

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

HOUSE BILL NO. 1290
(Representatives Meyer, Nicholas, Froelich)
(Senators Kinnoin, Solberg, Wanzek)

AN ACT to create and enact a new chapter to title 36 of the North Dakota Century Code, relating to a state meat inspection program; to provide a penalty; to provide for a transfer; to provide a statement of legislative intent; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 36 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Adulterated" means a whole carcass, part of a carcass, or meat food product:
 - a. That bears or contains a poisonous or harmful substance that may render it injurious to health;
 - b. That bears or contains a chemical pesticide that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - c. That bears or contains a food or color additive that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - d. That contains a filthy, putrid, or decomposed substance or is for any other reason unfit for human food;
 - e. That has been prepared, packed, or held under unsanitary conditions;
 - f. That is wholly or partly the product of an animal that has died in a manner other than slaughter;
 - g. The container of which is wholly or partly composed of a poisonous or harmful substance that may make the contents harmful to health;
 - h. That has been intentionally subjected to radiation, unless the use of the radiation conformed with a regulation or exemption in effect under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - i. That is damaged or inferior and that damage or inferiority has been concealed; or
 - j. That has had a substance added to it or mixed or packed with it so as to increase its bulk or weight, or make it appear better than or of greater value than it is.
2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, ratite, horses, equines, and other large domesticated animals, not including poultry.
3. "Commissioner" means the commissioner of agriculture.
4. "Container" includes a can, pot, tin, canvas, or other receptacle containing a meat food product.

5. "Custom processing" means slaughtering, eviscerating, dressing, or processing an animal or processing meat products for the owner of the animal or of the meat products, if all meat products derived from the custom operation are returned to the owner of the animal or of the meat products.
6. "Intrastate commerce" means commerce within this state.
7. "Meat food product" means a product usable as human food and made wholly or in part from meat or a portion of an animal carcass. The term does not include any product that contains meat or other portions of the carcasses of animals in a relatively small proportion or which historically have not been considered by consumers as a product of the meat food industry, and which is not represented as a meat food product.
8. "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

Inspectors - Appointments - Duties.

1. The commissioner shall appoint inspectors to examine and inspect meat food products prepared solely for intrastate commerce in a slaughtering, meat canning, salting, packing, or similar establishment. The inspections must take place at any time during which the slaughtering of animals or the preparation of food products is being conducted. Upon completing an inspection, the inspector shall mark, stamp, tag, or label the product "North Dakota inspected and passed" if it is unadulterated or as "North Dakota inspected and condemned" if the product is found to be adulterated.
2. The commissioner shall appoint inspectors to examine and inspect each slaughtering, meat canning, salting, packing, or similar establishment in which meat food products are prepared solely for intrastate commerce. The commissioner shall adopt rules of sanitation applicable to these establishments. If any facility does not meet the sanitary conditions required by the commissioner, the commissioner may not allow any meat food product from that facility to be labeled, marked, stamped, or tagged as "North Dakota inspected and passed".
3. Meat food products inspected and passed under this chapter may be sold at retail in this state.
4. Neither the commissioner, nor any inspector appointed by the commissioner, may undertake any activity that is duplicative of an activity performed by meat inspectors of the United States department of agriculture.

Access by inspectors - Penalty.

1. The commissioner and any authorized representative of the commissioner have access to:
 - a. Any place where food or any other product, the manufacture, sale, use, or transportation of which is restricted, regulated, or prohibited by a law of this state, is or may be manufactured, prepared, stored, sold, used, transported, offered for sale or transportation, or possessed with intent to use, sell, or transport;
 - b. Any place where an animal is pastured or stabled;
 - c. Any car or other carriage used to transport a meat food product or an animal;
 - d. Any place where food is or may be cooked, prepared, sold or kept for sale to or for the public or distributed as a part of the compensation of an employee or agent; and
 - e. Any place where a meat food product may be manufactured, sold, used, offered for sale or transportation, or possessed with intent to use, sell, or transport.

2. The commissioner and any authorized representative of the commissioner may inspect any container believed to hold food, a food ingredient, or some other product, the manufacture, use, sale, or transportation of which is restricted, regulated, or forbidden by state law, and may take samples from it for analysis.
3. It is a class A misdemeanor for any person to obstruct entry or inspection under this chapter or to fail, upon request, to assist in an inspection authorized by this chapter.

Marks and labels.

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

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

Prohibitions. A person may not:

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

Official marks and certificates - Required authorization. A person may not:

1. Cast, print, or otherwise make a device containing an official mark, simulation of an official mark, label bearing a mark or simulation, or form of official certificate or simulation, without authorization from the commissioner;
2. Forge an official device, mark, or certificate;
3. Use a real or simulated official device, mark, or certificate, or alter, detach, deface, or destroy an official device, mark, or certificate, without authorization from the commissioner;

4. Fail to use an official device, mark, or certificate if appropriate;
5. Knowingly possess, without promptly notifying the commissioner, a counterfeit, simulated, forged, or improperly altered official certificate, device, or label, or a whole carcass or part of a carcass bearing a counterfeit, simulated, forged, or improperly altered official mark;
6. Knowingly make a false statement in a certificate; or
7. Knowingly represent falsely that an article has been inspected and passed, or exempted, under this chapter.

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

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

Individual and custom processing.

1. This chapter does not apply to an individual processing the individual's own animals and the individual's preparation and transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products provided the animals are for the exclusive use of the individual, members of the individual's household, the individual's nonpaying guests, and employees.
2. This chapter does not apply to the custom processing by a person of animals delivered by the owner for processing, and the preparation or transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products of the animals, provided that the products are to be used exclusively in the household of the animal's owner by the owner and members of the owner's household, nonpaying guests, and employees.
3. A custom processor may not engage in the business of buying or selling whole carcasses, parts of carcasses, or meat food products of animals usable as human food unless the whole carcasses, parts of carcasses, or meat food products have been inspected and passed and are identified as inspected and passed by the commissioner or the United States department of agriculture.

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

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

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

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

Records - Examination. Upon notice by the commissioner, any person subject to the recordkeeping requirements of this chapter shall give the commissioner and the United States department of agriculture access to their places of business at all reasonable times and an opportunity to examine the facilities, inventory, and records of the business, to copy business records, and to take reasonable samples of their inventory upon payment of the fair market value of the samples.

Records - Retention. Any person subject to the recordkeeping requirements of this chapter shall maintain the records for the period prescribed by the commissioner.

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

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

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

Refusal or withdrawal of inspection.

1. For the length of time the commissioner considers necessary to carry out the purposes of this chapter, the commissioner may refuse to provide, or withdraw, inspection services from an establishment if after a hearing the commissioner determines that the recipient or potential recipient is unfit to engage in any business requiring inspection under this chapter because the recipient, potential recipient, or anyone responsibly connected with the recipient or potential recipient has been convicted of:
 - a. An offense determined by the commissioner to have a direct bearing on the person's ability to serve the public in a business requiring inspection under this chapter, or the commissioner determines the person is not sufficiently rehabilitated under section 12.1-33-02.1;
 - b. More than one violation of a law based on the acquisition, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food; or
 - c. Fraud in connection with transactions involving food.
2. For the purpose of this section anyone responsibly connected with a business means an individual who is a partner, officer, director, holder, or owner of ten percent or more of its voting stock or an employee in a managerial or executive capacity.

Detention of animals or products. If an inspector finds a whole carcass, part of a carcass, or meat food product, a product exempted from the definition of a meat food product, or a dead, dying, disabled, or diseased animal on premises where it is held for purposes of, during, or after distribution in intrastate commerce, and the inspector reasonably believes that the article is adulterated or misbranded and is usable as human food, or that it has not been inspected, in violation of this chapter or federal law, or that the article or animal has been or is intended to be distributed in violation of this chapter or federal law, the inspector may detain the article for up to twenty days pending a hearing or notification of federal authorities having jurisdiction over the article or animal. The article may not be moved by any person from the place at which it was located when detained, until released by the commissioner. The commissioner may require all official marks to be removed from the article or animal before it is released unless the commissioner is satisfied that the article or animal is eligible to retain the official marks.

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

1. The article is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter;
2. The article is usable as human food and is adulterated or misbranded; or
3. The article is in any other way violative of this chapter.

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

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

Powers of commissioner. For the purposes of this chapter, the commissioner may:

1. Gather and compile information concerning and investigate the organization, business, conduct, practices, and management of a person in intrastate commerce and the person's relation to other persons.
2. Require that a person engaged in intrastate commerce file with the commissioner, in the form and manner prescribed by the commissioner, annual and special reports or written answers to specific questions, giving the commissioner the information the commissioner requires about the organization, business, conduct, practices, management, and relation to other persons, of the person filing the reports or answers.
3. Examine and copy documentary evidence of a person being investigated or being proceeded against. A person may not refuse to submit the commissioner, for inspection and copying, any documentary evidence of a person subject to this chapter in the person's possession or control.
4. A person required by this chapter to file an annual or special report may not fail to do so within the time fixed by the commissioner, and continue the failure for thirty days after notice of failure to file.

5. Adopt rules to implement this chapter, including establishing inspection fees for providing inspection services under this chapter.

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

General penalty. Violation of this chapter or a rule adopted under this chapter is a class A misdemeanor. The commissioner is not required to report for prosecution or for the institution of injunctive proceedings a minor violation of this Act if the commissioner believes that the public interest will be adequately served by a suitable written warning.

SECTION 2. APPROPRIATION. There is hereby appropriated from special funds derived from federal funds and other income, the sum of \$454,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of implementing and operating the state meat inspection program for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 3. TRANSFER. The Bank of North Dakota shall transfer the sum of \$250,000 from uncommitted funds of the agricultural partnership in assisting community expansion fund to the agriculture department's operating fund for the purpose of implementing and operating the state meat inspection program for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 4. ESTABLISHMENT OF STATE MEAT INSPECTION RULES - TEMPORARY COMMITTEE. The agriculture commissioner shall appoint a committee to assist in establishing administrative rules for the state meat inspection program which meet the requirements of the United States department of agriculture for the biennium beginning July 1, 1999, and ending June 30, 2001. The committee consists of the agriculture commissioner or the commissioner's designee; the vice president of agricultural affairs at North Dakota state university; the state veterinarian or the veterinarian's designee; and four individuals appointed by the agriculture commissioner, one of whom represents producers, one of whom represents processors, and two consumer members. The agriculture commissioner or the commissioner's designee is chairman of the committee. Each appointed member is entitled to receive sixty-two dollars and fifty cents per day as compensation for time actually spent devoted to the duties as provided in this section and is entitled to receive necessary expenses in the same manner and amounts as state officials for attending meetings and performing other functions of the office.

SECTION 5. LEGISLATIVE INTENT. It is the intent of the fifty-sixth legislative assembly that the agriculture commissioner complete the promulgation of rules for the state meat inspection program and begin operating the program by July 1, 2000; however, if it is not possible to begin by July 1, 2000, the commissioner may begin the program at a later date but not later than January 1, 2001.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1290.

House Vote: Yeas 94 Nays 2 Absent 2

Senate Vote: Yeas 47 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State