowers sunflower, safflower, rapeseed or canola, crambe, or flax, which may be examined by the council at all reasonable times. Every designated handler shall report to the council stating the quantity of sunflowers sunflower, safflower, rapeseed or canola, crambe, or flax received, sold, or shipped by it. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section shall accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of an account or accounts designated "sunflower "oilseed fund"" to be used exclusively to carry out the intent and purposes of this chapter. Assessments collected from each crop must be used, for the purposes of this chapter, on each respective crop. However, for flax, emphasis should be given to utilize the assessment, except for that portion of the assessment necessary to administer the flax assessment, for nutritional and therapeutic research. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner of agriculture.

SECTION 5. AMENDMENT. Section 4-10.2-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-09. Nonparticipating growers - Refunds. Any grower subject to the assessment provided in this chapter may, within sixty days following such assessment or final settlement, make application by personal letter to the sunflower council for a refund application blank. Upon the return of said blank, properly executed by the grower, accompanied by a record of the assessment by the designated handler, the grower must be refunded the net amount of the assessment collected. If no request for refund has been made within the period prescribed above, then the grower is presumed to have agreed to such assessment. However, a grower, for any reason, having paid the tax assessment more than once on the same sunflowers sunflower, safflower, rapeseed or canola, crambe, or flax, upon furnishing proof of this to the council, is entitled to a refund of the overpayment.

The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the sunflower tax, safflower, rapeseed or canola, crambe, and flax assessment and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of sunflowers sunflower, safflower, rapeseed or canola, crambe, and flax.

SECTION 6. AMENDMENT. Section 4-10.2-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-10. Referendum by growers. Whenever fifteen percent of the participating growers in an industry, with not more than fifty percent of the signatory parties from any one district, if applicable, as disclosed by the records of the council for the preceding year, petition the council, the council shall conduct a referendum among the participating growers of the state in that industry to determine whether they wish the legislative assembly to raise or lower the tax assessment imposed by section 4-10.2-08 for that industry. Such referendum must be conducted only among participating growers for such industry who have paid all taxes assessed assessments pursuant to this enactment for the preceding year, and the ballots must be prepared by the council and mailed to each participating

grower at least thirty days prior to the last date for filing ballots. In addition, each ballot must be accompanied by a notice to each participating grower:

1. Of the date of the filing of the petition by the growers for the referendum and the number of signatures contained thereon.
2. Of the date and place where the council will open and tabulate the ballots, which date must be not less than five days after the last date for filing the ballots.
3. Of the last date upon which ballots must be filed with the council, or postmarked if delivered to the council by mail.
4. That any participating grower may attend the meeting of the council at the time the ballots are opened and the votes tabulated.

If a majority of the participating growers in an industry voting upon the question are in favor of the proposed change, the council shall certify the result to the commissioner with the request that the commissioner prepare a bill to submit to the next legislative session to modify this chapter in conformity therewith. The results of the referendum are advisory only and the legislative assembly is not obligated to adopt legislation enacting the proposals contained in any referendum.

SECTION 7. AMENDMENT. Subdivision c of subsection 1 of section 4-14.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. A member of the North Dakota ~~sunflower~~ oilseed council selected by that council.

SECTION 8. AMENDMENT. Section 4-24-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-24-07. Agricultural promotion groups - Collocation and assistance. The North Dakota wheat commission, established under section 4-28-03; the North Dakota ~~sunflower~~ oilseed council, established under section 4-10.2-03; the North Dakota dairy promotion commission, established under section 4-27-04; and the North Dakota beef commission, established under section 4-34-03 shall ~~not later than July 1, 1983,~~ collocate their respective offices. Each of the collocated entities may share administrative and clerical services as well as equipment and supplies. The collocated offices may, by majority vote of the members of each council or commission, agree to furnish services to other statutory agricultural commodity promotion groups.

\* SECTION 9. AMENDMENT. Section 4-24-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-24-09. Agricultural commodity assessments funds - Investment income allocation. The state treasurer, at the direction of the governing body of the respective agricultural commodity entity, shall provide for the investment of available moneys in the spud fund, ~~sunflower~~ oilseed fund, edible bean fund, barley fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, and the beef commission fund. The state treasurer, by rule, shall establish guidelines to be followed by the agricultural commodity organizations

- \* NOTE: Section 4-24-09 was also amended by section 1 of Senate Bill No. 2071, chapter 85.

regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services provided by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund. These moneys may be expended only within the limits of legislative appropriation.

Approved March 21, 1989  
Filed March 23, 1989

## CHAPTER 77

HOUSE BILL NO. 1519  
(Representatives Solberg, Nowatzki, Shide)  
(Senator Kinnoin)

**BARLEY DISTRICTS**

AN ACT to amend and reenact section 4-10.4-04 of the North Dakota Century Code, relating to the establishment of barley districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.4-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.4-04. Barley districts - Establishment. The following barley districts are established for the purpose of dividing the state into districts containing as nearly equal barley acres production as practicable:

1. State barley council district number one consists of the counties of Cavalier, Pembina, Walsh, Towner, and Ramsey.
2. State barley council district number two consists of the counties of Grand Forks, Nelson, Traill, Steele, Eddy, Foster, and Griggs.
3. State barley council district number three consists of the counties of Cass, Barnes, Richland, Ransom, LaMoure, Dickey, and Sargent.
4. State barley council district number four consists of the counties of Bottineau, Rolette, ~~Fowler~~, McHenry, Pierce, Benson, Sheridan, Wells, Eddy, Burleigh, Kidder, Stutsman, Emmons, Logan, and Foster McIntosh.
5. State barley council district number five consists of the counties of Renville, Burke, Divide, Williams, Mountrail, Ward, McLean, McKenzie, Dunn, Mercer, Oliver, ~~Burleigh~~, ~~Kidder~~, ~~Stutsman~~, ~~LaMoure~~, ~~Dickey~~, ~~McIntosh~~, ~~Logan~~, ~~Emmons~~, Sioux, Grant, Morton, Stark, Billings, Golden Valley, Slope, Hettinger, Adams, and Bowman.

Approved March 21, 1989  
Filed March 23, 1989

## CHAPTER 78

SENATE BILL NO. 2074  
(W. Meyer)

### **HONEY PROMOTION FEES**

AN ACT to amend and reenact section 4-12.1-03 of the North Dakota Century Code, relating to charging fees for items sold to promote honey.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-12.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.1-03. Fees - Special fund. The association may charge fees for items sold to promote honey. The state treasurer shall deposit all moneys received under this chapter in a special fund to be known as the honey fund. All moneys deposited in the honey fund must, subject to legislative appropriation, be expended by the commissioner for use pursuant to this chapter.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 79

SENATE BILL NO. 2154

(Committee on Agriculture)

(At the request of the Commissioner of Agriculture)

### BEEKEEPERS

AN ACT to amend and reenact sections 4-12.2-01, 4-12.2-03, 4-12.2-04, 4-12.2-04.1, 4-12.2-06, 4-12.2-07, 4-12.2-10, 4-12.2-13, 4-12.2-14, 4-12.2-23, and subsection 3 of section 4-12.2-24 of the North Dakota Century Code, relating to licensing beekeepers and maintaining bees in this state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-12.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Apiary" means any place where one or more colonies of bees are kept.
2. "Beekeeper" means any person who owns, or leases, or manages one or more colonies of bees for pollination or the production of honey, beeswax, or byproducts, either for personal or commercial use and maintains the bees in this state.
3. "Bees" means honey producing insects of the genus *Apis*, including all life stages of such insects. The word "bees" as used in this chapter is not limited to the common honey bee but includes Africanized bees.
4. "Colony" means the hive and its equipment including bees, comb and honey, and brood.
5. "Commercial apiary" means an apiary where twenty-four or more colonies of bees are kept and all vacant locations established pursuant to sections 4-12.2-04 and 4-12.2-13.
6. "Commercial operator" means any beekeeper who maintains two hundred fifty or more than one hundred colonies of bees.
7. "Commissioner" means the commissioner of agriculture, or the commissioner's authorized representative.
8. "Department" means the department of agriculture.

9. "Disease" means American foulbrood or European foulbrood, sacbrood, bee paralysis, or any disease, parasite, or pest that affects bees or brood.
10. "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives, and also includes any containers of honey and wax which may be used in any apiary or in transporting bees and their products and apiary supplies, and those items used in the operation of a honey house.
11. "Hobby operator" means any beekeeper who maintains one hundred or fewer colonies of bees.
12. ~~"Honey house" means any place in which honey is extracted, processed, or handled.~~
- ~~13.~~ "Noncommercial apiary" means an apiary where twenty-three or fewer colonies of bees are kept.
- ~~14.~~ 13. "Pollination location" means an apiary established pursuant to section 4-12.2-10.
- ~~15.~~ 14. "Property owner" means the person, including a lessee, who has actual use and exclusive possession of the land. However, any person leasing land for the primary purpose of establishing an apiary thereon is not a property owner within the meaning of this definition.
- ~~16.~~ 15. "Property owner location" means an apiary established pursuant to section 4-12.2-11.
- ~~17. Repealed by S.L. 1987, ch. 85, § 7.~~

SECTION 2. AMENDMENT. Section 4-12.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-03. Emergency orders and rules. Where an emergency exists requiring immediate action, the commissioner may, without notice or hearing-

- ~~1. Issue, issue~~ an order or rule reciting the existence of the emergency and requiring that necessary action be taken to meet the emergency ~~or~~
- ~~2. Adopt emergency rules which recite the existence of an emergency and provide a solution to the emergency.~~

An emergency order or emergency rule is effective immediately, but may is not ~~be~~ effective for more than ninety days.

SECTION 3. AMENDMENT. Section 4-12.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-04. Beekeeper's license required.

1. A beekeeper may not maintain bees in this state unless the beekeeper has a valid beekeeper's license. Annually, on or before

the first day of May in each year, each beekeeper shall apply to the commissioner, on a form to be furnished by the commissioner, for a beekeeper's license except that initial licensees shall within ten days after first acquiring bees in this state apply to the commissioner for a beekeeping license.

2. Each application, for an initial license or annual renewal, must set forth the name of the applicant, the total number of colonies to be maintained within this state, the name of the owner of the bees if different from the applicant, and the name and address of ~~lessees, and the name of all managers~~ all persons, other than the applicant, who are responsible for maintaining the bees within the state. The application must be signed by the applicant and the owner of the bees if different from the applicant, and all persons responsible for maintaining the bees within this state. If the applicant is not the owner of the bees, the application must disclose the nature of the relationship between the owner and the applicant. If the applicant is leasing the bees from the owner, a copy of a written lease agreement between the owner and the lessee must be submitted with the application.
3. The application must designate the number of colonies to be maintained at noncommercial apiaries. The application must also specify which apiaries, if any, will remain vacant during the current license period. The license required by this section is not transferable. No person may bring bees or equipment into this state without obtaining an entrance permit pursuant to section 4-12.2-20.
4. Each application for an initial license or renewal must also state the applicant's name, place of residence, and post-office address.

SECTION 4. AMENDMENT. Section 4-12.2-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-04.1. Application of minors for beekeeper's license - Liability for minor. A beekeeper who is licensed either as a commercial operator or hobby operator person must be at least eighteen years of age to be licensed as a beekeeper in this state. However, an applicant for a beekeeper's license a person who is less than eighteen years of age may be licensed as a commercial operator or hobby operator beekeeper, if the that person's application for license is signed by either the mother, father, or legal guardian of the applicant. Any civil or administrative liability for violation of the beekeeping laws of this chapter by a beekeeper who is less than eighteen years of age must be imputed to the person who has signed the application of that beekeeper for a license, which person is jointly and severally liable with the beekeeper.

SECTION 5. AMENDMENT. Section 4-12.2-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-06. Prevention of disease - Assessment of fees. In addition to the license fee required by section 4-12.2-05, an applicant for a license must submit the following fees with the application:

1. A hobby Hobby operator applying for a license shall pay a fee of - ten cents per colony for each colony maintained in this state.



2. ~~Repealed by S.L. 1987, ch. 85, § 7.~~
3. ~~A commercial Commercial operator applying for a license shall pay a fee of  twenty-five  cents per colony for each colony maintained in this state.~~

The commissioner may not issue a beekeeper's license until all civil penalties and all fees required by this section and section 4-12.2-05 are paid.

SECTION 6. AMENDMENT. Section 4-12.2-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-07. Registration of an apiary.

1. Each beekeeper shall make application for registration of all apiaries which are ~~under the beekeeper's control~~ maintained by the beekeeper within the state. The application forms for registration must be furnished by the department. The applicant shall provide the following information on the form provided:
  - a. ~~The applicant's name, place of residence, and post office address.~~
  - b. The location of each apiary, setting forth specifically the type of apiary, the location to the nearest section, quarter section, township, and range, and, if within the corporate limits of a city, the number or name of the lot, block, and addition in the city.
  - ~~c.~~ b. The name of the property owner on whose property the apiary is located; where the registrant is not the property owner, a copy of the written lease or other document from the property owner granting the applicant permission to maintain an apiary at that location. The written lease or other document is adequate for subsequent registrations if the parties to the agreement remain the same.
  - ~~d.~~ c. Any other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.
2. New commercial apiaries may be submitted for registration with the department at any time.
3. Priority in time of application gives the superior right to occupy a location.
4. A beekeeper may maintain or establish an apiary only after application is made and registration of the apiary is approved by the department.

SECTION 7. AMENDMENT. Section 4-12.2-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-10. Establishment of pollination locations.

1. When a person any property owner requests the commissioner to allow additional locations for the purpose of pollinating that person's property owner's crop, the commissioner may waive the two-mile [3.22-kilometer] radius restriction if application is made by that property owner and all the following conditions are met:
  - a. The applicant owns, leases, or rents the land on which the pollination location is to be located and uses the land for the purpose of growing a commercial seed, fruit, or other crop which depends on bees for pollination, and under rules adopted by the commissioner pollination is permitted for the commercial seed, fruit, or other crop to be pollinated.
  - b. The applicant provides the department with all pertinent data and information necessary for the department to determine that each pollination location is needed to adequately pollinate the applicant's crop. Applications must be filled out and submitted by the property owner.
2. The department may refuse to register a pollination location if the application does not demonstrate justification for the pollination location or specify the number and location of pollination locations needed for the purpose of adequately pollinating the applicant's crop.
3. A pollination location may not be sold, leased, transferred, or rented to another person.
4. The department may refuse to register a pollination location if the beekeeper's bees and equipment have been found to not have at least a two-year disease free history.
5. The commissioner shall adopt rules defining those crops for which a location may be allowed for pollination, and where necessary may prescribe time limits for the placement of bees at pollination locations.
6. The beekeeper, not the property owner, is responsible for properly maintaining the bees on the pollination location according to the application and the pollination rules adopted by the commissioner.

SECTION 8. AMENDMENT. Section 4-12.2-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-13. Occupation of locations - Vacancy allowance. Each commercial operator may maintain as vacant locations ten percent of the operator's registered apiary locations. Any registered apiary ~~site~~ which is not listed as a vacant location ~~site~~ pursuant to this section and which is not occupied by July first of each year is forfeited and canceled immediately upon written notice being given to the operator by the department after investigation by the department, and the registration for the location and all rights for the location must be canceled. A commercial operator whose location rights have been forfeited and canceled may request a hearing to reinstate canceled locations, provided that a request for hearing is made within fifteen days after receiving the written notice of forfeiture and cancellation of the location from the department.

SECTION 9. AMENDMENT. Section 4-12.2-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-14. Identification of hives colonies. All hives colonies must be identified as prescribed by the commissioner by rule. Each beekeeper shall specifically state on the application for license, each year, what form of identification will be used by that beekeeper to identify colonies. A beekeeper may not list another beekeeper's brand as an identifying mark on the application or otherwise use another beekeeper's brand to identify that beekeeper's colonies unless the other beekeeper's brand is not being used by that beekeeper to identify any bees maintained in North Dakota and written permission is obtained from the other beekeeper to use the brand.

SECTION 10. AMENDMENT. Section 4-12.2-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-23. Confiscation and disposal of transported or maintained material. Any bees or equipment found to be transported or maintained in violation of the beekeeping laws of this chapter may be confiscated by the state bee inspector or the sheriff of any county where the offense may have occurred and must be disposed of pursuant to court order. This section is in addition to section 4-12.2-21 or an administrative order issued by the commissioner after a hearing held under chapter 28-32, unless the bees or equipment are disposed of under section 4-12.2-21 or subsection 5 of section 4-12.2-16.

SECTION 11. AMENDMENT. Subsection 3 of section 4-12.2-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Whenever a beekeeper fails to appoint an agent in this state, or whenever the beekeeper's agent cannot be found with reasonable diligence, the commissioner is an agent of such beekeeper and service of any process, notice, or demand may be made upon the commissioner. If any process, notice, or demand is served on the commissioner, the commissioner shall forward it by registered certified mail to the beekeeper at the address submitted to the department under section ~~4-12.2-07~~ 4-12.2-04 and service must be deemed complete whether or not the beekeeper claims the certified mail.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 80

SENATE BILL NO. 2257  
(Committee on Agriculture)  
(At the request of the Livestock Sanitary Board)

**BOARD OF ANIMAL HEALTH NAME CHANGE**

AN ACT to amend and reenact subsection 1 of section 4-13.2-03, sections 4-13.2-04, 4-30-21, 36-01-01, 36-01-02, 36-01-03, 36-01-04, 36-01-05, 36-01-06, 36-01-07, 36-01-08, 36-01-09, 36-01-10, 36-01-11, 36-01-12, 36-01-12.1, 36-01-13, 36-01-14, 36-01-15, 36-01-16, 36-01-17, 36-01-18, 36-01-19, 36-01-22, 36-01-23, 36-01-24, 36-01-26, 36-01-27, 36-01-28, 36-01-29, 36-01-30, 36-05-03, 36-05-07, 36-05-09, 36-05-10, 36-05-11, 36-05-11.1, 36-05-13, 36-07-01, 36-07-02, 36-07-03, subsection 4 of section 36-07-07, sections 36-07-09, 36-07-10, 36-07-11, 36-09-15, 36-14-01, 36-14-02, 36-14-03, 36-14-05, 36-14-06, 36-14-07, 36-14-10, 36-14-11, 36-14-12, 36-14-13, 36-14-15, subsection 1 of section 36-14-19, section 36-14-21, subsection 1 of section 36-14.1-01, subsection 2 of section 36-15-01, sections 36-15-08, 36-15-08.1, 36-15-21, subsection 2 of section 36-21.1-01, sections 36-22-03, 36-23.1-01, 36-23.1-02, 49-18-31, and subdivision p of subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to changing the name of the livestock sanitary board to the board of animal health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-13.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Improve poultry breeding and to cooperate with the ~~North Dakota livestock sanitary~~ board of animal health in controlling and eradicating communicable diseases of poultry.

SECTION 2. AMENDMENT. Section 4-13.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-13.2-04. Poultry advisory board - How constituted. The advisory board consists of the executive officer of the ~~livestock sanitary~~ board of animal health; the chairman of the animal science department of North Dakota state university of agriculture and applied science; and three members recommended by the poultry industry who must be one representative from the egg industry, one from the turkey industry, and one from the hatchery industry. The appointed members shall serve: one for a term to expire July 1, 1976; one for a term to expire July 1, 1977; and one for a term to expire July 1, 1979. On or before July first in each year when a term is to expire, a member must be appointed to serve for a term of five years. Members of the advisory board must be reimbursed for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for attendance at regular and special meetings.

SECTION 3. AMENDMENT. Section 4-30-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-21. Standards for the production of cream for manufacturing purposes. Cream for manufacturing purposes must be separated from the milk of healthy cows and from herds which are kept in conformance with the laws of North Dakota and the rules **and regulations** of the **livestock sanitary** board of **animal health** and the state dairy department. Cows must not be fed any hay, silage, or other feed which contains any unwholesome substance. Milk from cows treated with an antibiotic or other drug must be excluded from the market for at least seventy-two hours unless specifically stated otherwise on the label of such antibiotic or drug. The cowyards, premises, and buildings must be kept reasonably clean. Utensils, equipment, and other items used in handling the milk or cream must be kept clean, in good condition, and free of rust. New utensils and equipment must subscribe to 3A standards if such standards have been established for said utensils or equipment. Udders must be washed before milking. The milk and cream must be protected at all times from contamination with flies, rodents, and sediment, and from extremes of temperature.

SECTION 4. AMENDMENT. Section 36-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-01. State **livestock sanitary** board of **animal health** - Appointment - Terms - Qualifications. The state **livestock sanitary** board of **animal health** consists of seven members appointed by the governor for terms of seven years each with their terms of office so arranged that one term, and only one, expires on the first day of August in each year. No person may be appointed to more than two 7-year terms on the board. Each member of such board must be a qualified elector of this state. Each member of the board, immediately after his appointment shall take the oath of office required of civil officers. One member of said board must be a person actively engaged and financially interested in the commercial beef cattle industry and shall represent said industry on said board; one member of said board must be a person actively engaged and financially interested in the registered purebred beef cattle industry and shall represent said industry on said board; one member of said board must be a person actively engaged and financially interested in the dairy cattle industry and shall represent said industry on said board; one member of said board must be a person actively engaged and financially interested in the swine industry and shall represent said industry on said board; one member of said board must be a person actively engaged and financially interested in the sheep industry and shall represent said industry on said board; and two members of said board must be competent veterinarians who are graduates of a veterinary course in a recognized college or university. Vacancies occurring prior to the expiration of terms of office must be filled by appointment by the governor and must be for the balance of the unexpired term. Recommendations for appointment of members to said board as constituted under this section may be made to the governor by the following associations for the following stated industries, to wit: by the North Dakota stockmen's association for the members representing commercial beef cattle, by the various registered purebred beef cattle associations for the member representing the registered purebred beef cattle, by the various dairy breed associations for the member representing dairy cattle, by the North Dakota swine breeders' association for the member representing swine, by the North Dakota wool growers' association for the member representing sheep, by the state veterinary medical association for the two veterinarian members, and by such other associations within this

state representing livestock industries as the governor may permit. Two recommendations must be submitted for each office to be filled.

SECTION 5. AMENDMENT. Section 36-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-02. Meetings of board - Limitations on number - Special. The state ~~livestock sanitary~~ board of animal health shall hold its meetings at the state capitol at such times as it may designate, but there may not be more than four regular meetings in any one year. The president of the board may call a special meeting whenever in his judgment it becomes necessary.

SECTION 6. AMENDMENT. Section 36-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-03. Officers of board - Election - Qualifications of executive officer. The state ~~livestock sanitary~~ board of animal health shall elect a president and a secretary from among its members and an executive officer who may not be a member of the board. The executive officer must be a competent and skilled veterinarian and must be a graduate of the course in veterinary medicine and surgery offered by a recognized college or university.

SECTION 7. AMENDMENT. Section 36-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-04. Compensation and expenses of members of board. Each member of the state ~~livestock sanitary~~ board of animal health shall receive as compensation for his services the sum of fifty dollars per day for each day employed, and his actual expenses incurred in attending the meetings of the board. Such sum must be paid out of the state treasury upon vouchers of the board duly certified by the executive officer thereof.

SECTION 8. AMENDMENT. Section 36-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-05. Executive officer - Salary - Bond. The executive officer of the state ~~livestock sanitary~~ board of animal health shall receive for his services such annual salary as must be fixed by the board within the limits of the appropriations made to the board by the legislative assembly. Before entering upon the discharge of his duties, the executive officer shall give a bond in the sum of five thousand dollars, to the state of North Dakota, conditioned for the proper discharge of his duties, and shall take the oath of office required of civil officers.

\* SECTION 9. AMENDMENT. Section 36-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-06. Executive officer to act as state veterinarian - Duties. The executive officer of the state ~~livestock sanitary~~ board of animal health shall act as the state veterinarian and he shall:

1. Ascertain, by personal examination or through reports from other accredited representatives of the board, all information which he can obtain regarding the existence of contagious, infectious, and epizootic diseases of animals.
2. Execute all orders, or rules, ~~and regulations~~ made by the board.

3. Present at the quarterly meetings thereof a detailed report of all matters connected with the work done by him or his subordinates during the quarter preceding said meeting.

SECTION 10. AMENDMENT. Section 36-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-07. Bacteriologist and consulting veterinarian of board - Duties - Compensation. The professor of veterinary science of the North Dakota state university of agriculture and applied science shall act as bacteriologist and consulting veterinarian to the state livestock sanitary board of animal health. He shall make bacteriological or pathological examinations of all diseased animals or portions thereof, or of such material as may be forwarded to him by the board or its duly authorized agents. He shall furnish material for the diagnosis of contagious diseases and instruction as to its use. For his services, the bacteriologist shall receive such compensation as the board may deem proper, which must be paid out of the fund appropriated for the use of the board.

\* SECTION 11. AMENDMENT. Section 36-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-08. Duties of board - May make rules and regulations. The state livestock sanitary board of animal health shall protect the health of the domestic animals of this state and shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals of this state. The board may make rules and regulations for the conduct of its business and to carry into effect the purposes of this chapter.

\* SECTION 12. AMENDMENT. Section 36-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-09. How regulations made Rules. The regulations rules of the state livestock sanitary board of animal health must be made in accordance with the provisions of chapter 28-32.

SECTION 13. AMENDMENT. Section 36-01-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-10. Agents and assistants may be employed by board - Granting of authority to United States government inspectors. The state livestock sanitary board of animal health may employ such officers, agents, or assistants as it may deem necessary to carry out the purposes of this chapter, at a compensation to be fixed by the board within the limits of appropriations made to the board by the legislative assembly. The board may grant to the inspectors of the United States department of agriculture the same authority as is possessed by agents of the board, and when such inspectors are engaged in work by the direction or at the request of the board they may not receive compensation from the state or be required to give bond thereto.

SECTION 14. AMENDMENT. Section 36-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-11. Reports of board. The state livestock sanitary board of animal health shall submit a report as prescribed by section 54-06-04 to the governor and the office of management and budget.

SECTION 15. AMENDMENT. Section 36-01-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-12. Powers of board over contagious and infectious diseases. The state livestock sanitary board of animal health may take such steps as it may deem necessary to control, suppress, and eradicate any and all contagious and infectious diseases among any of the domestic animals of this state. For this purpose, the board may quarantine any domestic animal which is infected, or may be infected, with any such disease or which has been exposed, or may be exposed, to infection, cause any animal so infected to be killed, regulate or prohibit the arrival in or departure from this state of any such exposed or infected animal, and at the cost of the owner thereof, it may detain any domestic animal found to be in violation of any such regulation or prohibition. The board may also quarantine any city, civil township, or county or areas within a county in this state and any enclosure, building, or any domestic animal therein which is or may be infected or exposed or may be exposed to any contagious or infectious disease.

SECTION 16. AMENDMENT. Section 36-01-12.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-12.1. Fund transfer for control of diseases. The livestock sanitary board of animal health may use any of the moneys appropriated to it for the control of animal diseases, for the rapid arrest and eradication of foot-and-mouth disease, rinderpest, contagious pleuropneumonia, or any other highly contagious or infectious animal plagues for which purpose adequate funds are not otherwise available.

\* SECTION 17. AMENDMENT. Section 36-01-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-13. Diseased animal to be reported to board. Any person who discovers, suspects, or has reason to believe that any domestic animal belonging to him or in his charge, or belonging to any other person, is affected by any contagious disease, shall report such knowledge, suspicion, or belief to:

1. The state livestock sanitary board of animal health or to a member or representative thereof; or
2. The clerk of the township in which such animal is present, or to a supervisor of such township if the clerk cannot be found. If a report is made to an officer under this subsection, such officer shall report the facts immediately to the state livestock sanitary board of animal health, and his failure to do so constitutes a violation of the provisions of this chapter.

\* SECTION 18. AMENDMENT. Section 36-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-14. Protest against killing of diseased animal - Examination of animal by experts - Appointment of experts. Whenever a domestic animal has been adjudged to be affected with a contagious or infectious disease and has



been ordered killed by the state livestock sanitary board of animal health or by an accredited agent thereof, the owner or keeper of said animal must be notified of the order. Within twenty-four hours after receiving such notice, such owner or keeper may file a protest against the killing of such animal with said board or with its accredited agent who has ordered the animal killed. Such protest must state under oath that to the best of the knowledge and belief of the person making the same such animal is not infected with any contagious or infectious disease. An examination of the animal involved then must be made by three experts, one of whom must be appointed by the board, one by the person making the protest, and the third by the two thus appointed. All such experts must be persons learned in veterinary medicine and surgery and graduates of the veterinary course of a recognized college or university.

SECTION 19. AMENDMENT. Section 36-01-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-15. Expense of experts - How paid. If at least two of the experts declare that the animal involved is free from any contagious or infectious disease, the expense of the consultation must be paid by the state livestock sanitary board of animal health. If at least two of such experts declare that such animal is affected with a contagious or infectious disease, the expenses incurred in the consultation must be paid by the person making the protest.

\* SECTION 20. AMENDMENT. Section 36-01-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-16. Disposal of carcass of diseased animal. The owner or keeper of any animal killed by order of the state livestock sanitary board of animal health shall dispose of the carcass of the animal in the manner prescribed by the board. If the owner or keeper of an animal killed as aforesaid is unknown, the carcass must be disposed of at the expense of the county in which the carcass is located.

\* SECTION 21. AMENDMENT. Section 36-01-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-17. Board, members, and agents to have same powers as county judge in examinations. The state livestock sanitary board of animal health, and any member or duly authorized agent thereof, may examine or cause to be examined under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination, or the danger of dissemination, of disease among domestic animals. For this purpose, the board, and any member or authorized agent thereof, must have all the powers vested by this code in county judges to take depositions, to compel witnesses to attend and testify, and to administer oaths. Such witnesses shall receive the same fees for attendance and travel as witnesses before the district courts, and said fees must be paid by the board from moneys appropriated to it.

\* SECTION 22. AMENDMENT. Section 36-01-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-18. Inspection of livestock in transit - Execution of orders of board by peace officers - Powers of officers - Penalty. Authorized representatives of the state livestock sanitary board of animal health, for

purposes of inspecting livestock in transit for health or ownership identification, may stop vehicles transporting livestock on public highways of this state. When signaled by such representative to stop, the operator of any vehicle shall stop the vehicle, show any health or identification forms which are required to be carried in transportation of livestock, and permit the inspector to make an inspection of the livestock being transported if deemed by the inspector to be necessary. Failure to stop when so directed constitutes a class A misdemeanor. Any vehicle used by an inspector for purposes of inspecting livestock in transit must be clearly identified in letters not smaller than three inches [7.62 centimeters]. The inspector is authorized to use a stop signal.

The state livestock sanitary board of animal health may call any sheriff or deputy sheriff to execute its orders, and those officers must obey the orders of the board. Any peace officer may arrest and take before any county judge of the county any person found violating any of the provisions of this chapter. The peace officer shall notify the state's attorney immediately of the arrest, and the state's attorney shall prosecute the person so offending.

SECTION 23. AMENDMENT. Section 36-01-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-19. Emergency fund in case of epizootic. In case of any serious outbreak of any contagious, infectious, or epizootic diseases among domestic animals, which cannot be controlled with the funds at the disposal of the state livestock sanitary board of animal health, the board shall notify the governor at once, and the governor thereupon shall call a meeting of the emergency commission, and such commission may authorize money to be drawn from the state treasury to meet the emergency.

\* SECTION 24. AMENDMENT. Section 36-01-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-22. Permit for feeding garbage to swine. No person may feed garbage to swine without first securing a permit from the livestock sanitary board of animal health. Such permits must be renewed on the first of July of each year. This section does not apply to any person who feeds garbage from his own household.

\* SECTION 25. AMENDMENT. Section 36-01-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-23. Application for permit. Any person desiring to obtain a permit to feed garbage to swine shall make written application therefor to the North Dakota livestock sanitary board of animal health.

\* SECTION 26. AMENDMENT. Section 36-01-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-24. Revocation of permits. The livestock sanitary board of animal health may suspend or revoke the permit of a person who has violated or failed to comply with the provisions of sections 36-01-21 through 36-01-28 or any of the rules or regulations of the board and may refuse to issue a permit to any person unless satisfied that his feeding operations will be conducted in compliance with the law and rules and regulations of the board.

\* SECTION 27. AMENDMENT. Section 36-01-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-26. Inspection and investigation - Maintenance of records - Feeding plants. Any authorized representative of the livestock sanitary board of animal health may enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the treating of garbage to be fed to swine and may examine any records pertaining to the feeding of garbage to swine. The livestock sanitary board of animal health may require maintenance of records relating to the operation of equipment for and procedure of treating garbage to be fed to swine and may require copies to be submitted to the board. The garbage feeding plant must be kept in a reasonably sanitary condition and any dead animals and all garbage which is not consumed must be cleaned up and the place kept in as sanitary a condition as possible under the circumstances.

\* SECTION 28. AMENDMENT. Section 36-01-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-27. Enforcement of the act. The livestock sanitary board of animal health shall administer and enforce the provisions of sections 36-01-21 through 36-01-28. The state veterinarian, by and with the consent of the livestock sanitary board of animal health, shall cooperate with the United States department of agriculture, agricultural research service, in the control and eradication of vesicular exanthema and may promulgate adopt and enforce such rules and regulations as may be necessary to carry out the provisions of sections 36-01-21 through 36-01-28.

\* SECTION 29. AMENDMENT. Section 36-01-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-28. Penalty. Any person who violates any of the provisions of this chapter for which a specific penalty is not provided, or who knowingly violates any rule or regulation duly established by the livestock sanitary board of animal health, is guilty of a class B misdemeanor.

\* SECTION 30. AMENDMENT. Section 36-01-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-29. Quarantined livestock feedlots - Regulations Rules - Licensure. The livestock sanitary board of animal health is authorized to promulgate regulations adopt rules for the establishment and maintenance by any person of a quarantined livestock feedlot. Any person may, on compliance with such regulations the rules, obtain a license for said feedlot upon filing an application with the state livestock sanitary board of animal health and upon the payment of an annual fee of fifty dollars to the state livestock sanitary board of animal health. Such fee must be deposited with the state treasurer in the general fund out of which upon legislative appropriation the veterinarian inspector's fees and cost of administration, must be paid. When so licensed and upon compliance with the regulations rules for the maintenance of the quarantined livestock feedlot, such licensee is authorized to confine and feed, in the feedlot, without vaccination or tests for brucellosis and such other diseases as the livestock sanitary board of animal health may specify, cattle to be sold only for slaughter or at public market or to another quarantined feedlot.

\* SECTION 31. AMENDMENT. Section 36-01-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-30. Feedlot registration - Rules and regulations - Penalty. No person may operate a registered livestock feedlot without obtaining from the livestock sanitary board of animal health a registration number. The livestock sanitary board of animal health is hereby authorized to set rules within the limitations of this section for the operation of feedlots registered for the enforcement of brand inspection regulations rules. Applications for registration must be made upon such forms as may be prescribed by the board and must be accompanied by a fee equal to the fee charged for brand recording. All fees and any inspection fees established by the board must be remitted regularly to the North Dakota stockmen's association. The board may promulgate in accordance with adopt rules under chapter 28-32 such rules and regulations consistent with law as may be required for the purpose of assuring that brand laws are complied with and brand inspection certificates are available, and proper records are maintained. Violation of any provision of law or of any rule or regulation of the board promulgated pursuant to adopted under this section subjects the operator to revocation or suspension of registration issued hereunder, and in addition any person violating any provision of this section or rule or regulation of the board promulgated hereunder adopted under this section is guilty of a class B misdemeanor. The provisions of this section may not be construed as prohibiting the operation of nonregistered feedlots.

\*\* SECTION 32. AMENDMENT. Section 36-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-03. License requirements - Application - Fee - Commission schedule - Facilities. No person, partnership, firm, or corporation may establish or operate a livestock auction market within this state without first procuring a license to do so from the commissioner. The commissioner may not approve any application without written permission from the executive officer of the livestock sanitary board of animal health. An applicant for such license shall do all of the following:

1. Make a written application therefor in the form prescribed by the commissioner.
2. File such evidence as the livestock sanitary board of animal health or the commissioner may require showing that the person is financially responsible to operate such an auction market and that 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 one hundred dollars.
4. File with the commissioner a schedule of the fees and commissions which will be charged to owners, sellers, or their agents. The schedule must be posted conspicuously at the auction market. This schedule may not be altered except upon notification to the commissioner and reposting of the changed schedule.
5. State the place where applicant proposes to operate a livestock auction market.

\*\* NOTE: Section 36-05-03 was also amended by section 2 of Senate Bill No. 2239, chapter 427.

6. Make a complete and detailed description of the property and facilities proposed to be used in connection with such livestock auction market.
7. Make a showing of public convenience and necessity to the satisfaction of the commissioner.

SECTION 33. AMENDMENT. Section 36-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-07. Sanitary regulations of livestock auction market. Every livestock auction market must be maintained in a sanitary condition. Any portion thereof 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. Such floors must be cleaned and disinfected after each sale, or in case of a continuous sale, not less than once each week or as often as may be prescribed by the state livestock sanitary board of animal health.

SECTION 34. AMENDMENT. Section 36-05-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-09. Records to be kept by operator of auction market - Contents - Examination - Report. The operator of each livestock auction market shall keep on file an accurate record of all of the following:

1. The date on which each consignment of animals was received and sold.
2. The name and address of the buyer and seller of such animals.
3. The number and species of the animals received and sold.
4. The marks and brands on each such animal.

This record, 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 livestock sanitary board of animal health, the commissioner, or authorized inspectors, and a copy thereof must be supplied to the owner of such livestock. All records of sales during the preceding twelve months must be kept readily accessible for immediate examination.

SECTION 35. AMENDMENT. Section 36-05-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-10. Inspection of livestock - Fees and regulations rules governing. When an animal enters a livestock auction market and before it is offered for sale, it must be inspected for health by a veterinarian licensed in this state and approved by the livestock sanitary board of animal health and in the case of cattle for brands by a trained brand inspector, acting under rules promulgated adopted by the North Dakota stockmen's association and the livestock sanitary 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 agency and approved by the state livestock sanitary board of animal health. Such veterinarian must be a local veterinarian or a veterinarian of

the vicinity, unless there is no such veterinarian available. If the livestock agency fails to recommend such a veterinarian within a reasonable time, the board may in ten days' notice to such agency appoint a veterinarian. The services and duties of the veterinarian are under the supervision of the state livestock sanitary board of animal health and said inspector must be relieved of his services by the board when he fails to perform such services and duties as required of him by the livestock sanitary board of animal health. This section does not apply to veterinarians who were approved by the livestock sanitary board of animal health prior to July 1, 1969. Fees for such inspection must be paid to the veterinarian by the auction market company and must be in an amount agreed upon by the auction market company and the veterinarian.

SECTION 36. AMENDMENT. Section 36-05-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-11. Treatment administered to livestock before removal from auction market - Fees for inspection and treatment. No operator of a livestock auction market may permit the removal of any livestock from the establishment until such livestock has been treated in accordance with the regulations prescribed rules adopted by the state livestock sanitary board of animal health. If livestock is destined to be shipped interstate, the authorized veterinarian of such 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.

SECTION 37. AMENDMENT. Section 36-05-11.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-11.1. Grievance committee. Any livestock auction market having a complaint against the veterinarian assigned to the livestock auction market, or any veterinarian having 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 the president of the North Dakota stockmen's association or the president's designee, the president of the livestock auction market association or the president's designee, and the president of the North Dakota veterinary medical association or the president's designee. 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 its recommendation to the livestock sanitary board of animal health within thirty days after receipt of the complaint.

SECTION 38. AMENDMENT. Section 36-05-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-13. Use of fees - Grounds for refusal or revocation of license - Procedure on default of licensee. All fees collected by the commissioner and the livestock sanitary board of animal health 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 section 36-04-10 or subsection 2 of section 36-04-04. 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 36-04-12 through 36-04-19 govern the procedure to be followed.

\* SECTION 39. AMENDMENT. Section 36-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-01. License required to operate rendering plant. No person, firm, or corporation may operate a rendering plant or establishment using the carcasses of domestic or wild animals which are not intended for human consumption without first obtaining a license to do so from the state livestock sanitary board of animal health. Such license may be issued only upon a written application filed with the board in accordance with the provisions of this chapter and such rules and regulations as may be established by the board.

\* SECTION 40. AMENDMENT. Section 36-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-02. Inspection of establishment of applicant by state livestock sanitary board of animal health. Upon the receipt of an application for a license to operate a rendering plant, the state livestock sanitary board of animal health shall cause an inspection to be made of the establishment for which a license is requested, including its equipment and vehicles and the manner in which its business is conducted, with reference and due regard to the danger of disease transmission and dissemination.

\* SECTION 41. AMENDMENT. Section 36-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-03. Granting of license - Fee - Term. If the inspection fails to reveal any danger of disease transmission, the state livestock sanitary board of animal health shall issue the license applied for upon payment of a fee of fifty dollars. Such license remains valid for a period of one year from the date of issuance unless it is revoked for cause by said board before such time.

SECTION 42. AMENDMENT. Subsection 4 of section 36-07-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Carry a tank filled with a four percent solution of creosol for use as a disinfectant, or other disinfectant as prescribed by the rules and regulations adopted by the state livestock sanitary board of animal health.

\* SECTION 43. AMENDMENT. Section 36-07-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-09. Operator of vehicle for rendering plant to have certificate. Any person operating a vehicle for a licensed rendering establishment shall have an authorized certificate from the rendering establishment which has been approved by the state livestock sanitary board of animal health.

\* SECTION 44. AMENDMENT. Section 36-07-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-10. Inspection of rendering plant authorized. The operator of any rendering establishment shall permit an official authorized by the state

livestock sanitary board of animal health or any health officer to inspect his establishment at any time.

\* SECTION 45. AMENDMENT. Section 36-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-11. 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 said packing plant is exempt from the provisions of this chapter, except that the transportation by such packing plant or a rendering plant of carcasses and other animal substances on any public highway or street is subject to the sanitary requirements of this chapter and the rules **and regulations** of the state livestock sanitary board of animal health made pursuant thereto.

SECTION 46. AMENDMENT. Section 36-09-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-09-15. Butcher to keep record of branded cattle slaughtered - Penalty. Any person engaged in the business of killing domestic animals and selling the meat of those animals at retail or wholesale, or who slaughters animals on a custom basis, is deemed a butcher for the purposes of this section. Any butcher who kills any head of neat cattle shall keep a record showing all of the following:

1. The name and place of residence of the person from whom such animal was purchased or for whom any custom slaughtering is performed.
2. When and where such animal was purchased or from where the animal came.
3. The sex of such animal and its age to the best of his knowledge.
4. A description of any and all marks and brands on the animal.

The record is open to inspection during business hours by a representative of the livestock sanitary board of animal health. Any person who violates any of the provisions of this section is guilty of an infraction.

SECTION 47. AMENDMENT. Section 36-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-01. Sale or gift of animal infected with contagious or infectious disease prohibited - Exception - Notice. No person may sell, give away, or in any manner part with any animal infected with or suspected of being infected with any contagious or infectious disease, except as may be provided otherwise by the rules **and regulations** of the state livestock sanitary board of animal health. If any animal is known to have been infected with or exposed to any such disease within one year prior to such disposal, due notice of such fact must be given in writing to the person receiving the animal.

SECTION 48. AMENDMENT. Section 36-14-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-02. Killing of infected animal for human consumption prohibited - Exception - Stamping of infected meat. No person may kill for human



consumption any animal infected, or suspected of being infected, with any contagious or infectious disease, nor may he sell, give away, or use any part of such animal or its milk, nor remove any part of its skin, except as the state livestock sanitary board of animal health may provide by rules and regulations. When it is lawful under the rules and regulations made by the state livestock sanitary board of animal health to sell, barter, or give away for human consumption the meat from any animal infected with a contagious or infectious disease, each quarter of meat must be stamped or labeled in at least ten separate places with the words "infected meat". No meat from any infected or diseased animal may be placed upon the block or table on which uninfected meat is handled. The provisions of this section do not apply to industries which are under the supervision of the United States department of agriculture, bureau of animal industry.

SECTION 49. AMENDMENT. Section 36-14-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-03. Animals infected with contagious or infectious disease to be confined and isolated from other animals. The owner, agent, or person having in charge any animal infected or suspected of being infected with any contagious disease shall confine the animal immediately in a safe place isolated from all other animals with all necessary restrictions to prevent the dissemination of the disease until the arrival of an accredited agent of the state livestock sanitary board of animal health.

\* SECTION 50. AMENDMENT. Section 36-14-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-05. Cattle brought into state - Certificate of health required. All cattle brought into this state for dairy, breeding, and feeding purposes must be accompanied by a certificate of health certifying that such animals are free from symptoms of contagious, infectious, or communicable disease, except that no health certificate is required for those cattle originating directly from a producer's premises and not diverted en route, if such cattle are delivered directly to a licensed auction market or other premises approved by the livestock sanitary board of animal health.

\* SECTION 51. AMENDMENT. Section 36-14-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-06. Certificate of health required of sheep imported into state - Contents. All sheep brought into this state must be accompanied by a certificate of health certifying that such animals are free from symptoms of contagious, infectious, or communicable diseases, except that no health certificate is required for those sheep originating directly from a producer's premises and not diverted en route, if such sheep are delivered directly to a licensed auction market or other premises approved by the livestock sanitary board of animal health.

\* SECTION 52. AMENDMENT. Section 36-14-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-07. Swine brought into state to have certificate of health - Contents. All swine brought into this state must be accompanied by a certificate of health certifying that such animals are free from symptoms of contagious, infectious, or communicable diseases, except that no health certificate is required for those swine originating directly from a

producer's premises and not diverted en route, if such swine are delivered directly to a licensed auction market or other premises approved by the livestock sanitary board of animal health.

\* SECTION 53. AMENDMENT. Section 36-14-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-10. Shipments of cattle, swine, and sheep for immediate slaughter. Shipments into this state of cattle, swine, and sheep for immediate slaughter shall be permitted without a health certificate only if such livestock are not diverted en route, and are delivered directly to a slaughtering establishment approved by the livestock sanitary board of animal health.

\* SECTION 54. AMENDMENT. Section 36-14-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-11. Certificates of health issued by whom - Tests made by whom - Regulations Rules governing. All certificates of health required under the provisions of this chapter must be issued, and all tests must be made, by a federal or state veterinarian or a deputy state veterinarian, or by a graduate veterinarian whose inspections and tests are endorsed by the officer in charge of the livestock sanitary board of animal health work in the state where the inspection or test is made, and subject to the regulations rules of the state livestock sanitary board of animal health. All such tests must conform to the standard tests of the United States department of agriculture. All serums used must be manufactured or approved by the United States department of agriculture.

\* SECTION 55. AMENDMENT. Section 36-14-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-12. Requirements governing the issuance of certificates. The certificate certifying to a test made under the provisions of this chapter must be made on official federal or state blanks and must accompany the shipment to its destination. When an original certificate is made, three copies thereof must be mailed immediately to the state livestock sanitary board of animal health. The failure of a veterinarian to mail such copies of each certificate relating to livestock to be shipped into this state to the board is sufficient cause to refuse acceptance of any more certificates from such person. The owner or owners of the livestock shall have a copy of the certificate to show on the demand of any federal or state official.

\* SECTION 56. AMENDMENT. Section 36-14-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-13. Issuance of health certificate by unauthorized person - Penalty. Any person who issues a health certificate for livestock within this state without being authorized so to do by the state livestock sanitary board of animal health or by the United States department of agriculture is guilty of a class B misdemeanor.

SECTION 57. AMENDMENT. Section 36-14-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-15. Duty of state's attorney to bring actions for violation of provisions of chapter - Notice. If livestock is brought into this state in

violation of any provision of this chapter or contrary to any rule ~~or regulation~~ of the state ~~livestock sanitary~~ board of animal health, the state veterinarian or other accredited agent of the board shall notify the state's attorney of the county into which such livestock has been brought. Immediately upon receiving such a notice the state's attorney shall bring an action against any person, firm, or corporation charged with bringing, transporting, or importing livestock contrary to any provision of this chapter or of any rule ~~or regulation~~ of the state ~~livestock sanitary~~ board of animal health.

SECTION 58. AMENDMENT. Subsection 1 of section 36-14-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. If the animal died of anthrax, as determined by an agent of the state ~~livestock sanitary~~ board of animal health, the carcass must be completely burned at the place where it died if possible. If the carcass must be moved, it may not be dragged over the ground but must be moved only on a suitable conveyor, and all body openings in the carcass must be plugged with cotton saturated with a strong antiseptic solution.

SECTION 59. AMENDMENT. Section 36-14-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-21. Penalty. Any person who knowingly violates any rule ~~or regulation~~ of the state ~~livestock sanitary~~ board of animal health, or who violates any provision of this chapter for which another penalty is not provided, is guilty of a class A misdemeanor.

SECTION 60. AMENDMENT. Subsection 1 of section 36-14.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Board" means state ~~livestock sanitary~~ board of animal health.

SECTION 61. AMENDMENT. Subsection 2 of section 36-15-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Board" means the state ~~livestock sanitary~~ board of animal health.

SECTION 62. AMENDMENT. Section 36-15-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-15-08. Owner entitled to compensation for animal infected with tuberculosis or with paratuberculosis - ~~Livestock sanitary board~~ Board of animal health may make ~~regulations~~ rules governing payments. The owner of an animal adjudged by the board to be infected with tuberculosis or with paratuberculosis and appraised in accordance with the provisions of this chapter is entitled to the amount specified in this chapter. Provided, that when in the discretion and judgment of the ~~livestock sanitary~~ board of animal health, a herd of cattle is so seriously infected with bovine tuberculosis, as to warrant disposal of the entire herd, the board is hereby authorized to approve indemnity payments on all cattle in such herd whether reactors, infected, or not, in accordance with the limits set forth in section 36-15-09. The board may make reasonable rules ~~and regulations~~ governing the payment of such compensation within the limitations prescribed in this chapter.

SECTION 63. AMENDMENT. Section 36-15-08.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-15-08.1. Owner entitled to compensation for cattle infected with or exposed to brucellosis - ~~Livestock sanitary board~~ Board of animal health may make rules and regulations governing payments. When in the discretion and judgment of the ~~livestock sanitary board of animal health~~, a herd of cattle is so seriously infected with bovine brucellosis, as to warrant disposal of the entire herd, the board is hereby authorized to approve indemnity on all cattle in such herds in accordance with the limits set forth in section 36-15-09. The board may make reasonable rules and regulations governing the payment of such compensation within the limits prescribed in this chapter.

SECTION 64. AMENDMENT. Section 36-15-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-15-21. Calfhood vaccination against brucellosis required - Penalty. No person may bring into this state any female cattle over the maximum vaccination age as prescribed in the brucellosis eradication uniform methods and rules approved and published by the United States department of agriculture, animal and plant health inspection service, for dairy or breeding purposes within this state, that have not been officially calfhood vaccinated against brucellosis. "Officially calfhood vaccinated" means a bovine female animal vaccinated against brucellosis under the supervision of a federal or state veterinary official within age limits prescribed by the ~~North Dakota livestock sanitary board of animal health~~ in compliance with United States department of agriculture uniform methods and rules, with a vaccine approved by the North Dakota state veterinarian, and permanently identified as such a vaccinate and reported at the time of vaccination to the appropriate state or federal agency cooperating in the eradication of brucellosis. However, the board in its discretion may grant a hearing to any person under the rules adopted by the board, as to whether or not an exception should be made to the provisions of this section. An appeal may be taken from the decision of the board under the provisions of chapter 28-32. Any person who brings into this state or acquires within this state any cattle contrary to the provisions of this section, is guilty of a class A misdemeanor.

SECTION 65. AMENDMENT. Subsection 2 of section 36-21.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Board" means the state ~~livestock sanitary board~~ of animal health.

SECTION 66. AMENDMENT. Section 36-22-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-22-03. Rules and regulations - Fees for inspection. The ~~North Dakota livestock sanitary board of animal health~~ shall, with the advice of the officers of the North Dakota stockmen's association, make rules regulating the inspection of cattle for brands at auction markets, packing plants, and buying stations and shall set the fees to be charged by the brand inspector. Brand inspectors under this chapter shall charge and collect fees for inspections on all shipments or consignments of cattle at livestock markets, at the rate authorized by the United States department of agriculture, and shall charge and collect fees for inspection at auction markets, buying stations, and packing plants as must be set by the ~~livestock~~

~~sanitary~~ board of animal health, which funds, so collected, must be paid into the general fund of the North Dakota stockmen's association.

SECTION 67. AMENDMENT. Section 36-23.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-23.1-01. Ante-mortem inspection. Except as otherwise provided by this chapter, the state ~~livestock sanitary~~ board of animal health shall provide by rule or regulation for the ante-mortem inspection of all cattle, sheep, swine, goats, horses, mules, or other equines which are to be slaughtered for human food at any slaughtering establishment in this state. The inspection must be performed by licensed veterinarians or other trained personnel of the board, and must determine if the animal under inspection is disease free, and otherwise fit for human food. If the animal is found to be disease free and otherwise fit for human food, the inspecting veterinarian shall allow the slaughter of such animal.

SECTION 68. AMENDMENT. Section 36-23.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-23.1-02. Post-mortem inspection. Except as otherwise provided by this chapter, the state ~~livestock sanitary~~ board of animal health shall provide by rule or regulation for the post-mortem inspection of the carcasses or the parts thereof of all cattle, sheep, swine, goats, horses, mules, or other equines which are slaughtered for human food at any slaughtering establishment in this state. The inspection service must be performed by licensed veterinarians or other trained personnel of the board, and must determine if the carcass or the parts thereof are wholesome, clean, healthful, and otherwise fit for use as human food, and not misbranded as defined by section 19-02.1-10 or adulterated as defined by section 19-02.1-09; and, the carcasses and parts thereof that are so determined must be inspected and marked, stamped, or tagged by the inspector as "N. Dak. inspected and passed". The carcasses or the parts thereof that are found to be unwholesome, unclean, unhealthful, or otherwise unfit for human food, or misbranded as defined by section 19-02.1-10 or adulterated as defined by section 19-02.1-09 must be marked, stamped, or tagged by the inspector as "N. Dak. inspected and condemned" and are subject to disposition in accordance with rules and regulations issued by the board. Inspection marks, stamps, and tags must be prescribed by the board, and must include thereon an identification number of the establishment assigned by the board.

SECTION 69. AMENDMENT. Section 49-18-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-31. Cleaning of livestock vehicle by common or contract motor carrier. No common or contract motor carrier subject to this chapter, its officers or agents, transporting either intrastate or interstate commerce, shall use for the transportation of goods for human consumption any motor vehicle which has been used for the transportation of livestock until such motor vehicle has been thoroughly cleansed and disinfected in such manner as shall be prescribed by the state department of health and consolidated laboratories or the ~~livestock sanitary~~ board of animal health.

\* SECTION 70. AMENDMENT. Subdivision p of subsection 1 of section 54-07-01.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

\* NOTE: Section 54-07-01.2 was also amended by section 3 of Senate Bill No. 2324, chapter 295, and section 6 of House Bill No. 1041, chapter 241.

p. The ~~livestock sanitary~~ board of animal health.

Approved March 14, 1989  
Filed March 15, 1989

\* NOTE: Twenty-nine North Dakota Century Code sections amended by Senate Bill No. 2257 were also amended or repealed by House Bill No. 1121, chapter 425.

## CHAPTER 81

HOUSE BILL NO. 1200  
(Committee on Agriculture)  
(At the request of the Office of Management and Budget)

## AGRICULTURAL FUEL TAX FUND

AN ACT to create and enact a new section to chapter 57-43.1 of the North Dakota Century Code, relating to motor vehicle fuel tax refunds to farm operators; to amend and reenact sections 4-14.1-01, 4-14.1-02, 4-14.1-03, 4-14.1-04, 4-14.1-05, 57-43.1-03, and 57-43.1-06 of the North Dakota Century Code, relating to the North Dakota agricultural products utilization commission, agricultural fuel tax fund, refunds of motor vehicle fuels taxes, and allocation of a portion of motor fuel tax refunds to the agricultural fuel tax fund; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-14.1-01. Legislative policy and purpose. It is hereby declared to be the public policy of the state of North Dakota to protect and foster the prosperity and general welfare of its people by ~~providing a new domestic source of energy and chemicals and other value-added products, and by stimulating~~ improving the agricultural economy of the state. In furtherance of this policy, it is the purpose of this chapter to provide necessary assistance ~~in the construction, operation, and maintenance of agricultural processing plants in North Dakota for the manufacture and marketing of agriculturally derived fuel, chemicals, and other agricultural products to the research and marketing needs of the state by developing new uses for agricultural products, byproducts, and by seeking more efficient systems for processing and marketing agricultural products and byproducts, and to promote efforts to increase productivity and provide added value to agricultural products.~~

\* SECTION 2. AMENDMENT. Section 4-14.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-14.1-02. ~~Agriculturally derived~~ Agricultural fuel tax fund - Purposes - Other funds. There is hereby created in the state treasury, a fund, to be known as the ~~agriculturally derived~~ agricultural fuel tax fund, which must be used to ~~provide a program fund programs for the implementation enhancement of a state~~ provide a program fund programs for the implementation enhancement of a state ~~agricultural research, development, processing industry, and marketing.~~ agricultural research, development, processing industry, and marketing. The fund must be used for the following purposes:

1. ~~Establishment, with cooperation from private industry, of procedures and processes necessary to the manufacture and marketing of agriculturally derived fuels, chemicals, and other agricultural products.~~ Appropriation to the North Dakota agricultural products

\* NOTE: Section 4-14.1-02 was also amended by section 2 of House Bill No. 1415, chapter 82.

utilization commission for its necessary administrative expenses including expenses of members of the commission, employment of needed personnel, hiring of consultants, contracting with public or private entities for services, and other expenditures necessary to implement the purposes of this chapter.

2. Establishment of a procedure for entering the agriculturally derived fuel, chemicals, and other agricultural products into the marketplace by private enterprise. Seventy-five percent of agricultural fuel tax funds available to the North Dakota agricultural products utilization commission after amounts necessary under subsection 1 must be made available for basic and applied research efforts regarding uses and processing for agricultural products and byproducts in consultation with the president of North Dakota state university and with the prior approval of the commission on each research proposal.
3. Analysis of the marketing process and testing of marketing procedures to assure acceptance of agriculturally derived fuels, chemicals, and other agricultural products resulting from their manufacture, in the private marketplace. Twenty-five percent of agricultural fuel tax funds available to the North Dakota agricultural products utilization commission after amounts necessary under subsection 1 must be made available for utilization and marketing efforts in consultation with the commissioner of agriculture and with the prior approval of the commission on each marketing proposal.
4. Cooperation with private industry to establish privately owned agricultural processing plants in this state to supply demand for agriculturally derived fuel, chemicals, and other agricultural products. The North Dakota agricultural products utilization commission may apply for, accept, and expend any grants, gifts, or services made available from public or private sources consistent with the purposes of this chapter.
5. Employment of needed personnel, hiring of consultants, and contracting with public entities or private parties for services as may be necessary to implement the policy and purposes of this chapter. The allocation of funds in subdivisions 2 and 3 may be changed by the agricultural products utilization commission, subject to emergency commission approval.

SECTION 3. AMENDMENT. Section 4-14.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-14.1-03. Agricultural products utilization commission - Composition - Appointment. The agriculturally derived agricultural fuel tax fund must be administered by the agricultural products utilization commission which is hereby established. The commission consists of seven nine members to, six of whom shall be appointed by the governor for terms of two years each, arranged so that at least three terms expire every year. Four members appointed by the governor must be actively engaged in farming in this state, one member must be actively engaged in the petroleum industry, and two members appointed by the governor must be actively engaged in business in this state. Commission members may be reappointed to the commission. Terms of commissioners shall run from the first day of July of odd-numbered years.



The director of the economic development commission, the president of North Dakota state university, and the commissioner of agriculture, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

SECTION 4. AMENDMENT. Section 4-14.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-14.1-04. Agricultural products utilization commission - Meetings - Personnel - Advisory committee Reports. The agricultural products utilization commission shall meet at least once annually, as necessary and shall report to each session of the legislative assembly. The commission may secure office space and employ needed personnel for the performance of its duties, may hire consultants, and may contract with public entities or private parties for services. The agricultural products utilization commission shall have an advisory committee composed of three persons; one each designated by the director of the economic development commission, the president of the North Dakota state university, and the state commissioner of agriculture.

SECTION 5. AMENDMENT. Section 4-14.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-14.1-05. Agricultural products utilization commission - Expense reimbursement only Reimbursement - Compensation. All members of the agricultural products utilization commission must be reimbursed for their actual and necessary expenses incurred in the performance of their duties, in the same manner as other state officials are reimbursed, according to sections 44-08-04 and 54-06-09, and shall receive no other compensation if not otherwise employed by the state of North Dakota, may receive up to fifty dollars for each regular meeting attended. The commission chairman, if not otherwise employed by the state of North Dakota, may receive an additional one hundred dollars for each regular meeting attended as payment for reviewing and evaluating grant proposals.

SECTION 6. AMENDMENT. Section 57-43.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-03. Refund of tax provided for fuel used for industrial purposes - Reduction for agriculturally derived agricultural fuel tax fund. Any person who buys or uses any motor vehicle fuel as defined in subsection 4 of section 57-43.1-01 for agricultural or industrial purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state on which the motor vehicle fuel tax has been paid, shall be reimbursed or repaid within the time provided in this section chapter, the amount of the tax paid by him upon the presentation to and the approval of the commissioner of a claim for refund. The amount of the tax refund provided for in this section shall be reduced by one-half cent per gallon [3.79 liters] retroactive to January 1, 1983, except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, and the one-half cent per gallon [3.79 liters] withheld from the refund shall must be deposited in the agriculturally derived agricultural fuel tax fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 shall be charged one-half cent per gallon [3.79 liters] by the dealer and the one-half cent charge shall be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

SECTION 7. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Refund of tax for fuel used for agricultural purposes - Reduction for agricultural fuel tax fund. Any person who buys or uses any motor vehicle fuel for agricultural purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state on which the motor vehicle fuel tax has been paid, shall be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund. The amount of the tax refund provided for in this section shall be reduced by two cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, and the two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 shall be charged two cents per gallon [3.79 liters] by the dealer and the two cents charged shall be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

\* SECTION 8. AMENDMENT. Section 57-43.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-06. Refund to prevent double taxation - Reduction for agriculturally derived agricultural fuel tax fund. Any person to whom special fuel or motor vehicle fuel is sold on which the tax imposed by this chapter or chapter 57-43.2 has been paid who thereafter removes the fuel from this state to a state which requires payment of a tax upon the use of the fuel in that state shall be granted a refund of the tax that was paid pursuant to this chapter or chapter 57-43.2. The refund of tax paid pursuant to this chapter shall be reduced by the amount amounts provided in section sections 57-43.1-03 and section 7 of this Act, and the reduction shall be deposited in the agriculturally derived agricultural fuel tax fund. The refund shall be granted only upon application to the commissioner on forms prescribed by the commissioner, including proof of payment of the tax imposed by the other state, and is subject to the limitations provided in section 57-43.1-05. The tax provided for in section 57-43.2-03 shall not be levied on sales of any such fuel for which a refund of tax is made pursuant to this section.

SECTION 9. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the agricultural fuel tax fund, in the state treasury, not otherwise appropriated, to the North Dakota agricultural products utilization commission for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Operating expenses	\$ 47,950
Contract personnel	72,000
Ethanol incentive program audit	2,000
Basic and applied research grants	751,920
Utilization and marketing grants	250,640
Ethanol incentive program	3,750,000
Total appropriation from the agricultural fuel tax fund	\$ 4,874,510

\* NOTE: Section 57-43.1-06 was also amended by section 3 of Senate Bill No. 2251, chapter 727.

SECTION 10. APPROPRIATION. All income received in excess of the amounts appropriated in section 9 of this Act is hereby appropriated to the North Dakota agricultural products utilization commission for research, marketing, and utilization grants for the biennium beginning July 1, 1989, and ending June 30, 1991. Any funds received require the approval of the budget section of the legislative council before they can be spent.

SECTION 11. APPROPRIATION - TRANSFER. In addition to other transfers from the highway tax distribution fund approved by the fifty-first legislative assembly for the purpose of providing production subsidies to North Dakota ethanol plants, there is hereby appropriated \$250,000, or so much thereof as may be necessary, from the highway tax distribution fund, which shall be transferred by the office of management and budget at the request of the agricultural products utilization commission to the agricultural fuel tax fund for the purpose of providing production subsidies to North Dakota ethanol plants for the biennium beginning July 1, 1989, and ending June 30, 1991. The funds transferred shall be used in the same manner as the transfer provided for in section 5 of House Bill No. 1415 approved by the fifty-first legislative assembly.

Approved April 28, 1989  
Filed April 28, 1989

## CHAPTER 82

HOUSE BILL NO. 1415  
(Representatives Myrdal, A. Olson, Skjerven)  
(Senator Tallackson)

### GASOHOL TAX REDUCTIONS

AN ACT to provide for severability of provisions relating to reductions of motor vehicle fuels taxes and special fuels taxes that contain a blend of qualifying alcohol; to create and enact a new section to chapter 57-43.1 of the North Dakota Century Code, relating to refundability of taxes; to amend and reenact subsection 4 of section 4-14.1-02 of the North Dakota Century Code, relating to the purposes of the agriculturally derived fuels tax fund; to suspend subsections 2 and 3 of section 57-43.1-02 and subsection 2 of section 57-43.2-02 of the North Dakota Century Code, relating to tax reduction for fuels that contain a blend of qualifying alcohol; to provide an appropriation; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Severability of fuels tax reductions. If for any reason the provisions of subsection 3 of section 57-43.1-02 are finally held by a court to be unconstitutional, the provisions of subsection 2 of section 57-43.1-02 and subsection 2 of section 57-43.2-02 continue in effect and the reductions provided for motor vehicle fuels and special fuels that contain an appropriate blend of qualifying alcohol continue to apply to alcohol derived from agricultural products, regardless of the place of production.

\* SECTION 2. AMENDMENT. Subsection 4 of section 4-14.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Cooperation with private industry to establish or continue privately owned agricultural processing plants in this state to supply demand for agriculturally derived fuel, chemicals, and other agricultural products.

SECTION 3. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Nonrefundability of taxes. No person may apply for a refund of any tax paid based upon a claim of unconstitutionality of subsection 3 of section 57-43.1-01 unless the taxes were timely paid under protest.

SECTION 4. SUSPENSION. Subsections 2 and 3 of section 57-43.1-02 and subsection 2 of section 57-43.2-02 of the 1987 Supplement to the North Dakota Century Code are hereby suspended until July 1, 1991, pursuant to the provisions of section 6 of this Act.

SECTION 5. APPROPRIATION - TRANSFER. The amount of \$3,500,000, or so much thereof as may be necessary, is hereby appropriated from the highway tax

- \* NOTE: Section 4-14.1-02 was also amended by section 2 of House Bill No. 1200, chapter 81.

distribution fund and shall be transferred by the office of management and budget to the agriculturally derived fuels tax fund for the purpose of providing a production subsidy to North Dakota ethanol plants for the period beginning July 1, 1989, and ending June 30, 1991. The distribution to the agriculturally derived fuels tax fund must be made in two equal installments on the first day of each fiscal year for the biennium beginning July 1, 1989, and ending June 30, 1991. Distribution from the agriculturally derived fuels tax fund to the producers of the agricultural derived fuel must be at the rate of forty cents for each gallon of agriculturally derived fuel produced in the state that is marketed by the producing plant to a distributor or wholesaler for sale within North Dakota. Payment must be approved by the agricultural products utilization commission to the producing plant upon presentation by the plant with an affidavit to the effect that the ethanol sold from the plant and for which the producers credit as being sought, is to be sold at retail to consumers in North Dakota. The certification by the producer of the ethanol must be accompanied by an affidavit from the wholesaler or retailer to the same effect. Upon receipt of the certifications, which must be prepared under oath, the payment must be made to the certifying producer to the extent that funds permit.

**SECTION 6. EFFECTIVE DATE.** If the Legislative Assembly does not appropriate any moneys from the highway tax distribution fund to the agriculturally derived fuels tax fund for the purpose of providing a production subsidy for the period beginning July 1, 1989, and ending June 30, 1991, or if such a subsidy is determined by a court of final jurisdiction to be unconstitutional, the provisions of subsection 2 of section 57-43.1-02 and subsection 2 of section 57-43.2-02 continue in effect and the reductions provided for motor vehicle fuels and special fuels that contain an appropriate blend of qualifying alcohol continue to apply to alcohol derived from agricultural products, regardless of the place of production.

**SECTION 7. EFFECTIVE DATE.** Section 3 of this Act is effective for all taxable periods after May 31, 1988.

**SECTION 8. EMERGENCY.** Section 7 of this Act is declared to be an emergency measure.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 83

SENATE BILL NO. 2047  
(Legislative Council)  
(Interim Judiciary Committee)

### APPEALS FROM LOCAL GOVERNMENT DECISIONS

AN ACT to provide procedures for appeals from the decisions of local governing bodies; to amend and reenact sections 4-16-09, 4-22-39, 11-11-41, 11-11-43, 11-28-19, 11-33-12, 11-33.2-09, 11-35-01, 15-27.3-07, 21-05-07, 24-07-22, 40-02-06.1, 40-05-02.2, 40-26-01, 40-39-10, subsection 5 of section 40-58-18, sections 40-62-04, 57-25-03, 57-28-12, 58-02-23, 58-03-15, 61-07-33, 61-12-18, 61-12-19, 61-12-23, 61-16.1-51, 61-16.1-53, 61-16.1-54, 61-21-17, 61-21-18, 61-21-43.1, 61-21-67, 61-24-17, and 61-32-07 of the North Dakota Century Code, relating to appeals from various local boards, commissions, and districts; and to repeal sections 61-16.1-55, 61-16.1-56, and 61-16.1-57 of the North Dakota Century Code, relating to appeals from water resource board decisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Appeals from local governing bodies - Procedures. This section, to the extent that it is not inconsistent with procedural rules adopted by the North Dakota supreme court, governs any appeal provided by statute from the decision of a local governing body, except those court reviews provided under sections 2-04-11, 40-47-11, and 40-51.2-15. For the purposes of this section, "local governing body" includes any officer, board, commission, resource or conservation district, or other political subdivision. Each appeal is governed by the following procedure:

1. The notice of appeal must be filed with the clerk of the court within thirty days after the decision of the local governing body. A copy of the notice of appeal must be served on the local governing body in the manner provided by rule 4 of the North Dakota Rules of Civil Procedure.
2. The appellee shall prepare and file a single copy of the record on appeal with the court. Within thirty days, or such longer time as the court by order may direct, after the notice of appeal has been filed in the court, and after the deposit by the appellant of the estimated cost of a transcript of the evidence, the local governing body shall prepare and file in the office of the clerk of the court in which the appeal is pending the original or a certified copy of the entire proceedings before the local governing body, or such abstract of the record as may be agreed upon and stipulated by the parties, including the pleadings, notices, transcripts of all testimony taken, exhibits, reports or memoranda, exceptions or objections, briefs, findings of fact, proposed findings of fact submitted to the local governing body, and the decision of the local governing body in the proceedings. If the notice of appeal

specifies that no exception or objection is made to the local governing body's findings of fact, and that the appeal is concerned only with the local governing body's conclusions based on the facts found by it, the evidence submitted at the hearing before the local governing body must be omitted from the record filed in the court. The court may permit amendments or additions to the record to complete the record.

3. If the court determines on its own motion or if an application for leave to adduce additional evidence is made to the court in which an appeal from a determination from a local governing body is pending, and it is shown to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to adduce such evidence in the hearing or proceeding had before the local governing body, or that such evidence is material to the issues involved and was rejected or excluded by the local governing body, the court may order that such additional evidence be taken, heard, and considered by the local governing body on such terms and conditions as the court may determine. After considering the additional evidence, the local governing body may amend or modify its decision, and shall file with the court a transcript of the additional evidence together with its new or modified decision, if any.

SECTION 2. AMENDMENT. Section 4-16-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-16-09. Charges entered as taxes - Notice required - Appearance - Appeal to district court - Collection. Before the board of township supervisors charges the amounts spent for gopher extermination as taxes against a parcel of land as provided in section 4-16-08, the board shall give the owner thereof at least twenty days' notice by mail of the time when and the place at which such amount will be so charged. The landowner has the right to appear and show cause why such amount must not be charged as taxes. If the landowner feels aggrieved by the decision of the board of township supervisors, ~~he~~ the landowner may appeal to the district court, and the appeal ~~shall~~ must be perfected and prosecuted in the ~~same manner as appeals from municipal courts~~ provided in section 1 of this Act. The county auditor shall enter the amounts upon the tax roll of the county against the land on which the work has been done, and the county treasurer shall collect such amounts in the same manner as taxes are collected, and shall place the same to the credit of the respective townships.

SECTION 3. AMENDMENT. Section 4-22-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-39. Aggrieved petitioner and supervisors may appeal to district court from order of board - Procedure. Any petitioner, or the supervisors of any district, aggrieved by an order of a board of adjustment granting or denying, in whole or in part, the relief sought in any petition filed with such board may ~~obtain a review of such order in appeal to the district court by filing in the court a petition praying that the order of the board be modified or set aside. A copy of the petition must be served upon all the parties to the hearing before the board. The party seeking the review shall file in the court a transcript of the entire record in the proceedings, including the documents and testimony upon which the order complained of was entered and the findings, determination, and order of the board, which record~~

must be certified by the board. After the record has been filed, the court shall give notice of a hearing thereon, and has jurisdiction of the proceedings in accordance with the procedure provided in section 1 of this Act. The court may grant such temporary relief as it deems just and proper, and may enter its decree enforcing, modifying and enforcing as modified, or setting aside in whole or in part, the order of the board. No contention which was not urged before the board may be considered by the court unless the failure or neglect to urge such contention is excused because of extraordinary circumstances. The findings of the board as to the facts are conclusive if such findings are supported by evidence. If any party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to produce it on the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings after considering the additional evidence so taken and filed. It shall file the modified or new findings, if any, and if the new findings are supported by evidence, they are conclusive, and the board shall file with the court any recommendations it may have for the modification or setting aside of its original order. The jurisdiction of the court is exclusive, and its judgment and decree is final except that it is subject to review in the same manner as are other judgments or decrees of the court.

SECTION 4. AMENDMENT. Section 11-11-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-41. Time for appeal—Notice—Transcript of proceedings. An appeal from a decision of the board of county commissioners must be taken within thirty days after the decision of the board by serving a written notice of appeal upon one member of the board. If the decision from which an appeal is taken relates to tax refunds, tax abatements, or other matters relating to taxation, in addition to the notice of appeal required by section 1 of this Act, a notice of appeal also shall must be served by registered or certified mail upon the state tax commissioner. The county auditor, upon the filing of the undertaking, shall make out a complete transcript of the proceedings of the board relating to the matter in controversy, and shall deliver the same to the clerk of the district court.

SECTION 5. AMENDMENT. Section 11-11-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-43. Appeals docketed and tried de novo - Procedure. All appeals taken from decisions of a board of county commissioners shall must be docketed as other causes pending in the district court and shall be heard and determined de novo. Section 1 of this Act governs all appeals taken under sections 11-11-39 through 11-11-43.

SECTION 6. AMENDMENT. Section 11-28-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28-19. Publication of rules, regulations, and proceedings. All rules and regulations governing the use of county parks and recreational areas under the jurisdiction, supervision, control, and management of the board of joint park commissioners and all proceedings of said the board shall must be published in the official newspaper of all counties affected in the same manner as the proceedings of the board of county commissioners. Any



person adversely affected by any rule or regulation promulgated by such the board may appeal to the district court of a county comprising a portion of the district and if such. If the court shall find finds the rule or regulations arbitrary, unreasonable, or beyond the scope of sections 11-28-12 through 11-28-22, it shall declare the rule or regulation invalid. Appeals under this section must be taken in accordance with the procedure provided in section 1 of this Act.

SECTION 7. AMENDMENT. Section 11-33-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-33-12. Appeals to district court. Any person, or persons, jointly or severally, aggrieved by a decision of the board of county commissioners under this chapter, may appeal to the district court in the manner provided in ~~chapter 11-11~~ section 1 of this Act.

SECTION 8. AMENDMENT. Section 11-33.2-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-33.2-09. Appeals to district court. Any person, or persons, jointly or severally, aggrieved by a decision of the board of county commissioners under this chapter, or any resolution or amendments adopted hereunder, may appeal to the district court in the manner provided in ~~chapter 11-11~~ section 1 of this Act.

SECTION 9. AMENDMENT. Section 11-35-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-35-01. Regional commissions - Appointment - Powers. The governing boards of counties, cities, and organized townships may cooperate to form, organize, and administer a regional planning and zoning commission for the region defined as may be agreed upon by the governing bodies of such political subdivisions. The regional commission membership shall consist of five members; namely, one from the board of county commissioners, two from the rural region affected, and two from the city, the members from each to be appointed by the respective governing boards. The proportion of cost of regional planning, zoning, studies, and surveys to be borne respectively by each of the said political subdivisions in the region, shall be such as may be agreed upon by their governing boards. The regional commissions, when requested by the governing board of a political subdivision in its region, may exercise any of the powers which are specified and granted to counties, cities, or organized townships in matters of planning and zoning. Upon organization of such commission, publication and hearing procedures shall be conducted pursuant to sections 11-33-08 and 11-33-09. Appeal from a decision of the commission may be taken to the district court in accordance with the procedure provided in section 1 of this Act.

SECTION 10. AMENDMENT. Section 15-27.3-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-27.3-07. Appeal from decision of county committee in making adjustments of property, debts, and liabilities. An appeal may be taken to the district court on any question of adjustment of property, debts, and liabilities among the districts involved in which the power to make an adjustment or adjustments has been extended by this chapter. Any person feeling aggrieved by the decision of the county committee after the hearing

provided for in section 15-27.3-05 may appeal from the decision in accordance with the procedure provided in section 1 of this Act. ~~The appeal must be taken within thirty days after the decision of the committee on the adjustment of the property, debts, and liabilities, by serving a written notice of appeal upon a member of the county committee.~~ If the court finds the terms of the adjustment in question to be not legally or equitably constituted, it shall make an adjustment that is equitable and legal. Any determination by the court with respect to the adjustment of property, debts, and liabilities among the districts or areas involved may not otherwise affect the validity of the reorganization or creation of any district or districts under this chapter.

SECTION 11. AMENDMENT. Section 21-05-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-05-07. Consideration of account - Action thereon. Whenever an account, claim, or demand against any township or county ~~shall have been~~ is reviewed in the manner prescribed in section 21-05-01, the board to which the same is presented may receive and consider the same and may allow or disallow the same, in whole or in part, as to the board shall appear just and lawful, saving to such claimant the right of appeal in accordance with the procedure provided in section 1 of this Act. Approval by the board ~~shall~~ must be recorded in the record of its proceedings and this ~~shall be~~ is sufficient to indicate approval without requiring a majority of the members of the board to sign or initial the voucher or order for payment.

SECTION 12. AMENDMENT. Section 24-07-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-07-22. Appeals - When and where taken. Any person who feels aggrieved by any determination or award of damages made by the board having jurisdiction, either in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue, any highway or cartway, within thirty days after the filing of such determination or award of damages, as provided in this chapter, may appeal therefrom in accordance with the procedure provided in section 1 of this Act. If the amount of damages claimed by appellant does not exceed one hundred dollars, the appeal ~~shall~~ must be taken to the county judge. If the damages claimed exceed one hundred dollars, the appeal ~~shall~~ must be taken to the district court.

SECTION 13. AMENDMENT. Section 40-02-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-02-06.1. Appeal of board of county commissioners' action - Scope of review. Any final action taken by a board of county commissioners on a petition for incorporation may be appealed to the district court in accordance with the procedure provided in section 1 of this Act. The review on appeal ~~shall extend~~ extends only to the determination of whether the board of county commissioners has pursued its authority regularly and has not exceeded its jurisdiction or abused its discretion under the provisions of this chapter.

SECTION 14. AMENDMENT. Section 40-05-02.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-05-02.2. City may levy excise tax on nonprofit liquor dealers by ordinance.

1. Any city, through the enactment of an ordinance to such effect, may levy a local excise tax, not in excess of fifty percent, upon the proceeds from gross sales of liquor, as defined by subsection 6 of section 5-01-01, by any nonprofit corporation licensed by the city to sell such liquor; provided, however, that no city ~~shall~~ may levy the tax herein provided for unless such nonprofit corporation is the only person, firm, association, or corporation within the corporate limits of such city licensed to sell such liquor.
2. The city in levying the excise tax provided for in subsection 1 shall provide within the levying enactment a method of computation, collection, and disposition of such tax revenue, and a procedure whereby any person aggrieved by such procedure may appeal to the governing body of the city. The right of appeal from a decision of the governing body of such city to the district court of the district wherein such city is located shall not be restricted. An appeal taken under this section must be in accordance with the procedure provided in section 1 of this Act.

SECTION 15. AMENDMENT. Section 40-26-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-26-01. Courts to review levy and apportionment of special assessments. The courts shall review the levy and apportionment of the special assessments in all actions and proceedings involving the validity or apportionment of any special assessment for local or special improvements. An appeal taken under this section must be in accordance with the procedure provided in section 1 of this Act.

SECTION 16. AMENDMENT. Section 40-39-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-39-10. Aggrieved person may appeal to district court. Any person aggrieved by the decision of the governing body granting the vacation of any public grounds, street, or alley, within twenty fifteen days after the publication of the resolution, may appeal to the district court of the county, ~~and the~~ in accordance with the procedure provided in section 1 of this Act. The judgment of the court therein shall be is final.

\* SECTION 17. AMENDMENT. Subsection 5 of section 40-58-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Any person affected by an order issued by the public officer may petition the district court, in accordance with the procedure provided in section 1 of this Act, for an injunction restraining the public officer from carrying out the provisions of the order, and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause. ~~Provided, however, that within sixty days after the posting and service of the order of the public officer, such person shall petition such court.~~ Hearings shall be had by the court on such petitions within twenty days, or as soon thereafter as possible, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter a final order or decree in the proceeding. In all such proceedings the findings of the public officer as to facts, if supported by evidence, shall be conclusive. Costs shall be in the

\* NOTE: Section 40-58-18 was also amended by section 17 of Senate Bill No. 2042, chapter 499.

discretion of the court. The remedies herein provided shall be exclusive remedies and no person affected by an order of the public officer shall be entitled to recover any damages for action taken pursuant to any order of the public officer, or because of compliance by such person with any order of the public officer.

SECTION 18. AMENDMENT. Section 40-62-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-04. Jurisdiction to improve and regulate. Upon hearing of any protests made by the owners of property within the improvement district in the time and in the manner provided by law, if the governing body shall determine the protests to be insufficient, it may proceed with the improvement as in the case of other special improvements; provided, that before so proceeding a certified transcript of the resolution of necessity shall be recorded in the office of the register of deeds, and any person aggrieved thereby may appeal ~~therefrom~~ to the district court of the county within twenty days after such recording in accordance with the procedure provided in section 1 of this Act, but only on the ground that the establishment of the mall or construction of the skyway in accordance with the resolution will unreasonably and arbitrarily obstruct the public use of and interest in the designated street or streets, or that such resolution has been adopted in a manner contrary to law. Notwithstanding the establishment of a mall or skyway, or the improvement of any street or any portion thereof as a part of such mall or skyway, or any limitation of the use thereof by vehicles, the city and the governing body shall retain at all times their police powers and other powers and rights pertaining thereto, and no such action shall constitute a vacation, in whole or in part, of any portion of a city street.

SECTION 19. AMENDMENT. Section 57-25-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-25-03. Appeal to district court. Any person dissatisfied with the order and determination of the board of county commissioners, ~~within fifteen days after such determination, decision, or order,~~ may appeal ~~therefrom~~ to the district court in accordance with the procedure provided in section 1 of this Act.

SECTION 20. AMENDMENT. Section 57-28-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-28-12. Appeal. The governing body of any taxing district, if dissatisfied with the determination of the board of county commissioners, may appeal ~~therefrom within ten days to the district court in the same manner as other appeals are taken from a determination by the board of county commissioners, except that no bond shall be required in accordance with the procedure provided in section 1 of this Act~~. All determinations of minimum values, on appeal, shall be heard by the court without a jury. The county auditor shall make such changes, if any, as may be ordered by the court upon appeal and shall offer such lands for sale at the minimum sale price, determined by the final judgment of the court.

SECTION 21. AMENDMENT. Section 58-02-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-02-23. Division of assets and liabilities of the original township. Within thirty days after the first election is held in a civil township established upon a petition described in section 58-02-21, the board of county commissioners, the county auditor, and the county judge shall meet as a board of arbitrators and shall determine a just and fair distribution of the property and apportionment of the debts of the original township between it and the township separated therefrom and established as a civil township. The new township shall succeed to a proportional share of the moneys and other property of the original township and shall assume a proportional share of the debts and liabilities thereof existing at the time of the division, such proportion to be determined by the relative valuation of the property of the respective parts as shown by the last preceding assessment. The board of arbitrators, upon subpoena issued by the clerk of the district court on the request of such board, may bring before it all necessary witnesses, books, and papers. The determination of the board of arbitrators may be reviewed by the district court on appeal ~~taken in the same manner as an appeal from a determination of a board of county commissioners in accordance with the procedure provided in section 1 of this Act, and shall be enforced by the courts.~~

SECTION 22. AMENDMENT. Section 58-03-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-03-15. Appeals. Appeals from any rule, ~~regulation,~~ restriction, or decision of the board of township supervisors may be made to the district court of the county in which such township lies. Appeals must be taken in accordance with the procedure provided in section 1 of this Act. Upon a showing that any rule, ~~regulation,~~ restriction, or decision of the board of township supervisors is unreasonable under the circumstances or contrary to the intent of sections 58-03-11 through 58-03-15, any such ~~regulation rule,~~ restriction, or decision may be set aside or reversed.

SECTION 23. AMENDMENT. Section 61-07-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-33. Appeal to district court - Time - ~~Notice~~—Undertaking required - Docketing. An appeal may be taken to the district court from any order or decision of the board of an irrigation district, by any person who is aggrieved thereby; ~~at any time within thirty days after the order or decision appealed from has been made by the board, and filed with the secretary, and served by registered or certified mail upon the interested landowners.~~ Such appeal shall be taken by serving notice of the appeal on the chairman or the secretary of the board and by filing the notice, proof of service thereof, and the undertaking required in this section, with the clerk of the district court of the county in which the appeal is taken. The appeal must be taken in accordance with the procedure provided in section 1 of this Act. To effect an appeal, an undertaking must be executed by the appellant and sufficient surety conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against ~~him~~ the appellant in the district court. ~~Such~~ The undertaking shall must be made in favor of the irrigation district as the obligee and may be enforced by the district. The appeal ~~shall~~ must be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is situated, and if ~~such~~ the land is situated in more than one county, the appeal may be taken to the district court of any county in which any part of ~~such~~ the land is situated. Any appeal thus taken ~~shall~~ must be docketed in the district court as any civil cause commenced in the district

court is docketed and thereupon the district court shall have and exercise original jurisdiction in such cause, and shall hear must be heard and determine the same determined without a jury, in like manner as a civil cause originally commenced in that court. The court may require the service and filing of formal pleadings and fix the time therefor. Appeals to the supreme court may be taken by the irrigation district or any other party to the cause from any judgment entered in the district court in any such cause and from any order of said court if an appeal would lie from such an order if the same were entered by the court in any other civil action.

SECTION 24. AMENDMENT. Section 61-12-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-12-18. Petition for review of assessments. Should any landowner believe that the assessment of the damages suffered by him has not been made fairly or equitably ~~he~~ the landowner may appeal to the district court of the county ~~wherein such~~ in which the land is situated, by filing a petition with the clerk of the district court of ~~said the~~ county, asking for a review of such assessment of damages. Such petition must be filed within fifteen days after the entry of the order confirming the same. The appeal must be taken in accordance with the procedure provided in section 1 of this Act.

SECTION 25. AMENDMENT. Section 61-12-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-12-19. Issue placed on court calendar - Judgment - Costs. Upon the filing of a petition for the review of assessments in the office of the clerk of the district court of the county in which the land is situated, ~~said the~~ clerk immediately shall notify the board of flood irrigation thereof. ~~Thereupon the said board shall certify all its records and proceedings in said matter to the district court. Said issue shall be deemed to be on the calendar of said court at the next court term thereof, and shall be heard promptly by the court. If it appears to said the court upon such the hearing that such the assessments have not been made equitably, it may proceed to correct the same. Such The correction and adjustment shall be is final, unless an appeal is taken to the supreme court. Costs may be granted to either party in the discretion of the court.~~

SECTION 26. AMENDMENT. Section 61-12-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-12-23. Assessment of benefits subject to review. The assessment of benefits provided for in section 61-12-22 also ~~shall be is~~ subject to review in the manner ~~and upon the notice provided for the review of the assessment of damages in sections 61-12-17 and 61-12-18~~ in section 1 of this Act.

SECTION 27. AMENDMENT. Section 61-16.1-51 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction - Definition. If the water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered or certified mail at the landowner's post-office address of record. A copy of the notice shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the obstruction, the opinion of the board as to its cause, and shall state that if the obstruction is not

removed within such period as the board shall determine, but not less than thirty days, the board shall procure removal of the obstruction and assess the cost thereof, or such portion as the board shall determine appropriate, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of such demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may immediately apply to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. Any landowner aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided ~~under sections 61-16.1-54 through 61-16.1-57 in section 1 of this Act.~~ A hearing as provided for in this section shall not be a prerequisite to such an appeal.

For the purposes of this section, "an obstruction to a drain" means any barrier to a watercourse, as defined by section 61-01-06, or any artificial drain, which materially affects the free flow of waters in such watercourse or drain.

SECTION 28. AMENDMENT. Section 61-16.1-53 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal - Injunction. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15,418.52 cubic meters] of water, has been established or constructed by a landowner or tenant contrary to the provisions of this title or any rules or regulations promulgated by the board, the board shall notify the landowner by registered or certified mail at the landowner's post-office address of record. A copy of the notice shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the noncompliance and shall state that if the dike, dam, or other device is not removed within such period as the board shall determine, but not less than thirty days, the board shall cause the removal of the dike, dam, or other device and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing upon the matter. Upon receipt of such demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the

opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided ~~under sections 61-16.1-54 through 61-16.1-57~~ in section 1 of this Act. A hearing as provided for in this section shall not be prerequisite to such an appeal.

SECTION 29. AMENDMENT. Section 61-16.1-54 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-54. Appeal from decision of water resource board - Undertaking - Jurisdiction. An appeal may be taken to the district court from any order or decision of the water resource board by any person aggrieved. An appellant shall file an undertaking in the sum of two hundred dollars with such sureties as may be approved by the clerk of the district court to which the appeal is taken. The undertaking shall be conditioned that the appellant will prosecute the appeal without delay and will pay all costs adjudged against the appellant in the district court. The undertaking shall be in favor of the water resource board as obligee, and may be sued on in the name of the obligee. The appeal ~~shall~~ must be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is located and is governed by the procedure provided in section 1 of this Act.

SECTION 30. AMENDMENT. Section 61-21-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-17. Notice of order establishing drain and period for appeal. Upon the making of an order establishing or denying establishment of a drain, the board shall give notice to all affected landowners by publishing a notice in a newspaper of general circulation in ~~such~~ the county. ~~Such~~ The notice ~~shall~~ must include a copy of ~~such~~ the order and ~~shall~~ must advise the affected landowners ~~that of their right to appeal to the district court from such order will expire upon thirty days from and after the date of such publication~~ under section 61-21-18.

SECTION 31. AMENDMENT. Section 61-21-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-18. Appeal to district court - Time - Undertaking - Hearing. Any person whose land is assessed or may be assessed or is condemned or may be condemned for the construction of a drain under the provisions of this chapter may appeal to the district court from the order of the board establishing or denying the establishment of the drain. ~~Such appeal shall be taken and perfected within thirty days from and after the date of publication of the "notice of order establishing the drain and time of expiration of right of appeal".~~ The appeal must be taken in accordance with the procedure provided in section 1 of this Act. The appellant must ~~file with the clerk of court, and serve upon a member of the board, a notice of appeal, and must~~ give an undertaking to be approved by the clerk of the district court in the sum of two hundred fifty dollars for the payment of the costs in the event that the appellant is unsuccessful in the district court. ~~Such~~ The undertaking ~~shall~~ must run in favor of the county in which the drain is located, and, if located in more than one county, it may run in the name of either of the counties in which the drain is located. The judge shall hear



~~such the~~ appeal not less than ten days nor more than thirty days after the filing of ~~such the~~ appeal with the clerk, the day of hearing to be fixed by the court, but such time for hearing may be extended by the court for good cause for a period not to exceed thirty days. The case ~~shall~~ must be tried in all respects as a court case without a jury and costs ~~shall be allowed and taxed as costs are taxed in said courts in civil actions and upon like notice.~~ Where ~~such the~~ appeal is perfected, the district court upon the hearing may try and determine the question as to whether, in the first instance, there was sufficient cause for making the petition for the establishment of the drain, whether the proposed drain will cost more than the amount of the benefits to be derived therefrom, and whether such drain was objected to by a majority of the affected landowners in accordance with the weighted voting provisions of section 61-21-16.

SECTION 32. AMENDMENT. Section 61-21-43.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction. If the board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or his tenant, the board shall notify the landowner by registered or certified mail at his post office of record. A copy of the notice ~~shall~~ must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if ~~such the~~ obstruction is not removed within such period as the board ~~shall determine~~ determines, but not less than thirty days, the board shall procure removal of ~~said~~ the obstruction and assess the cost thereof, or such portion as the board ~~shall determine~~ determines, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand in writing a hearing upon the matter. Upon receipt of ~~such the~~ demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may, immediately upon learning of the existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting such a landowner or his tenant to maintain such an obstruction. Any assessments levied under this section ~~shall~~ must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. Any landowner aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for ~~by sections 61-16-1-54 through 61-16-1-57 in section 1 of this Act.~~ A hearing as provided for in this section ~~shall~~ is not be a prerequisite to such an appeal.

SECTION 33. AMENDMENT. Section 61-21-67 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-67. Closing of noncomplying drain - Notice and hearing - Appeal - Injunction. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to the provisions of this chapter or any rules adopted by the board, the board shall notify the landowner by registered or certified mail at the landowner's post office of record. A copy of the notice ~~shall~~ must also be sent to the tenant, if any. The notice must specify the nature and extent of the

noncompliance and shall must state that if the drain, lateral drain, or ditch is not closed or filled within such period as the board shall determine determines, but not less than thirty days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, of such portion as the board shall determine determines, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand in writing a hearing upon the matter. Upon receipt of such the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from maintaining the drain, lateral drain, or ditch. Any assessments levied under this section shall must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. Any landowner aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for by sections 61-16-1-54 through 61-16-1-57 in section 1 of this Act. A hearing as provided for in this section shall is not be a prerequisite to such an appeal.

SECTION 34. AMENDMENT. Section 61-24-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24-17. Appeal from orders of district board. An appeal from an order of the board of directors of the conservancy district denying a petition for exclusion may be taken to the district court of the petitioning county. The appeal provided for herein must be taken within thirty days after the order of the district board has been filed with the secretary thereof. The appeal shall be taken by serving notice of appeal upon the secretary of the district. The appeal must be taken in accordance with the procedure provided in section 1 of this Act. The appeal shall must be docketed as any cause pending in district court is docketed and thereupon the court shall have and exercise original jurisdiction and shall hear and determine the cause de novo without a jury. An appeal to the supreme court may be taken by the petitioning county or by the conservancy district, from any judgment entered therein in district court, and from any order of said the court if an appeal would lie from such order if entered by the court in a civil action.

SECTION 35. AMENDMENT. Section 61-32-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction. Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. A complaint must be filed on a form made available by the state engineer. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to the provisions of this title or any rules or regulations promulgated by the

board, the board shall notify the landowner by registered or certified mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and shall state that if the drain, lateral drain, or ditch is not closed or filled within such reasonable time as the board shall determine, but not less than thirty days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. Any assessments levied under the provisions of this section must be collected in the same manner as assessments authorized by chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided ~~under sections 61-16.1-54 through 61-16.1-57~~ in section 1 of this Act. A hearing as provided for in this section is not a prerequisite to such an appeal.

SECTION 36. REPEAL. Sections 61-16.1-55, 61-16.1-56, and 61-16.1-57 of the North Dakota Century Code are hereby repealed.

Approved March 31, 1989  
Filed March 31, 1989

## CHAPTER 84

SENATE BILL NO. 2528  
(Senators Krauter, Maixner)  
(Representatives Martin, Nicholas)  
(Approved by the Committee on Delayed Bills)

### DAIRY PROCESSORS

AN ACT to create and enact four new sections to chapter 4-30 of the North Dakota Century Code, relating to a release of dairy processors' records, plants, reports, and notice to dairy producers; to amend and reenact sections 4-18.1-14, 4-30-03.3, and 4-30-03.8 of the North Dakota Century Code, relating to the release of information to the commissioner of agriculture or the dairy commissioner, the filing of a surety bond or other security by dairy processors, and surety bond protection for in-state dairy producers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-18.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-18.1-14. Entry, inspection, and investigation. Authorized representatives of the board have access to, and may enter at all reasonable hours, all places of business operated by licensees where raw milk, milk products, or frozen dairy products are produced, stored, processed, manufactured, or sold, or where the licensee maintains books, papers, accounts, records, or other documents related to such activities. The board may subpoena, and any of its authorized representatives may inspect and make copies of, any of such books, papers, records, accounts, or documents and audit the same, all for the purpose of determining whether or not the provisions of this chapter and of any regulations rules and stabilization plans issued by the board are being complied with.

The board may subpoena, and any of its authorized representatives 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 board or its representatives through such entry, inspection, or investigation must be treated as confidential by the board and its representatives and must be used only for the administration of this chapter; provided, that such persons may divulge such information when called upon to testify in any duly noticed proceeding before the board or in any court proceeding wherein the board is a party; ~~and provided further, that nothing or to the commissioner of agriculture or the dairy commissioner for the purpose of determining whether a licensee's financial condition is such as to reasonably assure prompt payment to the dairy farmers from whom milk or cream is purchased.~~ Nothing contained in this chapter prevents the use of any information procured by the board or its representatives in the compiling and dissemination of general statistical data, containing information procured from a number of licensees, and compiled in such manner as not to

reveal individual information for any licensee. Any person who divulges confidential information in violation of ~~the provisions of~~ this section to any person, other than members and employees of the board, is guilty of a class A misdemeanor.

The board may also subpoena and take the testimony under oath of persons believed by the board to have information needed by it in administering and enforcing ~~the provisions of~~ this chapter.

SECTION 2. A new section to chapter 4-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

Records release required with application for licensure. An applicant for a license shall file with the license application a release authorizing the commissioner access to 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 or in the course of an investigation of the applicant due to a complaint against the applicant or when based upon evidence 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.

SECTION 3. AMENDMENT. Section 4-30-03.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-03.3. Surety bond, trustee agreement, other security or assurances. In all cases where it appears that the financial condition of any applicant or licensee who purchases milk or cream from a dairy producer is not adequate to reasonably assure payment to dairy producers when due for the milk or cream to be purchased, or in lieu of annually filing with the department an audited financial statement as required in section 4-30-03.2, 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 or cream from dairy producers during the previous year. Where payment for milk or cream 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 or cream. Where payment for milk or cream 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 or cream. Where the period of payment for milk or cream 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 or cream 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 and cream 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 the seller for all milk or cream purchased by the licensee. The aggregate liability of the bonding company or the department to all dairy producers must in no event exceed the amount of the bond.
2. The providing of an amount of protection for dairy producers, from whom milk or cream is purchased, equal to the amount of protection provided in subsection 1, whereby the security is to 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 securities have regularly reported quotations, deposited with the department.
    - 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 for the 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 make and 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 shall at least annually render a true and correct account of trustee dealings to the department and to the dairy producers.

SECTION 4. A new section to chapter 4-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

Entry, inspection, and investigation. Authorized representatives of the department may enter, at reasonable hours, places of business where a licensee maintains books, papers, accounts, records or other documents related to the production, storage, processing, manufacturing, or sale of dairy products. The commissioner of agriculture 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 of agriculture or the commissioner's authorized representative under this section is confidential and may be used only for the administration of this chapter, but the department or the commissioner of agriculture or the commissioner's authorized representative may divulge the information when testifying in any departmental administrative hearing, in a duly noticed proceeding before the milk stabilization board, or in any court proceeding in which the department or the commissioner of agriculture is a

party. This chapter does not prevent the use of information procured by the department or the commissioner of agriculture or the commissioner's authorized representative in the compiling or dissemination of general statistical data containing information procured from a number of licensees and compiled in a manner so as not to reveal individual information for any licensee.

The commissioner of agriculture or the commissioner's authorized representative may also subpoena and take the testimony under oath of persons believed by the commissioner of agriculture to have information needed by the commissioner in administering and enforcing this chapter.

SECTION 5. A new section to chapter 4-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

Records and reports. Licensees shall maintain the records the commissioner by rule determines necessary to effectuate the purpose of assuring that a licensee's financial condition is such as to reasonably assure prompt payment to producers.

SECTION 6. AMENDMENT. Section 4-30-03.8 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-03.8. Out-of-state dealers, processors, or producers not exempt. The provisions of sections Sections 4-30-03.1 through 4-30-03.8 and sections 4 and 5 of this Act apply to all milk or cream purchasers licensed under section 4-30-02 doing business in whole or in part within the state. The protection to producers afforded by sections 4-30-03.1 through 4-30-03.8 and sections 4 and 5 of this Act is available to the producers of any state selling milk or cream to any licensee licensed under section 4-30-02, but the surety bond or other security required by sections 4-30-03.3 and 4-30-03.5 is payable only for the benefit of producers who are located within this state.

SECTION 7. A new section to chapter 4-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

Personal notice to file claims - When claims barred. In lieu of the procedure described in section 4-30-06, the department, as trustee, may provide personal notice by registered mail or by personal delivery in the same manner as a summons is delivered to all producers who have sold milk to the licensee within the pay periods affected by the licensee's default. The producers must be notified that they shall file claims with the department and surrender to it any receipts or other documentation reflecting a default in payment by the licensee. Any producer who fails to file a claim within forty-five days of the receipt of the notice is barred from participating in any fund marshalled by the department as prescribed in this chapter. If every producer affected by the licensee's default files a claim within forty-five days, the department may file its report with the court pursuant to section 4-30-10 before the expiration of the forty-five-day period.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 14, 1989  
Filed April 17, 1989

## CHAPTER 85

SENATE BILL NO. 2071  
(Dotzenrod)**SOYBEAN FUND INCOME**

AN ACT to amend and reenact section 4-24-09 of the North Dakota Century Code, relating to the investment income allocation of the soybean fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 4-24-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-24-09. Agricultural commodity assessments funds - Investment income allocation. The state treasurer, at the direction of the governing body of the respective agricultural commodity entity, shall provide for the investment of notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, sunflower fund, edible bean fund, barley fund, soybean fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed by the agricultural commodity organizations regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund. These moneys may be expended only within the limits of legislative appropriation.

Approved March 28, 1989  
Filed March 28, 1989

\* NOTE: Section 4-24-09 was also amended by section 9 of House Bill No. 1485, chapter 76.



## CHAPTER 86

HOUSE BILL NO. 1420  
(Representatives Brokaw, Vander Vorst, Kretschmar)  
(Senators Vosper, Kelsh, Richard)

**DAIRY PROMOTION COMMISSION**

AN ACT to amend and reenact section 4-27-04 of the North Dakota Century Code, relating to the membership on the North Dakota dairy promotion commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-27-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-27-04. North Dakota dairy promotion commission. There is hereby created a North Dakota dairy promotion commission consisting of nine members ~~of which the~~. The governor shall appoint ~~four two~~ members, ~~two appointive members who~~ must be producers and ~~two appointive members one member who~~ must be ~~processors a processor~~. The governor shall appoint the producer members from a list of nominees supplied by the American dairy association of North Dakota and the processor ~~members member~~ from a list of nominees supplied by the North Dakota dairy industries association. Each list of nominees must contain at least twice as many names as the number of appointments to be made therefrom. The term of office of each appointive member of the commission is two years, except that the initial ~~appointments~~ appointment of one producer ~~and one processor are~~ is for only one year, so that thereafter the ~~terms term~~ of one producer ~~and one processor~~ will expire each year. Terms of office commence on the first day of July. In addition to the ~~four three~~ appointive members there must be two ex officio, nonvoting, members of the commission who must be the ~~dairy~~ commissioner of agriculture or the commissioner's designee and the head of the animal science department or the department's designee at North Dakota state university. In addition to the appointive and ex officio members there must be ~~three four~~ elected members of the commission who must be the president of the American dairy association of North Dakota, the president of the ~~national~~ dairy council of North Dakota, ~~and a state executive committee member two members of the American dairy milk producers association of North Dakota to be designated~~ elected by that association. The elected ~~and ex officio~~ members shall meet with the commission and shall have the same rights and duties as the appointive members including the right to vote. The milk producers shall serve terms of two years, commencing on July first, except that initially one producer shall serve a term of one year as designated by the milk producers association of North Dakota.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 87

SENATE BILL NO. 2325  
(Senators Dotzenrod, Kelsh)  
(Representative Martin)

### DAIRY PRODUCT LABELING

AN ACT to create and enact a new subsection to section 4-30-01 of the North Dakota Century Code, relating to the definition of dairy animal; to amend and reenact subsections 25, 48, and 51 of section 4-30-01 and section 4-30-45 of the North Dakota Century Code, relating to the definition of milk; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 4-30-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"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.

SECTION 2. AMENDMENT. Subsections 25, 48, and 51 of section 4-30-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25. "Dairy or dairy farm" means a place where one or more ~~cows~~ dairy animals are kept, a part or all of the milk or milk products from which is sold or offered for sale.
48. "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more ~~healthy cows or goats~~ dairy animals.
51. "Milk producer" means a person who owns or controls one or more ~~cows~~ dairy animals, a part or all of the milk or milk products from which is sold, or offered for sale.

SECTION 3. AMENDMENT. Section 4-30-45 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-45. Labeling of milk and milk products for sale at retail. A package, carton, box, or any other container which holds milk or milk products for sale at retail may not bear any statement, design, or device regarding the product, or ingredients and substances contained therein, which is false, deceiving, misleading, or confusing in any particular, or which infers falsely as to the locality, state, or county of its origin. All containers must be so labeled as to clearly show the proper and correct net weight, volume, quantity, or size of the products contained therein as the case may be and they must be filled as full as practicable. All containers must be labeled so as to clearly show the name of the product, its correct

grade, if a grade is stated, and whether or not the product is raw, pasteurized, homogenized, reconstituted, or condensed. A container containing milk or milk products produced from a dairy animal other than a cow must be labeled so as to designate the dairy animal from which the milk or milk product was produced. All containers must be readily identifiable with the dairy plant which last processed, manufactured, or packaged the product either by having the name and location of said plant printed on the container or by registering with the dairy department, a code or mark of identity, which may be a number, name, letter, or any other mark of identity and having this mark plainly painted or stamped on each container. The dairy commissioner shall keep record of all such marks of identity and may not register any mark which is identical to or is so similar to any mark already registered by another person that it would be difficult to differentiate between them. Lettering on all labels on or attached to all such containers must be readily legible and all information required by this section must appear on at least one single panel of all containers. No person, firm, or corporation may use, in connection or association with the sale, exposure for sale, or advertisement of any substance designed to be used as a substitute for butter, the word "butter", "creamery", or "dairy", except as otherwise required by the laws of this state, nor use the name or representation of any breed of dairy cattle, any combination of such word or words and representation, or any other words, or symbols, or combination thereof commonly used in the sale of butter.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 9, 1989  
Filed March 9, 1989

## CHAPTER 88

SENATE BILL NO. 2508  
(Senators Axtman, Kelsh)  
(Representative Marks)

**PESTICIDE APPLICATION AND CHEMIGATION**

AN ACT to amend and reenact subsection 4 of section 4-35-05, section 4-35-09, subsection 2 of section 4-35-13, section 4-35-19, and subsection 1 of section 4-35.1-01 of the North Dakota Century Code, relating to eliminating direct supervision of the application of pesticides by commercial applicators and the definition of chemigation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 4 of section 4-35-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. a. "Certified applicator" means any individual who is certified or licensed under this chapter as authorized to use ~~or supervise the use of~~ any restricted use pesticide covered by ~~his the~~ applicator's certification.
- b. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by ~~him the applicator or his the applicator's~~ employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
- c. "Commercial applicator" means a certified applicator, whether or not ~~he the applicator~~ is a private applicator with respect to some uses, who uses ~~or supervises the use of~~ any pesticide which is classified for restricted use for any purpose or on any property other than as provided for by subdivision b.

\*\* SECTION 2. AMENDMENT. Section 4-35-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-09. Commercial applicator's license. No person who would be a commercial applicator if certified may purchase, or use, ~~or supervise the use of~~ a restricted use pesticide without a commercial applicator's license issued by a county treasurer, unless exempted by this chapter, and without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board. The board shall require an annual fee of twenty dollars for each commercial applicator's license issued which is to be paid to the county treasurer, who shall deposit the fee in the county general fund. The license expires on December thirty-first of each year. If the cooperative extension service, or

\* NOTE: Section 4-35-05 was also amended by section 1 of House Bill No. 1475, chapter 89.

\*\* NOTE: Section 4-35-09 was also amended by section 4 of House Bill No. 1475, chapter 89.

its designee, finds the applicant qualified to apply pesticides in the classifications he has applied for after examination as the board requires by regulation, and the applicant meets all other requirements of this chapter, the county treasurer of the appropriate county shall issue a commercial applicator's license limited to the classifications the applicant is qualified in. If certification is not to be issued as applied for, the cooperative extension service, or its designee, shall inform the applicant in writing of the reasons therefor. Individuals licensed pursuant to this section are deemed certified commercial applicators for the use of restricted use pesticides.

\* SECTION 3. AMENDMENT. Subsection 2 of section 4-35-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The county treasurer shall issue a limited license, without fee, to a public operator who has qualified by examination as prescribed by the board for such license. The public operator's license is valid only when the operator is acting as an operator applying ~~or supervising application of~~ restricted use pesticides used by the entities listed in subsection 1.

\*\* SECTION 4. AMENDMENT. Section 4-35-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-19. Exemptions.

1. The licensing and certification requirements of this chapter do not apply to any person applying pesticides ~~which~~ that are not classified for restricted use.
2. The provisions of this chapter relating to licenses and certification requirements do not apply to a competent person applying restricted use pesticides under the direct supervision of a ~~certified private~~ applicator, unless the pesticide labeling requires that a certified applicator personally applies the particular pesticide. A pesticide is considered to be applied under the direct supervision of a ~~certified private~~ applicator if it is applied by a competent person acting under the instructions and control of a ~~certified private~~ applicator who is available if and when needed, even though such ~~certified private~~ applicator is not physically present at the time and place that the pesticide is applied.
3. Persons conducting laboratory-type research using restricted use pesticides and doctors of medicine and doctors of veterinary medicine applying pesticides as drugs or medication during the course of their normal practice.

SECTION 5. AMENDMENT. Subsection 1 of section 4-35.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Chemigation" means any process by which chemicals, including pesticides and fertilizers, are applied to land or crops through ~~and on the farm~~ an irrigation system.

Approved April 12, 1989  
Filed April 13, 1989

\* NOTE: Section 4-35-13 was also amended by section 8 of House Bill No. 1475, chapter 89.

\*\* NOTE: Section 4-35-19 was also amended by section 14 of House Bill No. 1475, chapter 89.

## CHAPTER 89

HOUSE BILL NO. 1475  
(Representatives O'Shea, Brokaw)  
(Senators Krauter, Keller, Freborg)

**PESTICIDE APPLICATORS AND DEALERS**

AN ACT to amend and reenact subdivision a of subsection 4 of section 4-35-05, subsection 3 of section 4-35-06, sections 4-35-08, 4-35-09, 4-35-10, 4-35-11, 4-35-12, 4-35-13, subsection 3 of section 4-35-14, sections 4-35-15, 4-35-16, 4-35-17, 4-35-18, subsections 1 and 2 of section 4-35-19, section 4-35-22, subsection 7 of section 4-35-24, and section 4-35-28 of the North Dakota Century Code, relating to certification of pesticide applicators and distribution of funds; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subdivision a of subsection 4 of section 4-35-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. "Certified applicator" means any individual who is certified ~~or licensed~~ under this chapter as authorized to use or supervise the use of any restricted use pesticide covered by ~~his~~ the applicator's certification.

SECTION 2. AMENDMENT. Subsection 3 of section 4-35-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The board, in ~~promulgating regulations~~ adopting rules under this chapter, shall prescribe standards and requirements for the ~~licensing and~~ certification of applicators of restricted use pesticides. These standards ~~shall~~ must relate to the use and handling of pesticides. In determining these standards and requirements, the board shall take into consideration standards and requirements prescribed by the environmental protection agency.

SECTION 3. AMENDMENT. Section 4-35-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-08. Classification of ~~licenses~~ certificates. The board may classify commercial ~~licenses~~ certificates to be issued under this chapter. Such classifications may include, ~~but not be limited to,~~ pest control operators, ~~wood treaters,~~ ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any ~~licensee~~ applicator to apply restricted use pesticides or to the use of restricted use pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that ~~no~~ a person may be required to pay

\* NOTE: Section 4-35-05 was also amended by section 1 of Senate Bill No. 2508, chapter 88.

an additional ~~license~~ fee if such person desires to be ~~licensed~~ certified in one or more of the ~~license~~ classifications provided for by the board under the authority of this section.

\* SECTION 4. AMENDMENT. Section 4-35-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-09. Commercial applicator's ~~license~~ certification.

1. No person who would be a commercial applicator if certified may purchase, use, or supervise the use of a restricted use pesticide without a ~~commercial applicator's license issued by a county treasurer, unless exempted by this chapter, and without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board. The board shall require an annual fee of twenty dollars for each commercial applicator's license issued which is to be paid to the county treasurer, who shall deposit the fee in the county general fund. The license expires on December thirty first of each year.~~
2. An individual may be certified as a commercial applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the cooperative extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the ~~cooperative~~ North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications he has applied for after examination as the board requires ~~by regulation~~, and the applicant meets all other requirements of this chapter, the ~~county treasurer of the appropriate county~~ North Dakota state university extension service shall issue a commercial applicator's ~~license~~ certificate limited to the classifications the applicant is qualified in.
4. If certification is not to be issued as applied for, the ~~cooperative~~ North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons ~~therefor~~ for not issuing the certification. Individuals ~~licensed~~ certified pursuant to this section are deemed certified commercial applicators for the use of restricted use pesticides.

SECTION 5. AMENDMENT. Section 4-35-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-10. Expiration of certification - Renewal. Any A certificate issued under section 4-35-09 expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board shall require a person holding a current valid license may renew such license for the next year without taking another certificate to take an examination unless within the three-year period if the board determines additional knowledge related to classifications for which the applicant has applied

\* NOTE: Section 4-35-09 was also amended by section 2 of Senate Bill No. 2508, chapter 88.

makes a new examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to use pesticides safely and properly.

SECTION 6. AMENDMENT. Section 4-35-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-11. Nonresident application - Designation of agent for service of process. Any nonresident applying for a license certification as an applicator or dealer under this chapter to operate in the this state of North Dakota shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and the power of attorney must be so prepared and in such form as to render effective the jurisdiction of the courts of the this state of North Dakota over the nonresident applicant; provided, however, that any nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the secretary of state as such agent. The secretary of state is allowed such fees therefor as provided by law for designating resident agents. The nonresident must be furnished with a copy of the designation of the secretary of state or of a resident agent. The copy will be duly certified by the secretary of state.

SECTION 7. AMENDMENT. Section 4-35-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-12. Pesticide dealer license certification.

1. It is unlawful for any person to distribute or sell restricted use pesticides or assume to act as a restricted use pesticide dealer, at any time, without first having obtained an annual license certification from the county treasurer North Dakota state university extension service, or the service's designee in each the county in which the applicant operates his principal place of business; which license expires on December thirty-first of each year; A license is required for each location or outlet located within this state from which restricted use pesticides are distributed; provided that any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license from any county treasurer for his principal out-of-state location or outlet.
2. Application for a license certificate must be accompanied by a ten dollar annual license examination fee set by the board and must be on a form prescribed by the board. The board shall promulgate regulations adopt rules governing service of process on members of corporations, partnerships, or associations, and governing the listing of membership in such organizations. The application shall also state the address of each outlet to be licensed, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board.



3. ~~The provisions of this section do not apply to any federal, state, county, or municipal agency or other political subdivision which provides pesticides only for its own programs.~~
4. ~~The board shall require each pesticide dealer to demonstrate to the county extension agent North Dakota state university extension service or the service's designee knowledge of pesticide laws and regulations; pesticide hazards to humans, animals, and the environment; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination, after which the county treasurer shall issue a license of qualification or meeting other requirements within each classification for which certification is sought as prescribed by the board.~~
5. ~~4.~~ Each restricted use pesticide dealer is responsible for the acts of each person employed by ~~him~~ the dealer in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of such pesticides. The dealer's license certification is subject to denial, suspension, or revocation, after a hearing, for any violation of this chapter, whether committed by the dealer, or by the dealer's officer, agent, or employee.
6. ~~5.~~ Any A certificate issued under this section expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board may require any person holding a current valid license may renew such license for the next year without taking another certificate to take an examination unless within the three-year period if the board determines additional knowledge related to pesticides makes a new additional examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to distribute pesticides safely and properly.

\* SECTION 8. AMENDMENT. Section 4-35-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-13. Application of act to governmental entities ~~—Public operator's license required.~~

1. ~~All federal agencies, state agencies, municipal corporations, and any other governmental agencies, or public utilities, are subject to the provisions of this chapter and rules adopted thereunder concerning the application of restricted use pesticides.~~
2. ~~The county treasurer shall issue a limited license, without fee, to a public operator who has qualified by examination as prescribed by the board for such license. The public operator's license is valid only when the operator is acting as an operator applying or supervising application of restricted use pesticides used by the entities listed in subsection 1.~~

SECTION 9. AMENDMENT. Subsection 3 of section 4-35-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

\* NOTE: Section 4-35-13 was also amended by section 3 of Senate Bill No. 2508, chapter 88.

3. The board shall determine by regulation rule methods to evaluate the competence of private applicators and provisions for reevaluation as advances in technology warrant, or as necessary to assure a continuing level of competence and ability to use pesticides safely and properly. The cooperative North Dakota state university extension service, or its designee, in the county of the residence of the applicant shall issue a certificate, ~~without fee,~~ to any private applicator who has qualified as prescribed by the board. However, the cooperative North Dakota state university extension service, or its designee, may require any applicant required to be licensed or certified under this chapter to pay a reasonable charge, not greater than the cost to the cooperative North Dakota state university extension service, for materials provided to the applicant for training and education.

SECTION 10. AMENDMENT. Section 4-35-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-15. Unlawful acts - Grounds for denial, suspension, or revocation of a license or certification. The commissioner may, after opportunity for a hearing, deny, suspend, revoke, or modify any provision of any license or certification issued under this chapter, if the commissioner finds that the applicant or the holder of a license or certification has committed any of the acts enumerated in this section. Each of the following acts is a violation of this chapter, whether committed by an applicant, holder of a license or certification, or any other person applying or using pesticides, if the person:

1. Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification.
2. Made a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Applied materials known by ~~him~~ that person to be ineffective or improper.
4. Operated faulty or unsafe equipment.
5. Operated in a faulty, careless, or negligent manner.
6. Neglected, or, after notice, refused to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the commissioner.
7. Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required.
8. Made false or fraudulent records, invoices, or reports.
9. Operated unlicensed equipment in violation of section 4-35-17.
10. Used fraud or misrepresentation in making an application for, or for renewal of, a license or certification.

11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued ~~license~~ or certification.
12. Aided or abetted a ~~licensed certified~~ or an ~~unlicensed uncertified~~ person to evade the provisions of this chapter, conspired with such a ~~licensed certified~~ or an ~~unlicensed uncertified~~ person to evade the provisions of this chapter, or allowed ~~his license or the person's~~ certification to be used by another person.
13. Knowingly made false statements during or after an inspection concerning any infestation of pests found on the land.
14. Impersonated any federal, state, county, or city inspector or official.
15. Distributed any restricted use pesticide to any person who is required by law or ~~regulations promulgated under such law~~ rule to be certified to use or purchase such restricted use pesticide unless such person or his agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.
16. Bought, used, or supervised the use of any restricted use pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted therefrom.
17. Applied any economic poison which is not registered pursuant to the provisions of chapter 19-18.

SECTION 11. AMENDMENT. Section 4-35-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-16. ~~Licensees~~ Commercial applicators to keep records - Duration - Submission to commissioner. The board shall require ~~licensees~~ the holders of ~~certificates~~, except private applicators, to maintain records with respect to applications and sales of restricted use pesticides. Such relevant information as the board may deem necessary may be specified by ~~regulation~~ rule. The records must be kept for a period of three years from the date of the application or sale of the restricted use pesticide to which the records refer. Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

SECTION 12. AMENDMENT. Section 4-35-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-17. License plates for equipment. The board may require all motor vehicles, as defined in chapter 39-01, which are used for the application of restricted use pesticides to be identified by a license plate or decal furnished by the board. Such license plate or decal must be issued at no cost to the ~~licensee certified applicator~~, and must be affixed to the vehicle as prescribed by the board. This section must not be interpreted to apply to aircraft engaged in aerial spraying which are licensed under section 2-05-18.

SECTION 13. AMENDMENT. Section 4-35-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-18. Reciprocal agreement. The ~~cooperative~~ North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to use restricted-use pesticides under a plan substantially similar to this chapter. Such a certification may be suspended or revoked in the same manner and on the same grounds as ~~licenses and~~ certifications pursuant to this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

\* SECTION 14. AMENDMENT. Subsections 1 and 2 of section 4-35-19 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The ~~licensing and~~ certification requirements of this chapter do not apply to any person applying pesticides ~~which~~ that are not classified for restricted use.
2. The provisions of this chapter relating to ~~licenses and~~ certification requirements do not apply to a competent person applying restricted use pesticides under the direct supervision of a certified applicator, unless the pesticide labeling requires that a certified applicator personally applies the particular pesticide. A pesticide is considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place that the pesticide is applied.

SECTION 15. AMENDMENT. Section 4-35-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-22. Subpoenas. The commissioner may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records pertaining to pesticide applications and sales in the state in any hearing affecting the authority or privilege granted by a ~~license or~~ certification issued under the provisions of this chapter.

SECTION 16. AMENDMENT. Subsection 7 of section 4-35-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. If a civil penalty pursuant to section 4-35-23 is imposed by the commissioner of agriculture 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. Additionally, the commissioner may suspend or revoke a ~~license or~~ certification issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed.

SECTION 17. AMENDMENT. Section 4-35-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-28. Disposition of funds. All moneys received by the board under the provisions of this chapter must be deposited ~~with the state treasurer~~ to the credit of the ~~general~~ certification and training fund under the control of the board.

SECTION 18. EFFECTIVE DATE. This Act becomes effective on January 1, 1990.

Approved April 10, 1989  
Filed April 11, 1989

\* NOTE: Section 4-35-19 was also amended by section 4 of Senate Bill No. 2508, chapter 88.

## CHAPTER 90

SENATE BILL NO. 2360  
(Thane)

## PESTICIDE LOSS REPORTS

AN ACT to amend and reenact subsection 2 of section 4-35-21 and section 4-35-21.1 of the North Dakota Century Code, relating to reports of loss through pesticide application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 4-35-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Any person claiming damages from a pesticide application inflicting damage on property ~~other than property within the target area of the pesticide application~~, except where the claimant was the operator or applicator of the pesticide, shall report the loss in accordance with this chapter. Where damage is alleged to have occurred and the claimant has filed a report of loss in accordance with this chapter, the claimant shall permit the commissioner, the applicator, and ~~his the applicator's~~ representatives to observe, during reasonable hours, the lands or ~~nontarget organism~~ property alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands automatically bars the claim against the applicator. The number of applicator's representatives who may make an observation under this subsection may be limited by the board.

SECTION 2. AMENDMENT. Section 4-35-21.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-21.1. Reports of loss through pesticide application required.

1. No civil action may be commenced arising out of the application of any pesticide by any applicator inflicting damage on property ~~other than property within the target area of the pesticide application~~; unless the claimant has filed a verified report of loss with the commissioner of agriculture, ~~together with proof of service of the verified report of loss upon the applicator allegedly responsible and; if the claimant is not the person for whom the work was done;~~ then also the person for whom the work was done, within a period of sixty days from the occurrence of the loss or within sixty days from the date the claimant knew the loss had occurred. ~~If the damage is alleged to have been occasioned to growing crops, the report must be filed prior to the time when fifty percent of the crop was harvested. If, however, the applicator does not inform the claimant of the legal requirements for the claimant to file a verified report of loss, the claimant has one year from the date of~~

- the incident to file a verified report of loss, within sixty days from the date the claimant knew or reasonably should have known of the damage:
- a. The claimant has served the applicator allegedly responsible for damage with a verified report of loss;
  - b. If the claimant is someone other than the person employing the applicator alleged to be responsible for the damage, the claimant has served the person who employed the applicator allegedly responsible for the damage with a verified report of loss; and
  - c. The claimant has mailed or delivered to the commissioner of agriculture a verified report of loss together with proof of service of the report required by subdivision a and the report required by subdivision b, if applicable.
2. Notwithstanding the provisions of subsection 1, if damage is alleged to have occurred to growing crops, the report must be filed prior to the time fifty percent of the field is harvested or within sixty days from the date the claimant knew or reasonably should have known, whichever occurs first.
3. The applicator must provide anyone who alleges damage with information of this section for filing a verified report and that timely filing of a report is a prerequisite to any civil action. Failure to provide such information, in addition to the penalties of this chapter, may be grounds for revocation of the applicator's certification and, in addition, the sixty-day limitation of this section does not apply.
4. No verified report of loss is required when the claimant was the operator or applicator of the herbicide, insecticide, fungicide, or agricultural chemical.

Approved April 12, 1989  
Filed April 13, 1989