

2009 HOUSE AGRICULTURE

HB 1112

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1112

House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: January 16, 2009

Recorder Job Number: 7154

Committee Clerk Signature

Re Mae Kuehn

Minutes:

Roger Johnson, Agriculture Commissioner: Testified in support of HB 1112. It was a bill introduced at his request. **(Written testimony attached #1)** In regard to meat inspection laws, current enforcement action is either a warning letter or criminal prosecution.

Commissioner Johnson is asking for something in between and therefore urged a Do Pass on HB1112.

Representative Wall: Are all processing plants subject to state inspection?

Roger Johnson: No, we have federally inspected plants, state inspected plants, and custom exempt plants. There are 90 of those and we have 15 or 16 state inspected plants. The difference: state inspected plants—either slaughter or processed or both—the products are allowed to be sold but only within the state of North Dakota. Federal inspection products can go anywhere. Custom exempt plants are limited to slaughtering for your own use.

Representative Uglem: If there is an administrative fine, can the processor appeal and go on to court?

Roger Johnson: Yes, we do that routinely. They can come to us directly and try to resolve it. They can ask for an administrative hearing with an impartial judge but less than a criminal court. If they don't like the results of that, they can go on to court and pursue their rights.

Representative Mueller: In subsection 3—"impose other sanctions, other remedies." In what circumstances might you do that?

Roger Johnson: I think these would enter into agreements. Ex.: You have to do A, B, C. If you do that, then we'll allow you to do this. This is drafted to give a range of options.

Vice Chairman Brandenburg: You send out a warning letter once, twice—and then you're looking at fining them.

Roger Johnson: Yes. Upon inspection, we'll leave a record of deficiencies. Depending upon the severity of the violation we'll issue a warning letter. The next time we come back and it's not fixed then it's a penalty. They have a right to respond. We would follow the same rule that is in the rest of the office. We have statutory authority in different areas. We try to treat similar problems with similar penalties. This is not always really easy to judge that. The higher the level of risk, the higher the penalty. To get everyone on the same page in the office, all penalties go through my deputy.

Vice Chairman Brandenburg: I think you're trying to the program clean and neat so we don't have a problem with losing it. Is that where this is going?

Roger Johnson: We have a good program. We are put in a very awkward position by not having the authority to do something less than criminally prosecute when we have folks who are deliberately violating the rules.

Representative Kingsbury: How soon do you go back and inspect again?

Roger Johnson: I'm going to ask Dr. Grondahl.

Dr. Andrea Grondahl, Director of the State Meat Inspection Program: The timeline would depend on the severity of the violation. There is a frequency set by the Federal Government and that can vary from one week, to a quarter, to the next year.

Representative Vig: Is there a program that the meat inspectors can network with the meat markets so we can prevent violations? Is there a way that we can update and educate?

Dr. Grondahl: We do communicate on a regular basis. One thing we're proud of, is a quarterly newsletter. The Meat Processors of ND also have an association and an annual meeting.

Representative Rust: Would custom exempt be subject to this law?

Roger Johnson: Yes. The frequency of inspection is less.

Representative Rust: How often?

Dr. Grondahl: Normally it's on a quarterly basis.

Representative Mueller: Can a meat processing plant be both custom exempt and state inspected?

Dr. Grondahl: Yes. They often are.

Representative Mueller: Does that create problems?

Dr. Grondahl: No. They have to keep custom exempt products separate from state inspected products. It's not that difficult so normally we don't have issues with that.

Representative Kingsbury: Is there a difference in licensing? They do have to have a license?

Dr. Grondahl: No. We don't have licensing authority. Our laws require them to register annually. They're classified differently in our system.

Representative Kingsbury: You said a state place can do custom work too. Do they need an inspector when they slaughter?

Dr. Grondahl: If they are slaughtering under inspection. If it's custom, then they do not.

Representative Rust: How many federal inspected plants?

Dr. Grondahl: There's about 22 federally inspected plants. There are 15 state plants.

Chairman Johnson: Can they be dual certified?

Dr. Grondahl: There are situations where plants have dual “grants and inspection.”

USDA has not been real cooperative in that situation. They prefer to have a plant all federal or all state.

Chairman Johnson: I'll close the hearing.

Representative Kingsbury moved Do Pass on 1112.

Representative Holman seconded the motion.

Representative Schatz: I'd like to wait until Monday so I can talk to a few people.

Representative Rust: What kind of implications does this have for a small town meat cutter over what is current? This would have implications of penalties up to \$1,000 according to a scale that this law does not address.

Chairman Johnson: That was why they brought this bill to us, is to have that ability to have some type of penalty in between going from a warning to prosecution.

Representative Rust: Do those rules change with a different commissioner?

Chairman Johnson: If that would be the case, every two years we meet, we would have that case before us.

Representative Kingsbury: I would like to ask Roger Johnson another question. How many violations have happened? Is it a problem with the custom ones? Is there some resistance?

Dr. Grondahl (answered for Roger Johnson): I would have a hard time telling you that number but it seems this past year we have had an increase in compliance cases. We aren't real certain as to the reason for that. The compliance division started out being half compliance—half inspection. Now it's 75% compliance and we may have to make it 100% compliance.

Dave Slack, Compliance Officer with the State Meat Inspection Program: I issued 9 warning letters in the year 2008. Both of the cases before are people that had a warning letter and they still offended again. About 99% of the people do listen once you send them a warning letter.

Remember we are dealing with food safety.

Representative Rust: Of those 9 warning letters, can you tell which category?

Dave Slack: One letter to a federally inspected plant, I think two state inspected plants, and the rest to custom exempt. We can get that exact number for you.

Roger Johnson: This is not a bill to go after a certain level of plants. This is a tool to help with compliance. Food safety is very serious.

Representative Kingsbury: If they don't have a license, there is no fear of losing a license.

I don't think that this goes too far.

Representative Kingsbury: Line 17, #3 says it "does not preclude the commissioner from seeking to impose other sanctions or from seeking other remedies." It seems to me they would be seeking remedies before penalties.

A Roll Call vote was taken. **Yes: 10, No: 2, Absent: 1**, (Representative Boe).

Representative Uglem will carry the bill.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1112

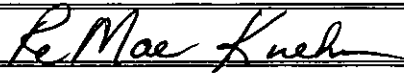
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: February 6, 2009 (**Committee Work**)

Recorder Job Number: 8931

Committee Clerk Signature



Minutes:

HB 1112 failed on the House floor and was brought back to the Agriculture Committee.

Representative Schatz: I talked to Rep. Kretschmar, who objected to this bill. If you look to the bill itself, it says, "Violations of this chapter or a rule adopted under this chapter." That's what he told me he objected to. The fact that the rules have become the law. I agree with him. If we do any fixing, that would be one thing I would like to see eliminated from the bill.

Representative Mueller: I think the bill is needed. If you look at what is in the code in all these sections regarding penalties in all kinds of areas, this is common in the Ag law. This is pretty standard language.

Chairman Johnson: I spoke with Rep. Kretschmar and he said maybe we should amend all of them. We're not going to go there.

Vice Chairman Brandenburg: I, too, think it is important that we get something passed. The issue seemed to be on the floor that they give these rules to other agencies which we already have. To go through the regular judicial process, can we do that, like take them to court and go to the State's Attorney?

Representative Uglem: If we take "rule" out, is anything enforceable?

Chairman Johnson: In visiting with Legislative Council, if we take that out, we could just as well do without the bill.

Commissioner Roger Johnson: We are OK with you taking that language out. We have an amendment prepared. There obviously was some confusion on the floor. That language is in the current statute. Killing the bill doesn't change anything. This bill was all about giving us something besides taking them to court. You can do a warning letter, you can take them to court for a misdemeanor. We wanted something in between. That's what the rule did. But we don't have any objection to taking the language about relative to a misdemeanor. We don't promulgate rules on the criminal code anyway. Most of the statute we have, this language is very common. It is across all of the code. Not just the Ag. Dept. code.

Representative Mueller: There are no specifics in this bill about meat inspections law. If that's all in rules, and we take that out, how do you have any way to do anything.

Commissioner Johnson: The language that he wants out is on line 11, "or a rule adopted under this chapter is guilty of a Class A Misdemeanor." The language that is in the amendment that we handed out only applies to that subsection 1 on lines 11 and 12. It takes those words out. That's what Rep. Kretschmar wanted. It doesn't change the language in paragraphs 2 & 3 from lines 13 to the end. That would remain in the bill. So we would still have the ability to do civil penalties including a rule.

Representative Schatz: On line 13 or 14 it also says "or a rule adopted."

Commission Johnson: When I talked to Rep. Kretschmar, he did not have any objection to that language in paragraph 2. The reason he objects to agencies having the ability to by rule deal with the criminal code. He didn't express any objection to agencies having the ability by rule to deal with penalties in the civil law. Every agency does that. The only part of the bill that deals with the criminal code is Class A Misdemeanor in the first paragraph, lines 11 & 12.

Representative Schatz: Can you just explain what kind of violations get \$1,000 fine?

Commissioner Johnson: Currently there is no fine. How we deal with it in other areas of the department is as follows: The statute normally gives us a maximum fine. When we regulate, for example, dairy, if we have producers that violate health standards because they are sending us milk that's contaminated with antibiotics, we have the ability to go in and fine or the more common penalty in the dairy industry is to just dump a load of milk. This would follow federal law and is a pretty significant economic loss. We would do similar kinds of things in the meat inspection law. This bill would give us authority for civil penalty up to \$1,000. Routinely the first violation that we do all across our agency is a warning letter unless it is a major health concern. If we come back and do a reinspect and it is still out of compliance, then we would follow a matrix of penalties based on risk. The higher the risk, the higher the financial penalty.

Representative Schatz: I don't see how crossing out the language in Section 36-24-26 and replacing it with this language makes it any better.

Commissioner Johnson: The language that is crossed out on lines 6-10 is really in paragraph 1 below on lines 11 and 12. These paragraphs below give the two choices for penalties that we had before plus the additional in between.

Representative Kingsbury: Paragraph 3 is giving the opportunity to impose other sanctions. So that takes the place of that top area.

Commissioner Johnson: Correct.

Representative Wall: With the amendments, do the standards stay the same for the custom shops as state inspected.

Commissioner Johnson: I'm going to ask Dr. Grondahl to answer that.

Dr. Andrea Grondahl, Director of the State Meat Inspection Program: The custom exempt plants are plants that are providing a service rather than selling a product. All parts of the

animal must go back to the owner that brought it in. The meat cannot be sold. The inspected plants would have an animal slaughtered under inspection with a third party verification by our inspector. It would get marked making it eligible for being sold to the public.

Representative Wall: Could you give me a scenario for a custom exempt plant that is structurally in not very good shape. Would passage of HB1112 under sanctions eventually put them out of business?

Dr. Grondahl: I don't see that happening. I think where a facility is older and there are maintenance issues, we do have other methods to deal with that. We have an Establishment Improvement Program. This gives the inspector and the owner of that establishment an option to come up with a plan to fix the facility in a timeline agreed upon by both sides. If it continuously isn't met, then we would pursue other enforcement options. I can see that as a case where a fine would be applied. An example where it would be applied: You've heard about the salmonella outbreak involving several deaths and many cases of illness. This was fueled by poor oversight by food safety regulators and a slow response by federal agencies. This product was shipped 12 times in cases where they had positive salmonella lab results at the plant and yet it still was shipped. That's going to be a criminally prosecuted case. What if you go back to the first positive? If you had the quick action of a fine and get results immediately before this became a widespread outbreak. A fine would get the attention of that plant and they would not do it again.

Representative Uglem: If you're violating the rule, it is a Class A Misdemeanor.

Commissioner Johnson: Without the amendment, if they violate the chapter or a rule, it's a criminal offense. When we take this language out, it just says if you violate this chapter, it's a criminal offense. That was at the heart of Rep. Kretschmar's objection. That's why we took to "or rule" out.

Representative Schatz: I just looked up what the definition of a Class A Misdemeanor was.

It says one year in prison and \$2,000 fine or both. When I look at section 2 and it says \$1,000 fine, there is a difference here.

Commissioner Johnson: Yes, there is a difference. Under the existing law we would have to go to criminal court to do the imprisonment or penalty. Under this bill we would be able to do a fine only without criminally prosecuting.

Vice Chairman Brandenburg: On line 15 it says a "civil penalty may be imposed by a court." The question on the floor will be as it continues with "or by the agriculture commissioner in an administrative proceeding." On the floor they say that only the court should administer a Class A or Class B penalties.

Commissioner Johnson: Under the law now we can do a warning letter or criminally prosecute. In court we can put them in prison or we can fine or both. Under civil law you don't go to court. You go to an administrative hearing. The agency has the authority to impose certain lesser things than under the criminal code. We would have the authority under this bill for a penalty not to exceed \$1,000. It is much easier to do it administratively.

Representative Boe: Moved the amendment.

Representative Holman: Seconded.

Voice Vote taken. Passed.

Representative Rust moved Do Pass as amended.

Representative Boe seconded.

A Roll Call vote was taken. Yes: 12, No: 1, Absent: 0.

Representative Uglem will carry the bill.

Date: 1/16/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1112

House Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Rep. Kingsbury Seconded By Rep. Holman

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	✓		Tracy Boe	AB	
Mike Brandenburg, Vice Chair	✓		Rod Froelich	✓	
Wesley R. Belter	✓		Richard Holman	✓	
Joyce M. Kingsbury	✓		Phillip Mueller	✓	
David S. Rust	✓		Benjamin A. Vig	✓	
Mike Schatz		✓			
Gerry Uglem	✓				
John D. Wall		✓			

Total (Yes) 10 No 2

Absent 1

Bill Carrier Rep. Uglem

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 21, 2009 8:13 a.m.

Module No: HR-12-0624
Carrier: Uglem
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1112: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **DO PASS**
(10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1112 was placed on the
Eleventh order on the calendar.

VR
2/6/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1112

Page 1, line 11, remove "or a rule adopted under this"

Page 1, line 12, remove "chapter"

Renumber accordingly

Female " or rule adopted under this
Chapter "

Date: 2/6/09Roll Call Vote #: 12009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1112House Agriculture Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 98215.0101Action Taken ☒ Do Pass ☐ Do Not Pass ☒ AmendedMotion Made By Rep. Rust Seconded By Rep. Boe

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	✓		Tracy Boe	✓	
Mike Brandenburg, Vice Chair	✓		Rod Froelich	✓	
Wesley R. Belter	✓		Richard Holman	✓	
Joyce M. Kingsbury	✓		Phillip Mueller	✓	
David S. Rust	✓		Benjamin A. Vig	✓	
Mike Schatz		✓			
Gerry Uglem	✓				
John D. Wall	✓				

Total (Yes) 12 No 1Absent 0Bill Carrier Rep. Uglem

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1112: Agriculture Committee (Rep. D. Johnson, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1112 was placed on the Sixth
order on the calendar.

Page 1, line 11, remove "or a rule adopted under this"

Page 1, line 12, remove "chapter"

Renumber accordingly

2009 SENATE AGRICULTURE

HB 1112

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1112

Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 12, 2009

Recorder Job Number: 10824

Committee Clerk Signature

Cassie Kron

Minutes:

Sen. Flakoll opened the hearing on HB 1112, a bill relating to penalties for violating meat inspection laws. All members (7) were present.

Wayne Carlson, program manager for Dept of Ag, testified in favor of the bill. See attached testimony, attachment #1.

Sen. Klein- have we had a outbreak where people have taken on a food borne illness?

Wayne- we have not that I am aware of.

Sen. Behm- the thing that concerns me is, do they ever change the rules in the middle of the road?

Wayne- they do change sometimes, we do have to go through the administrative rule process to change them, we like to keep our processors informed of the changes.

Dr. Grondahl got called to the podium.

Sen. Klein- do you want to talk about what a single product ingredient is?

Dr. Grondahl- it is a cut or a ground product, that type of thing.

Sen. Heckaman- what was the change that was made in the original bill?

Wayne- one of the changes that they made was that of concerns about the rules, if there is a criminal action to be taken. The other thing that they did was change the amount of the fine.

Terry Schantz, food processor business owner, testified in opposition to the bill. See attached testimony, attachment #2.

Sen. Klein- weather this bill passes or not, it still is going to be the same you are still going to have to comply by the rules it is just that maybe the fine won't be as big. We are still asking everyone to live by these rules, most folks out there do not realize how many things that you have to do to comply. I don't think that most people understand the process that you have to go through to stay in compliance.

Terry- actually if this bill passes it will make me more money, because there are so many little rules out there that are illegal and it just takes somebody to turn it in to get it shut down. I just believe that in our state we do not need these big fines and misdemeanors on hardworking people that are just trying to make a living. They don't even realize that these things are illegal. This just seems to be excessive.

Sen. Miller- what are the rules for a custom exempt shop?

Terry- I don't really know, I guess some of them have changed.

Sen. Flakoll closed the hearing.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1112

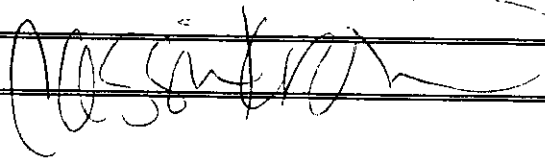
Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 12, 2009

Recorder Job Number: 10834

Committee Clerk Signature



Minutes:

Sen. Flakoll opened the discussion on HB 1112.

Sen. Klein- I am not going to support this, working on the other side of this thing we make every attempt. I don't see that the consumers have been harmed, I think that they are just trying to make it easier for them but they don't make it easy for us. I have found that since we have state meat inspection that the rules have certainly been changed, there is no gray area. We get inspected quarterly as a grocery store.

Sen. Wanzek- I think that in its current form that I couldn't support it either. It's not that I don't think that they won't be fair in the way that it is administered but we don't write these laws for just one sort of regulator we write them just generally speaking and it sounds like it is confusing enough already.

Sen. Taylor- I would agree with the fact that it would need to be amended to "willfully", I think that it would satisfy the request that they were looking for. There was a lot of things said this morning that probably need further understanding on how this whole system works. I think that adding that language would give it a lot of value I think.

Sen. Klein- I don't know if the custom exempt plans should fall under another category or not cause we are not the ones processing anything to move across state lines, we are not trying to

sell it. Those plants that were built to do that are doing a good job. I know there is a separation here and I don't know where it is or how we can make it that way.

Sen. Heckaman- I guess I don't have a problem with doing that either.

Sen. Flakoll closed the discussion.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1112

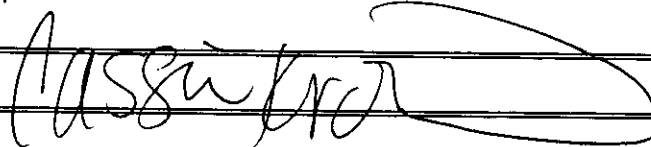
Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 20, 2009

Recorder Job Number: 11354

Committee Clerk Signature



Minutes:

Sen. Flakoll opened the discussion on HB 1112.

Sen. Klein- I spent some time up at the council on this, there were some issues, I was trying to make an attempt to split out the custom exempt folks from the actual folks who enjoy the state meat inspection to sell to other people. In chatting with the council, she had some concerns about the civil penalty explaining to us how it already worked and it is kind of an interesting way of trying to get to the end of a resolution. I am not supporting this bill, I think it goes beyond what I think we need to do to regulate the industry.

Sen. Taylor- If they were to go to prosecution, they wouldn't have to suggest any jail time it could be a \$2,000 fine which wouldn't be much different than the civil action they would have here without burden of prosecution?

Sen. Wanzek- I do recall one think that Anita Thomas had made a comment about is that with the civil action that almost gives them the ability to a judge and jury and the whole works. She questioned the legitimacy on whether or not that was a good policy.

Sen. Wanzek motioned for a Do not pass and was seconded by **Sen. Miller**, roll call vote 7 yea 0 nay 0 absent. **Sen. Klein** was designated to carry the bill to the floor.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1112

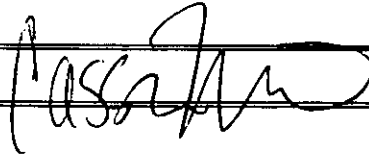
Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 20, 2009

Recorder Job Number: 11355

Committee Clerk Signature



Minutes:

Sen. Flakoll opened the discussion on HB 1112. All members (7) were present.

Roger Johnson asked the committee to come before them and present more information relating to the bill. See attached testimony, attachment #1.

Sen. Heckaman- When I look at the civil penalties under the different chapters they vary, is that to do with the chapter itself like the commodity or the product or what does that more have to do with, just a history of the legislature?

Roger- I can't really answer that.

Sen. Heckaman- how many times in the last year have you imposed a civil penalty to any group?

Roger- I would say that is was only around 4-5 cases. I don't ever remember using the criminal side of this, we always try to do something less than that.

Dr. Andrea Grondahl stood to add additional information and answer any questions that the committee had.

Grondahl- I would just say that we do have a hard time being more lenient because when we are the USDA comes down on us and might have the opinion that we are not equal too. What

we try to do as a state program is provide assistance, guidance and education so that people can meet the requirements.

Sen. Miller- so we get some kind of reimbursement from USDA for performing this?

Johnson- yes, for state inspection we are reimbursed at about 50% from the federal government.

Sen. Klein- on the handful of cases that you had referred to earlier how often did the ALJ rule in favor of your agency vs. the producer?

Johnson- what I can tell you is that we have seen rulings both ways. My guess is that more often than not they are ruling in our favor. Food safety is a huge issue and we take it very seriously, we want compliance, we would rather not go to criminal court. That is really all this bill is about.

Sen. Wanzek- so what you are saying is we don't want to jeopardize the ability to have this opportunity?

Johnson- I don't want ND to be in the news for a food born illness coming out of a state inspected plant, that is the biggest fear that I have. This bill is about something less than going to court but something more than issuing the 3rd or 4th warning letter.

Sen. Wanzek- I think some of the confusion resulted in some of the opposition, the comment was made that it makes charity things and boy scout dinners and such illegal, I am supposing some of those things are probably regulated too. So this program, the provisions that are enforced are federal law, it doesn't change those in anyway?

Johnson- there is nothing in this bill that would impact that, all it changes is it gives us this penalty authority, that is all it does. No other laws are changed here. The two things that it changes is a misdemeanor which is criminal code and number two a warning letter, those are

the two things that the law allows us to exercise to bring people that are out of compliance into compliance.

Sen. Flakoll- when you go before the ALJ does the state have legal representation at that?

Johnson- yes we do.

Sen. Flakoll closed the discussion.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1112

Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: April 2, 2009

Recorder Job Number: 11652

Committee Clerk Signature

Minutes:

Sen. Flakoll opened the discussion on HB 1112.

Sen. Klein motioned to reconsider previous action and was seconded by **Sen. Wanzek**, roll call vote 7 yea 0 nay.

Sen. Klein motioned to move amendments 98215.0201 and was seconded by **Sen. Miller**, roll call vote 7 yea 0 nay.

Sen. Miller motioned for a Do Pass as amended and was seconded by **Sen. Taylor**, roll call vote 7 yea 0 nay.

Sen. Klein was designated to carry the bill to the floor.

Sen. Flakoll closed the discussion.

Date: 1/11/11
Roll Call Vote #:

1112

Committee

Legislative Council Amendment Number

Do Not Pass

Wanzen

Miller

[illegible]

Absent 0

Floor Assignment Sen. Klein

If the vote is on an amendment, briefly indicate intent:

Roll Call Vote #:

1112

Committee

Legislative Council Amendment Number

Motion Made By Klein

[illegible]

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

March 31, 2009

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1112

~~Page 1, line 11, replace "who violates a provision of" with "willfully violating"~~

Page 1, line 13, replace "who violates a provision of" with "willfully violating"

Page 1, line 14, replace "one thousand" with "two hundred fifty"

Renumber accordingly

Roll Call Vote #:

112

Committee

Legislative Council Amendment Number

more Amendments 98215.0201

Klein

Miller

[illegible]

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Roll Call Vote #:

1112

Committee

Legislative Council Amendment Number

Do pass as Amended

Miller

Taylor

[illegible]

Absent ☐

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1112, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1112 was placed on the Sixth order on the calendar.

Page 1, line 13, replace "who violates a provision of" with "willfully violating"

Page 1, line 14, replace "one thousand" with "two hundred fifty"

Renumber accordingly

2009 TESTIMONY

HB 1112

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Roger Johnson

1112

Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

1/16/09

(#1)

600 E. Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020
Equal Opportunity in Employment and Services

**Testimony of Roger Johnson
Agriculture Commissioner
North Dakota Department of Agriculture
House Bill 1112
Agriculture Committee
Peace Garden Room
January 16, 2009**

Chairman Johnson and members of the committee, for the record, I am North Dakota Agriculture Commissioner Roger Johnson. I am here to testify in support of House Bill 1112, which would allow for civil penalties if meat inspection laws are violated.

The effectiveness of the state meat inspection law would be enhanced if we could issue penalties for violations. Although we can take regulatory control action in the event of product adulteration, most violations now lead only to the issuance of a warning letter. This is effective in most cases, but not in all. The only other enforcement action we have available is criminal prosecution, and it is reserved for only the most serious offenses.

During 2008, there were two egregious violations of the Meat Inspection Act that demonstrate a true lack of ability for our regulatory officers to do their jobs effectively and protect the state's consumers.

Case Number 1

A meat processing plant that operates under a retail exemption is allowed to sell a small amount of federally inspected single ingredient, raw products to hotels, restaurants and/or institutions. The dollar amount is set annually by USDA. Because we have serious concerns about this practice, we strive to ensure that these establishments follow the rules. In March 2008, our compliance officer discovered that a retailer in the Bismarck/Mandan area had exceeded this limit for the calendar year 2007 by several thousand dollars. Throughout 2007, this information was purposely withheld from inspectors during reviews. A warning letter was issued immediately, and we had hoped this would be enough to prevent the same violation from occurring in the future. Unfortunately, this was not the case. Seven months later, in October 2008, our compliance officer discovered that this retailer had sold nearly twice their allowed amount for 2008. From March 2008 through October 2008, the operators of this establishment purposely and repeatedly withheld records and actually lied to our regulatory officials. I believe this blatant unwillingness to comply occurred because the establishment knew there would be no real consequences for their actions.

Case Number 2

This involves an older custom exempt establishment that had not been maintained and had gradually deteriorated to the point that the owner was unable or unwilling to correct major deficiencies that were needed for him to continue operating. In March 2008, he signed a Plant Activity Report, indicating he would discontinue custom processing activities and would contact us in the event he changed his mind or sold the plant. In November 2008, our staff discovered that this owner had decided to start operating again; however, he knew he could not meet the

requirements so he did not contact us. At this time, our inspectors observed worsening conditions and serious food safety hazards, and we ordered the owner to cease all activities immediately and remain closed until he was able to address facility and sanitation issues. Once again he ignored the order. Within two weeks, our compliance officer found him operating. Again, as in the first case, I believe he refused to comply because he knew there weren't significant consequences for his violations.

The state meat inspection program was developed to help provide opportunities for small meat processors and producers. I believe we have done this and will continue to do so. However, we are also obligated to protect consumers and reduce the likelihood of food borne illness. Meat products are considered to be one of the highest risk foods because of their contamination potential. It is critical that meat is handled correctly in a sanitary environment and in a manner to preserve its wholesomeness. If it is not, there is a risk of food borne illness.

The meat inspection law has a penalty section, and any person in violation of the act is guilty of a Class A misdemeanor. Any serious or repetitive violations of this chapter are sent to the local states attorney's office. We have found this process to be slow and/or burdensome. In other cases, either no action is taken, or the violation may end up as a criminal case which may result in excessive punishment for the offense. Allowing an administrative fine gives us the flexibility to punish those minor offenses instead of taking criminal actions.

Most meat processors understand the importance of sanitation and the need to adhere to regulations. It is the few individuals who are only interested in profit for which we seek this

4

legislation. In order for the program to continue to be successful and expand, we must ensure that the establishments under state inspection meet and follow state and federal regulations. Our inspection staff must also have the tools necessary to effectively enforce the regulations and ensure that only wholesome meat products are produced and offered for sale.

Mr. Chairman and committee members, I urge a "do pass" on House Bill 1112. I would be happy to answer any questions you may have.

Thank you.

PROPOSED AMENDMENT TO HOUSE BILL NO. 1112

Page 1, line 11, remove “or a rule adopted under this chapter”

Renumber accordingly

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Attachment #1
Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

600 E. Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020
Equal Opportunity in Employment and Services

**Testimony of Wayne Carlson
North Dakota Department of Agriculture
House Bill 1112
Senate Agriculture Committee
Roosevelt Parks Room
March 12, 2009**

Chairman Flakoll and members of the committee, for the record, I am Wayne Carlson the Program Manager for the North Dakota Agriculture. I am here to testify in support of House Bill 1112, which would allow for civil penalties if meat inspection laws are violated.

The effectiveness of the state meat inspection law would be enhanced if we could issues penalties for violations. Although we can take regulatory control action in the event of product adulteration, most violations now lead only to the issuance of a warning letter. This is effective in most cases, but not in all. The only other enforcement action we have available is criminal prosecution, and it is reserved for only the most serious offenses.

During 2008, there were two egregious violations of the Meat Inspection Act that demonstrate a true lack of ability for our regulatory officers to do their jobs effectively and protect the state's consumers.

Case Number 1

A meat processing plant that operates under a retail exemption is allowed to sell a small amount of federally inspected single ingredient, raw products to hotels, restaurants and/or institutions. The dollar amount is set annually by USDA. Because we have serious concerns about this practice, we strive to ensure that these establishments follow the rules. In March 2008, our compliance officer discovered that a retailer in the Bismarck/Mandan area had exceeded this limit for the calendar year 2007 by several thousand dollars. Throughout 2007, this information was purposely withheld from inspectors during reviews. A warning letter was issued immediately, and we had hoped this would be enough to prevent the same violation from occurring in the future. Unfortunately, this was not the case. Seven months later, in October 2008, our compliance officer discovered that this retailer had sold nearly twice their allowed amount for 2008. From March 2008 through October 2008, the operators of this establishment purposely and repeatedly withheld records and actually lied to our regulatory officials. I believe this blatant unwillingness to comply occurred because the establishment knew there would be no real consequences for their actions.

Case Number 2

This involves an older custom exempt establishment that had not been maintained and had gradually deteriorated to the point that the owner was unable or unwilling to correct major deficiencies that were needed for him to continue operating. In March 2008, he signed a Plant Activity Report, indicating he would discontinue custom processing activities and would contact us in the event he changed his mind or sold the plant. In November 2008, our staff discovered that this owner had decided to start operating again; however, he knew he could not meet the

requirements so he did not contact us. At this time, our inspectors observed worsening conditions and serious food safety hazards, and we ordered the owner to cease all activities immediately and remain closed until he was able to address facility and sanitation issues. Once again he ignored the order. Within two weeks, our compliance officer found him operating. Again, as in the first case, I believe he refused to comply because he knew there weren't significant consequences for his violations.

The state meat inspection program was developed to help provide opportunities for small meat processors and producers. I believe we have done this and will continue to do so. However, we are also obligated to protect consumers and reduce the likelihood of food borne illness. Meat products are considered to be one of the highest risk foods because of their contamination potential. It is critical that meat is handled correctly in a sanitary environment and in a manner to preserve its wholesomeness. If it is not, there is a risk of food borne illness.

The meat inspection law has a penalty section, and any person in violation of the act is guilty of a Class A misdemeanor. Any serious or repetitive violations of this chapter are sent to the local states attorney's office. We have found this process to be slow and/or burdensome. In other cases, either no action is taken, or the violation may end up as a criminal case which may result in excessive punishment for the offense. Allowing an administrative fine gives us the flexibility to punish those minor offenses instead of taking criminal actions.

This proposed penalty authority would provide the state meat inspection program with authority that is very similar to other regulatory programs within our agency. I have included a list of other, similar penalty authority in state law for various areas of the Agriculture Department. As you can see by this list, we have the ability to assess civil penalties that are up to \$5,000 per incident, which is far more than we are asking in this bill.

Most meat processors understand the importance of sanitation and the need to adhere to regulations. It is the few individuals who are not concerned about the safety of their product for which we seek this legislation. In order for the program to continue to be successful and expand, we must ensure that the establishments under state inspection meet and follow state and federal regulations. Our inspection staff must also have the tools necessary to effectively enforce the regulations and ensure that only wholesome meat products are produced and offered for sale.

Mr. Chairman and committee members, I urge a "do pass" on House Bill 1112. I would be happy to answer any questions you may have.

Thank you.

CHAPTER 4-12.2

BEEKEEPING

4-12.2-22. Penalties - Criminal - Civil - License revocation or nonrenewal.

1. A person who violates this chapter or any rules adopted under this chapter is guilty of a class A misdemeanor.
2. In addition to criminal sanctions which may be imposed pursuant to subsection 1, a person found guilty of violating this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32.

CHAPTER 4-21.1

NURSERIES AND NURSERY STOCK

4-21.1-16. Penalties - Criminal - Civil - License revocation or nonrenewal.

1. Any person who violates this chapter, or any rules adopted pursuant to it, is guilty of a class B misdemeanor.
2. Any person who violates any of the provisions of this chapter, or rules adopted pursuant to it, is subject to a civil penalty not to exceed five hundred dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32.

CHAPTER 4-30

DAIRY PRODUCTS REGULATIONS

- 4-30-53. Penalty for violation of chapter - Additional civil penalty - Failure to pay civil penalty.** Any person violating any of the provisions of this chapter, the rules of the

department, or any order of the commissioner, for which another criminal penalty is not specifically provided is guilty of a class B misdemeanor. In addition, a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation may be imposed. The civil penalty may be imposed by the courts in a civil proceeding or by the commissioner through an administrative hearing pursuant to chapter 28-32.

CHAPTER 4-35

PESTICIDE ACT

4-35-23. Penalties.

1. Any registrant; applicator, other than a private applicator; wholesale dealer; retailer; or other distributor who knowingly violates any provision of this chapter shall be guilty of a class A misdemeanor.
2. Any private applicator or other person not included in subsection 1 who knowingly violates any provision of this chapter shall be guilty of a class B misdemeanor.
3. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
4. A person who violates a provision of this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter.

CHAPTER 4-35.1

CHEMIGATION REGULATION

4-35.1-06. Penalties.

1. Any person who violates the provisions of this chapter or any rules adopted under this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing the provisions of this chapter or any rules adopted under this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
3. Any person found to have violated the provisions of this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32.

CHAPTER 36-01

STATE BOARD OF ANIMAL HEALTH

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

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, is guilty of an infraction.

36-01-30. Feedlot registration - Rules - Penalty. No person may operate a registered livestock feedlot without obtaining 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 compliance with brand laws, availability of brand inspection certificates, and maintenance of proper records. 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.

36-01-31. Venomous reptiles - Possession - Permit - Penalty.

1. Except in accordance with the terms of a permit issued under subsection 2, a person may not possess a live venomous reptile, as defined by the state veterinarian.
2. The state veterinarian may issue a permit for the possession of a live venomous reptile only if, in the determination of the state veterinarian, the applicant seeking the permit demonstrates an educational purpose for and the ability to appropriately house, feed, care for, handle, and if necessary dispose of the reptile. For purposes of this subsection, an educational purpose includes research, and displays at schools, institutions of higher education, wildlife preserves, and zoos. The state veterinarian may establish the length of time for which each permit is valid.

3. A person may not release in this state any reptile whose possession is prohibited by this section.

4. A person who violates this section is guilty of a class B misdemeanor.

CHAPTER 36-04

LIVESTOCK DEALERS

36-04-21. Penalties - Criminal - Civil - Injunctions.

1. Any person who violates any of the provisions of this chapter is guilty of a class A misdemeanor.

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

CHAPTER 36-05

LIVESTOCK AUCTION MARKETS

36-05-14. Penalties - Criminal - Civil.

1. Any auction market or person who violates any of the provisions of this chapter is guilty of a class A misdemeanor.

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

CHAPTER 36-15

BOVINE TUBERCULOSIS AND BRUCELLOSIS

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

1. The board may order 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 animals to be slaughtered or destroyed.
2. If, after a hearing, the board finds that a person has brought, kept, or received animals in this state and the animals 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.

CHAPTER 36-25

FARMED ELK

36-25-10. Enforcement orders - Administrative hearing - Penalty.

1. The board may order any elk brought into this state in violation of this chapter or rules adopted by the board to be returned to the state of origin or to be slaughtered. The owner of the elk has the right to an administrative hearing on an order of the board in the manner provided in chapter 28-32 if the owner makes a written request for a hearing to the board within ten days after service of the order. If the owner does not request a hearing and if the owner fails to comply with the order, the state veterinarian shall carry out the order. The owner is liable to the board for all costs, including disease testing, incurred in carrying out the order.
 2. If the board finds that a person has brought elk into this state, kept elk, or received elk in violation of this chapter or rules adopted by the board, the board may assess that person a civil penalty in an amount up to five thousand dollars per violation.
- Any person aggrieved by a decision of the board may appeal the decision as provided in chapter 28-32. The civil penalty assessed under this subsection must be

in addition to any costs incurred by the board for enforcement of the order.

3. Any person who knowingly violates this chapter or any rule of the board is guilty of an infraction.

CHAPTER 19-14

LIVESTOCK MEDICINE

19-14-08. Penalty - Criminal - Civil. Any person who violates any of the provisions of this chapter or any rule adopted pursuant to this chapter, or who willfully and falsely represents that any livestock medicine is registered for sale in this state when in fact it is not so registered, is guilty of a class B misdemeanor. In addition to the criminal penalty provided in this section, a person who violates a provision of this chapter or a rule adopted pursuant to this chapter is subject to a civil penalty not to exceed five hundred dollars per violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an administrative hearing pursuant to chapter 28-32.

CHAPTER 19-18

PESTICIDE REGISTRATION

19-18-08. Penalties. Any person violating this chapter is guilty of an infraction. In any case where a registrant was issued a warning by the commissioner pursuant to this chapter, the registrant is, upon violating this chapter other than subsection 1 of section 19-18-03, guilty of a class A misdemeanor, and the registration of the article with reference to which the violation occurred terminates automatically. A pesticide, the registration of which has been terminated, may not again be registered unless the

pesticide, its labeling, and other material required to be submitted appear to the commissioner to comply with all the requirements of this chapter. In addition to the criminal sanctions that may be imposed, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed one thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing pursuant to chapter 28-32.

CHAPTER 19-20.2

ANHYDROUS AMMONIA FACILITIES

19-20.2-10. Penalty.

1. Any person violating this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person is deemed to be the act, omission, or failure of the person as well as that of the person employed.
3. In addition to the criminal sanctions that may be imposed, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an administrative hearing.

My name is Terry Schantz I have been in the food processing business for 15 years. I'm here to talk about the custom except meat shops. If I make any statement that is not a fact I would invite anyone of you in this room to correct me. Custom except means my customers come to me at my shop and when they see how clean and how you handle their food you will have all the customers you want if you are a poor food handler the customers will just stop coming. Therefore the customer is doing their own food inspection.

About 8 years ago a group of well meaning Senators and Representatives thought we needed a state meat inspection. To help the custom shops in N.D. with a more understanding state meat inspection for our N.D needs. The federal meat inspection did not understand our custom shops. Now according to this bill 1112 our State meat inspection and agriculture commissioner wants to make these small shop owners ^{Law Breakers} ~~criminals~~ with a \$1,000 fine and a class A misdemeanor. If they don't obey our new State meat inspections is this what N D needs. Now the bill that was written about 8 years ago by our legislations was a good bill. The problem was the state inspection never took one idea from that bill. They adopted the Federal rules and nothing changed they are in fact an excite duplication of the federal inspection. So now we have two meat inspections and we still have a problem in our very large food handling plants from meat to vegetables even peanuts. It looks like someone dropped the ball but it was not the small food processor. Why should the custom shops have to

be lumped in to the problem of the very large plants. After all the small shops are held to the highest food handle law that is the customer. If you don't do a good job they will put you out of business. I believe that is why there has never been a food contamination from our N.D custom food processors.

Now let's look at who this law will affect about a month ago Joel H was telling every one on his talk show there was a boy scout troop that was having a fund raiser with sausage the boy's and there father's had made at there small custom exempt shops \$10 all you can eat. Under This law they are criminals with Joel's listener base this may only be 10 people. Another group of criminals where known to have served buffalo burgers at a fall festival where one of the children family donated a buffalo, it was processed at the local custom exempt shop sold for \$5 a burger buy that vicious group of close up kids. And we all know those criminals that put on those church fund raisers pot lucks \$15 all you can eat. I attend most of these events and everyone there knew were the food cane from and know one cared does that make us criminals. I could go on but that is enough silliness this is a very serious matter in these silly times. We are playing with these very hard working people lives and livelihood. Who did nothing wrong except put out superior products. Once our small plants are gone we are at the mercy of the plants that are having the big problems. And according to this bill our N D agriculture commissioner wants to criminalizes these people for making a superior product.

All these statements and examples did happen and are criminal in the eyes of our N D ag commissioner. And according to this bill he wants to be judge jury and executioner if you will only give him the power. How would you like to be known as the senator that voted against the boy scout fund raiser. So I hope we vote no on House bill 1112. We should be ashamed it every was introduced.

Johnson, L. Roger

From: Johnson, L. Roger
Sent: Thursday, March 19, 2009 5:01 PM
Subject: -Grp-NDLA Senate Agriculture
Cc: Grondahl, Andrea L.; Carlson, Wayne R.; Weispfenning, Jeff K.; Johnson, L. Roger

Chairman Flakoll and Members of the Senate Agriculture Committee,

Today the Senate Ag Committee voted unanimously for a "do not pass" on House Bill 1112, relating to meat inspection penalties. I very strongly disagree with this action. Thank you for agreeing to allow me to address the committee tomorrow at 10:45. HB 1112 is about food safety issues here in North Dakota, at the national level and even internationally.

The real issue in this bill is about a continuum of appropriate enforcement actions to deal with problems/violations in the regulated meat community. Under current law I have the authority to issue warning letters OR criminally prosecute a violation—nothing in between! This bill would allow my office to use a series of lesser sanctions than criminal prosecution, but still something stronger than simply wagging my metaphorical finger and saying, "you are warned that you have to fix something".

The civil penalty authority in 1112 is actually less than what is currently in most other program areas of the ag department, but in nearly every other regulatory area of my office I also have administrative penalty authority—so do most other agencies (see attachment below). This authority has not been abused in the other areas and is not used except when deemed absolutely necessary.

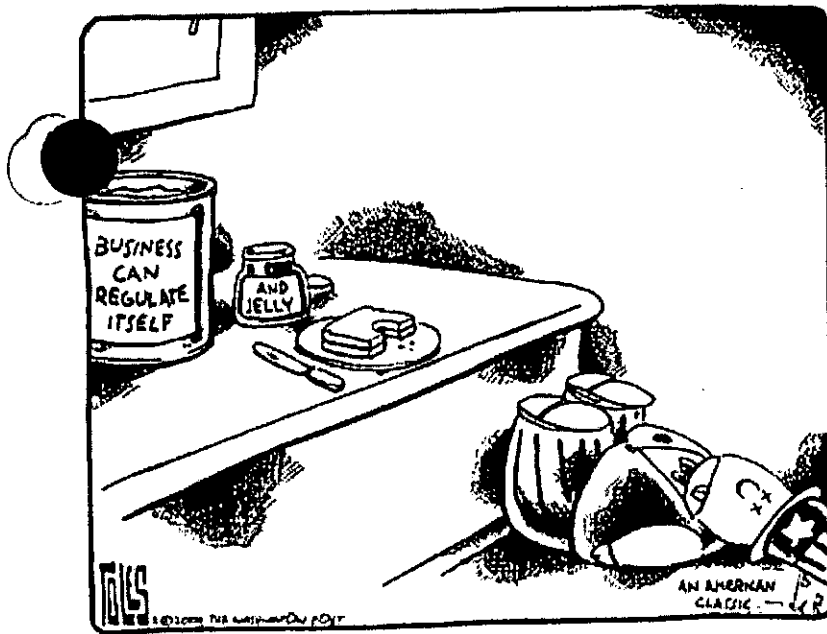
I am sure you've all seen the headlines regarding the national salmonella outbreak involving peanut butter products that injured more than 650 people and caused 9 deaths. There were several warning signals prior to the outbreak that were either ignored or unrecognized including 12 positive salmonella tests, no state license and a slow response or failure to act by inspectors. If effective procedures and enforcement tools had been in place, this disaster could have been prevented.

We do not want to wait for something like this to happen in North Dakota. This bill will allow us to be proactive rather than reactive. Nothing would destroy the reputation of the state meat inspection program and the state government as a whole faster than an outbreak such as this.

Thank you for allowing me to address your committee so that I can request that you reconsider your vote on HB 1112.

Sincerely,

Roger Johnson
Agriculture Commissioner



CHAPTER 4-12.2

BEEKEEPING

4-12.2-22. Penalties - Criminal - Civil - License revocation or nonrenewal.

1. A person who violates this chapter or any rules adopted under this chapter is guilty of a class A misdemeanor.
2. In addition to criminal sanctions which may be imposed pursuant to subsection 1, a person found guilty of violating this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32.

CHAPTER 4-21.1

NURSERIES AND NURSERY STOCK

4-21.1-16. Penalties - Criminal - Civil - License revocation or nonrenewal.

1. Any person who violates this chapter, or any rules adopted pursuant to it, is guilty of a class B misdemeanor.
2. Any person who violates any of the provisions of this chapter, or rules adopted pursuant to it, is subject to a civil penalty not to exceed five hundred dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32.

CHAPTER 4-30

DAIRY PRODUCTS REGULATIONS

4-30-53. Penalty for violation of chapter - Additional civil penalty - Failure to pay civil penalty. Any person violating any of the provisions of this chapter, the rules of the department, or any order of the commissioner, for which another criminal penalty is not specifically provided is guilty of a class B misdemeanor. In addition, a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation may be imposed. The civil penalty may be imposed by the courts in a civil proceeding or by the commissioner through an administrative hearing pursuant to chapter 28-32.

CHAPTER 4-35

PESTICIDE ACT

4-35-23. Penalties.

1. Any registrant; applicator, other than a private applicator; wholesale dealer; retailer; or other distributor who knowingly violates any provision of this chapter shall be guilty of a class A misdemeanor.

2. Any private applicator or other person not included in subsection 1 who knowingly violates any provision of this chapter shall be guilty of a class B misdemeanor.

3. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

4. A person who violates a provision of this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter.

CHAPTER 4-35.1

CHEMIGATION REGULATION

4-35.1-06. Penalties.

1. Any person who violates the provisions of this chapter or any rules adopted under this chapter is guilty of a class A misdemeanor.

2. When construing and enforcing the provisions of this chapter or any rules adopted under this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

3. Any person found to have violated the provisions of this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or the commissioner through an administrative hearing under chapter 28-32.

CHAPTER 36-01

STATE BOARD OF ANIMAL HEALTH

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

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, is guilty of an infraction.

36-01-30. Feedlot registration - Rules - Penalty. No person may operate a registered livestock feedlot without obtaining 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 compliance with brand laws, availability of brand inspection certificates, and maintenance of proper records. 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.

36-01-31. Venomous reptiles - Possession - Permit - Penalty.

1. Except in accordance with the terms of a permit issued under subsection 2, a person may not possess a live venomous reptile, as defined by the state veterinarian.
2. The state veterinarian may issue a permit for the possession of a live venomous reptile only if, in the determination of the state veterinarian, the applicant seeking the permit demonstrates an educational purpose for and the ability to appropriately house, feed, care for, handle, and if necessary dispose of the reptile. For purposes of this subsection, an educational purpose includes research, and displays at schools, institutions of higher education, wildlife preserves, and zoos. The state veterinarian may establish the length of time for which each permit is valid.
3. A person may not release in this state any reptile whose possession is prohibited by this section.
4. A person who violates this section is guilty of a class B misdemeanor.

CHAPTER 36-04

LIVESTOCK DEALERS

36-04-21. Penalties - Criminal - Civil - Injunctions.

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

CHAPTER 36-05

LIVESTOCK AUCTION MARKETS

36-05-14. Penalties - Criminal - Civil.

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

CHAPTER 36-15

BOVINE TUBERCULOSIS AND BRUCELLOSIS

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

1. The board may order 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 animals to be slaughtered or destroyed.
2. If, after a hearing, the board finds that a person has brought, kept, or received animals in this state and the animals 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.

CHAPTER 36-25

FARMED ELK

36-25-10. Enforcement orders - Administrative hearing - Penalty.

1. The board may order any elk brought into this state in violation of this chapter or rules adopted by the board to be returned to the state of origin or to be slaughtered.
2. The owner of the elk has the right to an administrative hearing on an order of the board in the manner provided in chapter 28-32 if the owner makes a written request for a hearing to the board within ten days after service of the order. If the owner does not request a hearing and if the owner fails to comply with the order, the state

veterinarian shall carry out the order. The owner is liable to the board for all costs, including disease testing, incurred in carrying out the order.

2. If the board finds that a person has brought elk into this state, kept elk, or received elk in violation of this chapter or rules adopted by the board, the board may assess a person a civil penalty in an amount up to five thousand dollars per violation.

Any person aggrieved by a decision of the board may appeal the decision as provided in chapter 28-32. The civil penalty assessed under this subsection must be in addition to any costs incurred by the board for enforcement of the order.

3. Any person who knowingly violates this chapter or any rule of the board is guilty of an infraction.

CHAPTER 19-14

LIVESTOCK MEDICINE

19-14-08. Penalty - Criminal - Civil. Any person who violates any of the provisions of this chapter or any rule adopted pursuant to this chapter, or who willfully and falsely represents that any livestock medicine is registered for sale in this state when in fact it is not so registered, is guilty of a class B misdemeanor. In addition to the criminal penalty provided in this section, a person who violates a provision of this chapter or a rule adopted pursuant to this chapter is subject to a civil penalty not to exceed five hundred dollars per violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an administrative hearing pursuant to chapter 28-32.

CHAPTER 19-18

PESTICIDE REGISTRATION


19-18-08. Penalties. Any person violating this chapter is guilty of an infraction. In any case where a registrant was issued a warning by the commissioner pursuant to this chapter, the registrant is, upon violating this chapter other than subsection 1 of section 19-18-03, guilty of a class A misdemeanor, and the registration of the article with reference to which the violation occurred terminates automatically. A pesticide, the registration of which has been terminated, may not again be registered unless the pesticide, its labeling, and other material required to be submitted appear to the commissioner to comply with all the requirements of this chapter. In addition to the criminal sanctions that may be imposed, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed one thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing pursuant to chapter 28-32.

CHAPTER 19-20.2

ANHYDROUS AMMONIA FACILITIES

19-20.2-10. Penalty.

1. Any person violating this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person is deemed to be the act, omission, or failure of the person as well as that of the person employed.
3. In addition to the criminal sanctions that may be imposed, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an administrative hearing.



Would You Like Your Hamburger With E. Coli or Without?

For more than 100 years, USDA has been working to keep us safe from deadly diseases caused by contaminated meat.

Now meat and poultry interests want to allow meat processors to avoid federal inspections. They just convinced the U.S. House to open new loopholes that could keep federal inspectors out of thousands of meat processing plants.

Having weaker inspections is the wrong move for American consumers, particularly when food safety is more important than ever. USDA just announced that a meat processing plant is recalling its hamburger products because they may be contaminated with E.coli. You can check out www.fsis.usda.gov/Fsis_Recalls to learn more.

We should be working to strengthen federal inspection of meat and poultry—not going backward.

**Please call your Senators at (202) 224-3121.
Tell them to keep our meat *federally* inspected.**

Protect Food Safety. Keep Federal Inspections.

Paid for by American Federation of Government Employees and Consumer Federation of America.

Organizations in Coalition:

Consumer Federation of America • Food & Water Watch • S.T.O.P. – Safe Tables Our Priority
AFGE • AFL-CIO • United Food & Commercial Workers

C

West's North Dakota Century Code Annotated Currentness

Title 12.1. Criminal Code

Chapter 12.1-02. Liability and Culpability

→ § 12.1-02-02. Requirements of culpability

1. For the purposes of this title, a person engages in conduct:
 - a. "Intentionally" if, when he engages in the conduct, it is his purpose to do so.
 - b. "Knowingly" if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.
 - c. "Recklessly" if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 12.1-04-02, awareness of the risk is not required where its absence is due to self-induced intoxication.
 - d. "Negligently" if he engages in the conduct in unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
 - e. "Willfully" if he engages in the conduct intentionally, knowingly, or recklessly.
2. If a statute or regulation thereunder defining a crime does not specify any culpability and does not provide explicitly that a person may be guilty without culpability, the culpability that is required is willfully.
3.
 - a. Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to those attendant circumstances specified in the definition of the offense, except that where the required culpability is "intentionally", the culpability required as to an attendant circumstance is "knowingly".
 - b. Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required degree of culpability is required with respect to the result.
 - c. Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for grading.
 - d. Except as otherwise expressly provided, culpability is not required with respect to facts which establish that a defense does not exist, if the defense is defined in chapters 12.1-01 through 12.1-06; otherwise the least kind of culpability required for the offense is required with respect to such facts.
 - e. A factor as to which it is expressly stated that it must "in fact" exist is a factor for which culpability is not required.

NDCC, 12.1-02-02

Page 2

4. Any lesser degree of required culpability is satisfied if the proven degree of culpability is higher.

5. Culpability is not required as to the fact that conduct is an offense, except as otherwise expressly provided in a provision outside this title.

CREDIT(S)

S.L. 1973, ch. 116, § 2.

Current through the 2008 general election

(C) 2009 Thomson Reuters

END OF DOCUMENT

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.