

LIVESTOCK

CHAPTER 317

HOUSE BILL NO. 1276

(Representative Berg)

(Senator Solberg)

LIVESTOCK REGULATION

AN ACT to create and enact a new section to chapter 36-01, a new section to chapter 36-05, and a new section to chapter 36-14 of the North Dakota Century Code, relating to livestock unfit for sale and animals imported into the state; to amend and reenact sections 36-01-05, 36-01-07, 36-01-08, 36-01-08.1, 36-01-08.3, 36-01-08.4, 36-01-13, 36-01-14, 36-01-28, 36-05-01, subsection 4 of section 36-05-13.2, sections 36-07-07, 36-14-10, 36-14-20, 36-14-21, 36-15-01, 36-15-02, 36-15-08.1, 36-15-09, 36-15-14, 36-15-19, 36-15-21, 36-15-22, and subsection 1 of section 36-21.1-06 of the North Dakota Century Code, relating to the board of animal health, livestock auction markets, rendering plants, contagious and infectious livestock diseases, tuberculosis and brucellosis eradication in animals, and humane treatment of animals; to repeal sections 36-14-04, 36-14-05, 36-14-06, 36-14-07, 36-15-08, and 36-15-12 of the North Dakota Century Code, relating to horses, cattle, sheep, and swine imported into the state, compensation for owners of animals infected with tuberculosis or paratuberculosis, and bovine tuberculosis and brucellosis funds; to provide a penalty; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-01-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-05. State veterinarian - Appointment. The commissioner shall, with the consent of the board, appoint the state veterinarian and deputy state veterinarian. ~~However, the commissioner's first appointments to the positions of state veterinarian and deputy state veterinarian must be the persons serving in those capacities for the board of animal health on the day before August 4, 1995.~~ The state veterinarian and deputy state veterinarian must be competent and skilled veterinarians and graduates of a veterinary medicine and surgery course at a recognized college or university. The commissioner may remove the state veterinarian or deputy state veterinarian for cause. At the request of the board, the commissioner shall deputize persons licensed to practice veterinary medicine in this state as assistant state veterinarians. Deputized persons shall serve during periods of emergency and only for the time period determined by the board.

SECTION 2. AMENDMENT. Section 36-01-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-07. ~~Bacteriologist and consulting~~ Consulting veterinarian of board - Duties - Compensation. The professor of veterinary science of the ~~North Dakota~~

state university of agriculture and applied science shall board shall choose a veterinarian on staff at North Dakota state university to act as bacteriologist and consulting veterinarian to the board. The bacteriologist term of appointment is open and at the will of the board. At the discretion of the board, the consulting veterinarian, or any United States department of agriculture approved laboratory shall make bacteriological or pathological diagnostic examinations of all diseased animals or portions thereof or of such material as may be forwarded to the bacteriologist by the board or the commissioner's duly authorized agents. The bacteriologist shall furnish material for the diagnosis of contagious diseases and instruction as to its use. For services, the bacteriologist consulting veterinarian or United States department of agriculture approved laboratory is entitled to receive such compensation as the commissioner may deem proper, which must be paid out of the fund appropriated for the use of the commissioner.

SECTION 3. AMENDMENT. Section 36-01-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-08. Duties - Rules - Fees. The board shall protect the health of the domestic animals and nontraditional livestock of this state, 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 and nontraditional livestock of this state, and shall prevent the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests. For the purpose of preventing the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests, the board may, by rule, quarantine any such animal, cause any such animal to be killed, regulate or prohibit the arrival in or departure from this state of any such animal, and at the cost of the owner thereof, the board may detain any animal found to be in violation of any rule or prohibition. Any matter relating to the health and welfare of domestic animals and nontraditional livestock and not specifically assigned by statute to another entity is deemed to be within the authority of the board. The board may make rules to carry into effect the purposes of this chapter and other duties prescribed in this title. The commissioner shall collect six cents for each brucellosis tag and each identification tag and eight dollars for each health book the commissioner distributes. The fees collected by the commissioner must be deposited in the state general fund.

²³⁴ **SECTION 4. AMENDMENT.** Section 36-01-08.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-08.1. ~~Captive wildlife~~ Nontraditional livestock license - Fee. The board of animal health may require a license for ~~captive wildlife~~ nontraditional livestock maintained within this state. The annual fee for a license for a bird species required to be licensed is ~~five~~ seven dollars. The maximum annual fees for bird species licenses to be paid by a person holding more than one bird species license is ~~twenty-five~~ forty dollars. The annual fee for a license for any other species required to be licensed is ~~ten~~ fifteen dollars. The maximum annual fees for nonbird species licenses to be paid by a person holding more than one nonbird species license is ~~seventy-five~~ one hundred dollars.

²³⁴ Section 36-01-08.1 was also amended by section 52 of House Bill No. 1045, chapter 50.

SECTION 5. AMENDMENT. Section 36-01-08.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-08.3. Duties - Evaluations - Report. The board and the commissioner shall conduct performance evaluations of the state veterinarian and any assistant state veterinarians; review the short-term and the long-term role and mission of the board and its employees; review alternatives for the enhancement of, and the efficient delivery of, services provided by the board and its employees; and evaluate the consolidation and cooperation with the department of agriculture. The board shall report to the governor and the legislative council before September 1, 1996, and each year thereafter.

SECTION 6. AMENDMENT. Section 36-01-08.4 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-08.4. Ownership of skunks and raccoons prohibited - Exception - Rules - Penalty on primates, wolves, and wolf hybrids. ~~No~~ A person may not keep a skunk or raccoon in captivity. This section does not apply to a zoo licensed by the regulatory enforcement and animal care program of the animal and plant health inspection service of the United States department of agriculture. The state veterinarian shall confiscate and dispose of any animal kept in violation of this section. The board shall adopt rules governing the keeping of a primate, wolf, or wolf hybrid in captivity and to implement this section. As used in this section, "primate" does not include a human being; "wolf" means any animal of the species *canis lupus*; and "wolf hybrid" means any animal that is any part wolf. ~~A person who willfully violates this section is guilty of a class B misdemeanor.~~

SECTION 7. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

Confiscation of nontraditional livestock held in violation of this chapter.

1. The state veterinarian, or the state veterinarian's designee, a police officer, sheriff, or other law enforcement officer may seize any nontraditional livestock located on private property from the animal's owner or custodian if probable cause exists to believe that the animal is being held in violation of this chapter or rules adopted under this chapter. Unless it is shown that there exists an exigency or occasion as to require the immediate confiscation, an animal may not be seized until a hearing is held allowing the owner or custodian to show cause why the animal should not be confiscated. If exigent circumstances exist, an ex parte order may be issued authorizing seizure of the animal if probable cause appears to the court that:
 - a. The animal is in immediate danger of being released into the wild, destroyed, concealed, removed from the state, or sold or given to an innocent party.
 - b. The animal is infected with any contagious or infectious disease capable of being spread to animals or humans.

All animals seized must be held subject to the order of a court of competent jurisdiction. Whenever probable cause exists for a preconfiscation hearing, the owner or custodian of the animal must be notified in writing that, on the day fixed for a hearing, which may not be less than three days from the date of receipt of notice, the owner or

custodian may appear or show cause why the animal should not be confiscated. Notice must be delivered to the owner or custodian by personal service or registered mail to that person's last-known mailing address. An affidavit of service or the post-office registration receipt signed by the owner or custodian is prima facie evidence of service of notice.

2. Upon request by the person confiscating the animal, the board, the state department of health, the game and fish department, any county sheriff's office, city police department, or other peace officer may provide assistance in any action to seize, impound, confiscate, or quarantine any animal suspected of being held or possessed in violation of this title.
3. A court having jurisdiction of an alleged offense under this title or rules adopted under this chapter may order the disposition of all animals that have been confiscated. This order may be entered only after a hearing duly had upon proper notice to the owner or custodian and after a finding by the court that the animal was being held or possessed in violation of this title at the time it was seized.
4. When any nontraditional livestock is found to be held or possessed contrary to this chapter, the court may:
 - a. Order the animal to be forfeited by its owner or custodian and that the animal be destroyed or disposed of otherwise. The court may order disposition to a zoo licensed by the animal care program of the animal and plant health inspection service of the United States department of agriculture if the zoo requests possession upon confiscation of the animal; or
 - b. Order the return of custody to the owner or custodian upon compliance with all applicable state and local regulations governing ownership and possession of nontraditional livestock, including payment of any license fees.

The court may award reasonable costs of seizure, care, and keeping pending disposition, and attorneys' fees to the agency bringing an action to confiscate any nontraditional livestock under this title.

5. Subject to section 32-12.2-02, the owner of an animal may bring a claim for money damages, and may recover the amount of actual damages incurred during the time of seizure, if the owner establishes that before the animal was seized under this chapter, the agency knew or recklessly failed to determine that the animal, at the time of seizure, was lawfully owned and licensed in this state or that the animal was a domestic animal not subject to seizure under this chapter.

SECTION 8. AMENDMENT. Section 36-01-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-13. Diseased animal to be reported - Records exempt.

1. Any person who discovers, suspects, or has reason to believe that any domestic animal or nontraditional livestock belonging to that person or belonging to any other person, is affected by any reportable contagious

disease as defined by the board, shall report that knowledge, suspicion, or belief to:

- ~~4. The the state veterinarian or any other agent or representative of the commissioner; or~~
- ~~2. Any law enforcement officer of the county or city in which the animal is present. If a report is made to a law enforcement officer under this subsection, the officer shall report the facts immediately to the commissioner or the state veterinarian and failure to do so constitutes a violation of this chapter.~~
2. The records are exempt from open records laws, except those records concerning diseases that are specifically regulated by mandatory control and eradication programs or to protect public health.

SECTION 9. AMENDMENT. Section 36-01-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-14. Protest against killing of diseased animal - Examination of animal by experts - Appointment of experts. Whenever a domestic animal or nontraditional livestock has been determined to be affected with a contagious or infectious disease and has been ordered killed by the board, the state veterinarian, or an agent or representative of the board, the owner or keeper of the animal must be notified of the order. Notice may be accomplished by sending, by registered mail, a copy of the order to the owner or keeper of the animal, or by having an agent or representative of the board; ~~or a law enforcement officer,~~ serve a copy of the order upon the owner or keeper of the animal. Within twenty-four hours after receiving notice of the order, the owner or keeper may file a protest against the killing of the animal with the board or with the person who has ordered the animal killed. The protest must state under oath, that to the best of the knowledge and belief of the person making the protest, the animal is not infected with any contagious or infectious disease. An examination of the animal or laboratory reports 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 the experts must be persons learned in veterinary medicine and surgery and graduates of the veterinary course of a recognized college or university.

SECTION 10. AMENDMENT. Section 36-01-28 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-28. Enforcement orders - Administrative hearing - Penalty.

1. Except when otherwise ordered by a court of competent jurisdiction, the board may order any domestic animal or nontraditional livestock brought into this state which is not in compliance with the provisions of this chapter to be returned to the state of origin, or in the alternative, the board may order the animal slaughtered or destroyed. The board may grant an exception for any nontraditional livestock if a zoo licensed by the animal care program of the animal and plant health inspection service of the United States department of agriculture takes possession upon confiscation of the animal.
2. If, after a hearing, the board finds that a person has brought, kept, or received any domestic animal or nontraditional livestock in this state and the animal or livestock is not in compliance with the provisions of this

chapter or rules adopted under this chapter, a civil penalty not to exceed five thousand dollars per violation may be assessed against that person.

3. 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 adopted by the board of animal health, is guilty of a ~~class B misdemeanor~~ an infraction.

²³⁵ **SECTION 11. AMENDMENT.** Section 36-05-01 of the North Dakota Century Code is amended and reenacted as follows:

36-05-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

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

SECTION 12. A new section to chapter 36-05 of the North Dakota Century Code is created and enacted as follows:

Livestock unfit for sale. Livestock may not be offered for sale or sold at any licensed public livestock auction market if the livestock has a condition including the following:

1. Is infected with a disease that permanently renders the livestock unfit for human consumption;
2. Has severe neoplasia;
3. Has severe actinomycosis;
4. Is unable to rise to its feet by itself; or
5. Has an obviously fractured long bone or other fractures or dislocation of a joint that renders the livestock unable to bear weight on the affected limb without the limb collapsing.

If, in the judgment of a veterinarian licensed in this state and approved by the board of animal health, the livestock consigned and delivered on the premises of a livestock auction market is in any of the conditions described above, the veterinarian shall humanely euthanize the livestock or direct the consignor to immediately remove the

²³⁵ Section 36-05-01 was also amended by section 6 of House Bill No. 1337, chapter 321.

livestock from the premises of the livestock auction market. All expenses incurred for euthanasia and disposal of the livestock under the provisions of this section are the responsibility of the consignor. Collection of expenses is not the responsibility of the consignee.

SECTION 13. AMENDMENT. Subsection 4 of section 36-05-13.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section ~~36-04-07.4~~ 36-05-09.1;

SECTION 14. AMENDMENT. Section 36-07-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-07-07. Unloading chutes and vehicles used by rendering plant - Regulations governing. All unloading places or chutes used by a rendering plant or establishment must be on cement floors ~~which that~~ can be cleaned and disinfected. Every vehicle used for transporting carcasses of dead animals to a rendering plant or establishment must:

1. Be provided with a bed or tank not less than fifty inches [127 centimeters] in width which is all metal, metal lined, or watertight for at least six inches [15.24 centimeters] above the floor of the box or bed.
2. Have a metal lined endgate ~~which that~~ is hinged at the bottom of the bed or box and is fastened firmly to the top of the bed or box when closed.
3. Be so constructed that the sides, top, and endgate thereof will prevent flies and other insects from entering the vehicle.
4. Carry a tank filled with a ~~four percent~~ solution of ~~creosol~~ approved by the state veterinarian for use as a disinfectant; ~~or other disinfectant as prescribed by the rules adopted by the state board of animal health.~~
5. Be disinfected with the solution described in subsection 4 after it has been used for collecting a dead animal at a farm and before it enters upon any public highway of this state, and special attention must be given to all those parts of the vehicle which came in contact with the ground while upon the premises.
6. Be thoroughly washed and disinfected with the solution described in subsection 4 or with live steam, or both, after it has been unloaded at the rendering plant.

The operator of any such vehicle shall ~~disinfect himself~~ wash with disinfectant, paying special attention to ~~his~~ disinfecting the operator's hands and footwear, with the solution described in subsection 4 immediately after leaving any farm at which ~~he~~ the operator has collected the carcass of a dead animal.

SECTION 15. A new section to chapter 36-14 of the North Dakota Century Code is created and enacted as follows:

Animals imported into state to have certificate of veterinary inspection - Exception.

1. Except as otherwise provided by this chapter or by rule, all domestic animals and nontraditional livestock brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of all contagious and infectious diseases, and that the animals meet disease testing and vaccination requirements prescribed by rule. Animals originating in other countries must be tested for diseases, as determined by the board, until a risk assessment is completed for the disease. If the board determines that an unacceptable risk exists, the board may deny entry, require additional testing, or require a vaccination.
2. The requirement for a certificate of veterinary inspection is waived for cattle, sheep, or swine originating directly from a producer's premises and not diverted en route, if the waiver is approved by the state veterinarian and the cattle, sheep, or swine are delivered for sale directly to a licensed auction market or other premises approved by the state veterinarian.
3. The board may require certification indicating that animals entering this state from a foreign country and intended for human consumption have not been treated with drugs that are disallowed under federal law for use in animals intended for human consumption.
4. The board may adopt rules to implement this section.

SECTION 16. AMENDMENT. Section 36-14-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-14-10. Shipments of ~~cattle, swine, and sheep~~ animals for immediate slaughter. Shipments into this state of ~~cattle, swine, and sheep~~ animals for immediate slaughter may be permitted without a certificate of veterinary inspection only if the ~~livestock~~ animals are not diverted en route and are delivered directly to a slaughtering establishment approved by the commissioner of agriculture.

SECTION 17. AMENDMENT. Section 36-14-20 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-14-20. Duty of overseer of highways ~~or coroner~~ when carcass of dead animal is found - Fees - Recovery of expense. If the owner or person in charge of a dead animal fails to comply with the provisions of section 36-14-19, the overseer of highways; ~~or the county coroner in a district which has no overseer,~~ shall comply with the provisions of section 36-14-19 for the owner or person. If burial of the animal is permitted, the burial may be made upon the premises of the owner or person in charge of the animal at any place more than one thousand feet [304.8 meters] from any dwelling house or barn. The board of county commissioners shall allow in payment a sum for disposal services as it deems to be reasonable, and the sum must be paid as other moneys are paid for services rendered to the county. The owner of the animal is liable to the county for any amount paid out for disposal services. If the owner does not pay that amount within thirty days after written

demand for payment is made upon ~~him~~ the owner by the county auditor, the sum may be recovered in a civil action, and the judgment must include the costs of the suit and a reasonable attorney's fee to be fixed by the court. No property except absolute exemptions is exempt from sale for the payment of any such judgment. Any attorney's fee allowed by the court must be paid to the county if the action is brought by the state's attorney.

SECTION 18. AMENDMENT. Section 36-14-21 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-14-21. Enforcement orders - Administrative hearing - Penalty.

1. The board may order any domestic animal or nontraditional livestock brought into this state which is not in compliance with the provisions of this chapter to be returned to the state of origin, or in the alternative, the board may order the animal slaughtered or destroyed.
2. If, after a hearing, the board finds that a person has brought, kept, or received any domestic animal or nontraditional livestock in this state and the animals or livestock are not in compliance with the provisions of this chapter or rules adopted under this chapter, a civil penalty not to exceed five thousand dollars per violation may be assessed against that person.
3. Any person who knowingly violates any rule of the ~~state~~ 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~~ an infraction.

SECTION 19. AMENDMENT. Section 36-15-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Animals" means ~~neat cattle~~ bovine animals or bison.
2. "Board" means the state board of animal health.
3. "Diseased", when used to describe any animals, means animals infected with either bovine tuberculosis or ~~paratuberculosis (Johne's disease)~~ brucellosis.
4. The singular of any term imports the plural and the plural of any term includes the singular.

SECTION 20. AMENDMENT. Section 36-15-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-02. Notice of condemnation of diseased animal - Animal to be destroyed within fifteen days - Extension of time. Whenever any animal has been adjudged by the board to be infected with bovine tuberculosis or brucellosis, the board or its authorized agent shall serve a written notice of its decision upon the owner or keeper of the animal before the condemned animal is killed. The animal must be destroyed within fifteen days after notice of condemnation, in either a federal or state inspected slaughtering plant, or under the supervision of an agent of the board. The fifteen-day period may be extended by the state veterinarian if that person deems it

advisable due to the circumstances involved in each case, and the extension must be in writing. The notice must advise the owner or keeper of that person's right to protest against the diagnosis and determination of the board within twenty-four hours after the service of the notice upon that person. If no protest is made within such time by the owner or keeper of the condemned animal, it must be appraised in the manner provided in this chapter.

SECTION 21. AMENDMENT. Section 36-15-08.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

²³⁶ **SECTION 22. AMENDMENT.** Section 36-15-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-09. Return of appraisement - Payment of claims for diseased animals. The return of an appraisement made under this chapter must be in writing and signed by the board or by the agent thereof which made the appraisement, or by the members of the board of appraisers if a reappraisement is made after a protest, and by the owner of the condemned animal. The return must be certified by the commissioner of agriculture to the state auditor, who shall draw a warrant upon the state treasurer in favor of the owner of the animal. The amount of indemnity paid by this state, however, must be, in the case of an animal condemned because it is infected with bovine tuberculosis or paratuberculosis ~~brucellosis~~, one-third of the difference between the appraised value of the animal and the net value of the salvage received by the owner, however, the indemnity payments may not exceed twenty-five dollars for each grade animal or fifty dollars for each registered purebred animal, except, that if the federal government fails to provide an amount of indemnity equal to that provided by the state, the owner must be paid one-half of the difference between the appraised value of the animal and the net value of the salvage thereof. Before any indemnity payment is made for such registered purebred animals, a certificate of registration in a recognized herdbook must be submitted to the state veterinarian prior to the date set for slaughter of said animal. This state is not liable for indemnity under this chapter in excess of the amount appropriated for the payment of such indemnity by the legislative assembly and the state is not liable for indemnity for any animal killed during a biennium after the appropriation for such biennium has been exhausted.

SECTION 23. AMENDMENT. Section 36-15-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

²³⁶ Section 36-15-09 was also amended by section 8 of Senate Bill No. 2130, chapter 106.

36-15-14. Cattle Animals not to be permitted to enter state or area circumscribed by board for testing purposes. The ~~commissioner~~ state veterinarian shall enforce the tuberculin testing or the brucellosis testing of all cattle animals entering the state as prescribed by rule or in a circumscribed area as established by the board in accordance with the provisions of this chapter providing for the eradication of bovine tuberculosis or brucellosis, as the case may be, and the rules of the board relating to eradication. Whenever a circumscribed area is established by the board as an area in which all cattle animals are to be tuberculin tested or brucellosis tested, as the case may be, and the test is undertaken under the direction of the board, no other cattle animals may be permitted to enter the area except under a special permit and restrictions provided by the board unless:

1. If the animals in the area ~~is~~ are to be tuberculin tested, the cattle animals entering the area have been tuberculin tested under the direction of an agent of the board or are accompanied by a proper tuberculin test certificate ~~of veterinary inspection.~~
2. If the animals in the area ~~is~~ are to be brucellosis tested, the cattle animals entering the area have been brucellosis tested under the direction of an agent of the board or are accompanied by a proper brucellosis test certificate ~~of veterinary inspection.~~

SECTION 24. AMENDMENT. Section 36-15-19 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-19. Penalty for violation of provisions relating to testing of livestock animals. Any person who ~~refuses to assist in or~~ attempts to prevent the board or the commissioner from carrying out this chapter, or who violates any of the provisions of this chapter relating to the testing of cattle animals, is guilty of ~~a class B misdemeanor~~ an infraction.

SECTION 25. AMENDMENT. Section 36-15-21 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-21. Calfhod 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 calfhod vaccinated against brucellosis. Female cattle originating from free states that do not require North Dakota-origin female cattle to be calfhod brucellosis vaccinated are exempt from the requirements of this section. A person who brings cattle into this state from other free states that reciprocate shall prove that the cattle were located in that state for a period of at least sixty days. "Officially calfhod vaccinated" means a bovine female animal vaccinated against brucellosis under the supervision of a federal or state veterinary official or an accredited veterinarian within age limits prescribed by the board 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 may grant an exception 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 26. AMENDMENT. Section 36-15-22 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-22. Enforcement orders - Administrative hearing - Penalty.

1. The board may order ~~cattle~~ animals brought into the state which are not in compliance with the provisions of this chapter to be returned to their state of origin, or in the alternative, the board may order the ~~cattle~~ animals to be slaughtered or destroyed.
2. If, after a hearing, the board finds that a person has brought, kept, or received ~~cattle~~ animals in this state and the ~~cattle~~ animals are not in compliance with the provisions of this chapter or rules adopted under this chapter, a civil penalty not to exceed ~~two~~ five thousand ~~five hundred~~ dollars per violation may be assessed against that person.

SECTION 27. AMENDMENT. Subsection 1 of section 36-21.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any sheriff, police officer, licensed veterinarian, or investigator may take custody of, and care for any animal found abandoned, unjustifiably exposed to cold or inclement weather, or not properly fed and watered. Any sheriff or police officer may use reasonable means to enter a motor vehicle and remove an animal that has been left in the vehicle in violation of section 36-21.1-03.1. ~~It is a responsibility of such~~ A sheriff, police officer, licensed veterinarian, or investigator ~~to~~ may care for the ~~same~~ animal until it is redeemed by the owner and when necessary may deliver the animal to another person or facility to be sheltered, cared for, and furnished suitable food and drink. In all cases the owner, if known, must be immediately notified, or if the owner is unknown, notice must be given by publication in the manner prescribed by law. Such notice must inform the owner that such animal may be sold, or otherwise disposed of, pursuant to court order if the animal is not redeemed within five days after receiving the notice or after publication.

SECTION 28. REPEAL. Section 36-15-12 of the North Dakota Century Code and sections 36-14-04, 36-14-05, 36-14-06, 36-14-07, and 36-15-08 of the 1997 Supplement to the North Dakota Century Code are repealed.

SECTION 29. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying the state board of animal health, including its membership, its representation, and the nature and scope of its regulatory authority over nontraditional livestock. The legislative council shall report any findings, and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

Approved April 17, 1999
Filed April 19, 1999

CHAPTER 318

SENATE BILL NO. 2187

(Senators Solberg, Bowman, Tomac)
(Representatives Berg, DeKrey, Meyer)

FEEDLOT AND BRAND FEES AND ESTRAY INSPECTIONS

AN ACT to provide for a special fund; to amend and reenact sections 36-01-30, 36-05-12, 36-09-18, 36-22-03, 36-22-04, and 36-22-08 of the North Dakota Century Code, relating to feedlot registration fees, brand recording and inspection fees, and estray inspections; to repeal section 36-22-05 of the North Dakota Century Code, relating to the estray fund; to provide for a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-01-30 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-30. Feedlot registration - Rules - Penalty. No person may operate a registered livestock feedlot without obtaining ~~from the commissioner~~ a registration number ~~from the chief brand inspector~~. The board may adopt rules for the operation of feedlots registered for the enforcement of brand inspection rules. Applications for registration must be made upon 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 state treasurer for deposit in the North Dakota stockmen's association fund. The board may adopt rules required for the purpose of assuring ~~that compliance with brand laws are complied with~~, availability of brand inspection certificates are available, and maintenance of proper records are maintained. A registration issued under this section may be revoked or suspended for violation of any law or any rule adopted by the board under this section. In addition, any person violating this section or any rule adopted by the board under this section is guilty of a class B misdemeanor. This section does not prohibit the operation of nonregistered feedlots.

SECTION 2. AMENDMENT. Section 36-05-12 of the North Dakota Century Code is amended and reenacted as follows:

36-05-12. Operator to warrant title to purchaser - Dispute in title of animal sold. The operator of each livestock auction market shall warrant to the purchaser the title of all livestock bought by ~~him~~ the purchaser through ~~such~~ the auction market and is liable to the rightful owner of any livestock sold through the auction market for the net proceeds in cash received ~~therefor~~ for the livestock. If the operator of an auction market is notified by an authorized brand inspector that there is a question as to whether or not any designated livestock sold through ~~such~~ the auction market is lawfully owned by the consignor ~~thereof~~ of the livestock, ~~such~~ the operator shall hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed sixty days, to permit the consignor to establish ownership. At the expiration of such time, if the consignor fails to establish ~~his~~ lawful ownership of the livestock to the satisfaction of the brand inspector, the

proceeds must be ~~paid into~~ remitted to the state treasurer for deposit in the estrays North Dakota stockmen's association fund in accordance with the provisions of chapter 36-22.

SECTION 3. AMENDMENT. Section 36-09-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-09-18. Performance bond - ~~Disposition~~ Collection of fees - ~~Continuing appropriation~~ - Discrimination prohibited. ~~The North Dakota stockmen's association shall file with the secretary of state a performance bond in the amount of forty thousand dollars, payable to the state of North Dakota and conditioned upon the faithful performance of the requirements of this chapter. Any fees collected under this chapter must be deposited in the general fund of~~ remitted to the state treasurer for deposit in the North Dakota stockmen's association fund. ~~The fees deposited under this chapter and section 36-22-03 are appropriated as a continuing appropriation to the North Dakota stockmen's association. The North Dakota stockmen's association may not discriminate between or among members of the association and persons who are not members of the association with respect to fees, recordings, complaints, requests for assistance, and any other services to be provided under this chapter.~~

SECTION 4. AMENDMENT. Section 36-22-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-22-03. Rules - Fees for inspection. The board of animal health ~~shall~~, with the advice of the officers of the North Dakota stockmen's association, ~~make~~ shall adopt 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 board of animal health, ~~which funds, so.~~ The fees collected, must be paid into the general fund of remitted to the state treasurer for deposit in the North Dakota stockmen's association fund.

SECTION 5. AMENDMENT. Section 36-22-04 of the North Dakota Century Code is amended and reenacted as follows:

36-22-04. Collection of estray funds. ~~It is lawful for said~~ A brand inspectors of said association to ~~inspector may~~ receive and receipt for all funds from the sale of estray cattle and ~~turn~~ shall remit the same over funds to the state treasurer of said association for disbursement as hereinafter provided for deposit in the North Dakota stockmen's association fund.

SECTION 6. AMENDMENT. Section 36-22-08 of the North Dakota Century Code is amended and reenacted as follows:

36-22-08. Disposition of unclaimed receipts from sale of estrays. ~~Any funds in the hands of said association, or hereinafter received by it from the sale of estrays which are not claimed by the owners within one year from the posting of the notice provided for in section 36-22-07 must be turned in to the general fund of the association. All~~ The North Dakota stockmen's association shall preserve all records relative to estrays must be preserved by the association for a period of six years subsequent to the time the money reverts to is deposited by the state treasurer in the general North Dakota stockmen's association fund of the association. Provided,

~~however, that nothing herein bars. This section does not bar the lawful owner of any estray from maintaining an action against said the association for the recovery of any sum to which he the owner may be entitled within the period of limitation given by general law governing other claims for relief of like character if the action is commenced within six years after the sum is deposited.~~

SECTION 7. North Dakota stockmen's association fund - Continuing appropriation. The North Dakota stockmen's association fund is a special fund in the state treasury. The state treasurer shall deposit in the North Dakota stockmen's association fund all brand fees and estray funds received by the North Dakota stockmen's association in return for its performance of statutory duties and services and remitted to the state treasurer. All moneys in the North Dakota stockmen's association fund, together with all interest income earned by moneys in the fund, are appropriated on a continuing basis to the North Dakota stockmen's association to be used for the purpose of carrying out duties statutorily assigned to the association.

SECTION 8. REPEAL. Section 36-22-05 of the North Dakota Century Code is repealed.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 1999

Filed March 23, 1999

CHAPTER 319

HOUSE BILL NO. 1315 (Representatives Tollefson, Wentz)

ANIMAL ABANDONMENT

AN ACT to amend and reenact section 36-21.1-02 of the North Dakota Century Code, relating to the abandonment of animals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-21.1-02 of the North Dakota Century Code is amended and reenacted as follows:

36-21.1-02. Overworking or, mistreating, or abandoning animals.

1. No person may overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when unfit for labor.
2. No person may deprive any animal over which ~~he~~ the person has charge or control of necessary food, water, or shelter.
3. No person may keep any animal in any enclosure without exercise and wholesome change of air.
4. No person may abandon any animal.
5. A person shall reclaim an animal within forty-eight hours of the agreed upon time for termination of a boarding contract and pay all charges for boarding the animal.
- ~~6.~~ 6. No person may allow any maimed, sick, infirm, or disabled animal of which ~~he~~ the person is the owner, or of which ~~he~~ the person has custody, to lie in any street, road, or other public place for more than three hours after notice.
- ~~6.~~ 7. No person may willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty.
- ~~7.~~ 8. No person may cage any animal for public display purposes unless the display cage is constructed of solid material on three sides to protect the caged animal from the elements, and unless the horizontal dimension of each side of the cage is at least four times the length of the caged animal. ~~The provisions of this~~ This subsection ~~do~~ does not apply to the North Dakota state fair association, to agricultural fair associations, to any agricultural display of caged animals by any political subdivision, or to district, regional, or national educational livestock or poultry exhibitions. Zoos which have been approved by the health district or the governing body of the political subdivision which has jurisdiction over the zoos are exempt from ~~the provisions of~~ this subsection.

~~8. Repealed by S.L. 1975, ch. 106, § 397.~~

Approved March 25, 1999
Filed March 25, 1999

CHAPTER 320

HOUSE BILL NO. 1290

(Representatives Meyer, Nicholas, Froelich)
(Senators Kinnoin, Solberg, Wanzek)

STATE MEAT INSPECTION PROGRAM

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.

Approved April 14, 1999
Filed April 15, 1999

CHAPTER 321

HOUSE BILL NO. 1337

(Representatives Nicholas, Meyer, Belter)
(Senators Freborg, Tomac, Wanzek)

FARMED ELK

AN ACT to create and enact a new chapter to title 36 of the North Dakota Century Code, relating to farmed elk; to amend and reenact section 19-02.1-21, subsection 3 of section 36-01-00.1, section 36-04-02, subsection 2 of section 36-05-01, subsection 2 of section 36-05.1-01, subsection 1 of section 38-11.1-03, and subsection 1 of section 38-18-05 of the North Dakota Century Code, relating to the inclusion of farmed elk in other provisions regarding livestock; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-02.1-21 of the North Dakota Century Code is amended and reenacted as follows:

19-02.1-21. Inspections - Examinations. The department has free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose of inspecting such factory, warehouse, establishment, or vehicle to determine if this chapter is being violated and to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample.

The department shall make or cause to be made examinations of samples secured under this section to determine whether or not this chapter is being violated.

Inspections of slaughterhouses, meatpacking, and meat processing plants where cattle, swine, sheep, goats, farmed elk, horses, or other equines are slaughtered for human food or where the carcass or the parts thereof, meat, or meat food products are salted, canned, packed, smoked, cured, rendered, or otherwise processed or prepared for human food, may not be performed under this chapter if the slaughterhouses, meatpacking, or meat processing plants are inspected under the North Dakota Meat Inspection Act, or the Federal Meat Inspection Act, as amended [34 Stat. 1260-65; 21 U.S.C. 71-91].

SECTION 2. If House Bill No. 1276 does not become effective, 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. "Board" means the state board of animal health.
2. "Commissioner" means the commissioner of agriculture.

3. "Farmed elk" means mammals of the elk family (cervus elaphus), except red deer, confined in a manmade enclosure designed to prevent escape and:
 - a. Raised for fiber, meat, or animal byproducts; or
 - b. Raised for breeding, exhibition or harvest.
4. "Owner" means a person who owns or is responsible for the raising of farmed elk.

Farmed elk - Rules - Data base. The board may adopt rules relating to the raising of farmed elk, including matters concerning the health, safety, confinement, and identification of farmed elk. Any rules relating to nontraditional livestock and adopted by the board before August 1, 1999, are, if applicable to farmed elk, deemed to apply to farmed elk until otherwise modified by the board. The board shall maintain a data base regarding farmed elk.

Farmed elk advisory committee. The commissioner may appoint a farmed elk advisory committee to provide advice to the commissioner regarding farmed elk.

Farmed elk development program. The commissioner may establish a farmed elk development program to support applied research and provide demonstrations, financing, marketing, promotion, breed development and registration, and other services related to the raising of farmed elk. The commissioner shall include information regarding farmed elk in reports on agriculture in this state.

Farmed elk - Confinement - Rules. Farmed elk must be confined in a manner designed to prevent escape. Unless otherwise required by rule, fencing for farmed elk must be at least eighty-four inches [213.36 centimeters] in height. If any farmed elk escape, their owner shall report the escape to the board within one business day of the discovery and shall notify the board upon recapture. The owner is liable for the expenses incurred by another person in capturing, caring for, and returning farmed elk that have escaped, provided the other person notifies the owner as soon as practicable after discovering the escape.

Farmed elk - Agricultural pursuit. Farmed elk are livestock, and the products of farmed elk are farm products for purposes of financial transactions and collateral. The raising of farmed elk is agricultural production and an agricultural pursuit.

Farmed elk - Sales of meat products. Unless otherwise provided, a person selling or buying farmed elk as livestock, for human consumption or for slaughter, must comply with this title and all applicable rules.

Farmed elk - Identification. The owner of farmed elk shall identify each animal by a means of identification approved by the board.

Farmed elk - Inspection. The commissioner and the board may inspect farmed elk and all records related to the farmed elk.

Enforcement orders - Administrative hearing - Penalty. The board may order any elk brought into this state in violation of rules adopted by the board to be returned to the state of origin or to be slaughtered. If the board finds that a person has brought elk into this state, kept elk, or received elk in violation of rules adopted by the board, the board may assess that person a civil penalty in an amount up to

two thousand five hundred dollars. Any person who knowingly violates this chapter or any rule of the board is guilty of a class A misdemeanor.

Tuberculosis - Brucellosis - Compensation of owner. If the board determines an elk to be infected with tuberculosis or brucellosis, its owner is entitled to payment as specified in this section. If an elk herd is adjudged by the board to be so seriously infected with tuberculosis or brucellosis as to warrant disposal of the entire herd, its owner is entitled to indemnity payments for the herd whether reactors, suspects, or exposed, in accordance with the limits set forth in this section. The board may adopt rules governing the payment of compensation under this section of not to exceed twenty-five dollars for each grade elk nor fifty dollars for each registered purebred elk.

SECTION 3. If House Bill No. 1276 becomes effective, 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. "Board" means the state board of animal health.
2. "Commissioner" means the commissioner of agriculture.
3. "Farmed elk" means mammals of the elk family (cervus elaphus), except red deer, confined in a manmade enclosure designed to prevent escape and:
 - a. Raised for fiber, meat, or animal byproducts; or
 - b. Raised for breeding, exhibition, or harvest.
4. "Owner" means a person who owns or is responsible for the raising of farmed elk.

Farmed elk - Rules - Data base. The board may adopt rules relating to the raising of farmed elk, including matters concerning the health, safety, confinement, and identification of farmed elk. Any rules relating to nontraditional livestock and adopted by the board before August 1, 1999, are, if applicable to farmed elk, deemed to apply to farmed elk until otherwise modified by the board. The board shall maintain a data base regarding farmed elk.

Farmed elk advisory committee. The commissioner may appoint a farmed elk advisory committee to provide advice to the commissioner regarding farmed elk.

Farmed elk development program. The commissioner may establish a farmed elk development program to support applied research and provide demonstrations, financing, marketing, promotion, breed development and registration, and other services related to the raising of farmed elk. The commissioner shall include information regarding farmed elk in reports on agriculture in this state.

Farmed elk - Confinement - Rules. Farmed elk must be confined in a manner designed to prevent escape. Unless otherwise required by rule, fencing for farmed elk must be at least eighty-four inches [213.36 centimeters] in height. If any farmed elk escape, their owner shall report the escape to the board within one business day of the discovery and shall notify the board upon recapture. The owner is liable for the expenses incurred by another person in capturing, caring for, and returning

farmed elk that have escaped, provided the other person notifies the owner as soon as practicable after discovering the escape.

Farmed elk - Agricultural pursuit. Farmed elk are livestock, and the products of farmed elk are farm products for purposes of financial transactions and collateral. The raising of farmed elk is agricultural production and an agricultural pursuit.

Farmed elk - Sales of meat products. Unless otherwise provided, a person selling or buying farmed elk as livestock, for human consumption or for slaughter, must comply with this title and all applicable rules.

Farmed elk - Identification. The owner of farmed elk shall identify each animal by a means of identification approved by the board.

Farmed elk - Inspection. The commissioner and the board may inspect farmed elk and all records related to the farmed elk.

Enforcement orders - Administrative hearing - Penalty. The board may order any elk brought into this state in violation of rules adopted by the board to be returned to the state of origin or to be slaughtered. If the board finds that a person has brought elk into this state, kept elk, or received elk in violation of rules adopted by the board, the board may assess that person a civil penalty in an amount up to five thousand dollars. Any person who knowingly violates this chapter or any rule of the board is guilty of a class A misdemeanor.

SECTION 4. AMENDMENT. Subsection 3 of section 36-01-00.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Domestic animal" means dog, cat, horse, bovine animal, sheep, goat, bison, farmed elk, llama, alpaca, or swine.

SECTION 5. AMENDMENT. Section 36-04-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-04-02. Restrictions on application of provisions of chapter. The provisions of this chapter do not apply to:

1. Farmers who or farm associations which buy and sell farmed elk, livestock, poultry, or wool among themselves as producers.
2. Farmers who or farm associations which purchase farmed elk, livestock, or wool to complete a load of their own farmed elk, livestock, or wool for shipment to market if the amount so purchased does not exceed twenty-five percent of a truckload.
3. Cooperative farmed elk, livestock, or wool marketing associations of producers of farmed elk, livestock, or wool in their dealings with their members.
4. Livestock including farmed elk, purchased by local butchers for slaughter or processing in their business for local home consumption.

²³⁷ **SECTION 6. AMENDMENT.** Subsection 2 of section 36-05-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Livestock" means horses, mules, cattle, swine, sheep, farmed elk, and goats.

SECTION 7. AMENDMENT. Subsection 2 of section 36-05.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Livestock" means horses, mules, cattle, swine, sheep, farmed elk, and goats.

SECTION 8. AMENDMENT. Subsection 1 of section 38-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.

SECTION 9. AMENDMENT. Subsection 1 of section 38-18-05 of the North Dakota Century Code is amended and reenacted as follows:

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not ~~such~~ the animals are to be sold commercially.

Approved March 9, 1999
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²³⁷ Section 36-05-01 was also amended by section 11 of House Bill No. 1276, chapter 317.