

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1. AMENDMENT.** Section 36-04-01 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **36-04-01. Definitions.**

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

7 1. ~~"Commissioner" means the agriculture commissioner.~~<sup>1</sup>

8 2. ~~"Dealer" means any person, copartnership, association, corporation, or limited liability~~  
9 ~~company engaged in the business of buying or dealing in, "dealer" means a person<sup>2</sup>~~  
10 ~~that buys~~ horses, mules, cattle, hogs, goats, or sheep, ~~or wool<sup>3</sup> from the a~~ producer,  
11 ~~terminal market<sup>4</sup>; or a~~ livestock auction market for resale, slaughter, or shipment within  
12 ~~or without the state, and also resale in the local market.~~

13 3. ~~"Department" means the department of agriculture.~~<sup>5</sup>:

14 1. On the person's own account, more than once per year for the purpose of resale  
15 within thirty days;

16 2. On commission; or

17 3. For slaughter.

**NOTE:**

<sup>1</sup>The statutory context will clarify the definition of "commissioner." Therefore, it is not necessary to define the word.

<sup>2</sup>Section 1-01-49 defines a "person," as a human being, foreign or domestic association, business trust, corporation, enterprise, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, any legal or commercial entity, government, political subdivision, or government agency or instrumentality. Therefore, it is not necessary to include the list of intended entities.

<sup>3</sup>Because wool is not "livestock," it is suggested that the concept of a wool dealer's license be placed in a separate chapter.

<sup>4</sup>Department of Agriculture personnel indicated that terminal markets do not exist in this state.

<sup>5</sup>The statutory context will clarify the definition of "department." Therefore, it is not necessary to define the word.

1       **SECTION 2. AMENDMENT.** Section 36-04-02 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **36-04-02. Restrictions on application of provisions of chapter.**

4       ~~The provisions of this~~This chapter ~~does~~does not apply to:

- 5       1. ~~Farmers who or farm associations which buy and sell farmed elk, livestock, poultry, or~~  
6             ~~wool among themselves as producers.~~The sale and purchase of cattle, goats, hogs,  
7             horses, mules, or sheep if the transaction is limited to a livestock cooperative and  
8             members of the livestock cooperative; and

**NOTE:** If a person does not meet the definition of a livestock dealer, that person does not have to be licensed under this chapter or subject to its requirements. It is not statutorily necessary to reference farmed elk, wool, etc.

- 9       2. ~~Farmers who or farm associations which purchase farmed elk, livestock, or wool to~~  
10            ~~complete a load of their own farmed elk, livestock, or wool for shipment to market if the~~  
11            ~~amount so purchased does not exceed twenty five percent of a truckload.~~

**NOTE:** Given the wording suggested above, subsection 2 appears to be unnecessary. (If the chapter does not apply to a particular transaction, the purpose of the transaction is statutorily irrelevant.)

- 12       3. ~~Cooperative farmed elk, livestock, or wool marketing associations of producers of~~  
13            ~~farmed elk, livestock, or wool in their dealings with their members.~~

**NOTE:** Given the wording suggested above, subsection 3 appears to be an unnecessary restatement.

- 14       4. ~~Livestock, including farmed elk, purchased by local butchers for slaughter or~~  
15            ~~processing in their business for local home consumption.~~

- 16       2. Slaughter establishments that purchase fewer than thirty cattle, goats, hogs, horses,  
17            mules, or sheep per week.

**NOTE:** Because phrases such as "local butcher" and "for local home consumption" are vague, Department of Agriculture personnel suggested that the subsection reference small slaughter establishments.

18       **SECTION 3. AMENDMENT.** Section 36-04-03 of the North Dakota Century Code is  
19 amended and reenacted as follows:

1       **36-04-03. Dealer's license required-- Agent designation and licensure - Suitability for**  
2 **licensure - Liability of owner for agent's acts.**

3       1. ~~All dealers and agents must be licensed as provided in this chapter.~~

**NOTE:** If the chapter requires all dealers and agents to be licensed, it is not necessary to restate that in this fashion.

4       2. ~~No~~An agent may not act for any on behalf of a dealer unless the:

5       a. The dealer is licensed and in accordance with this chapter;

6       b. The dealer has designated suchauthorized the agent to act in the dealer's for or  
7       on behalf of the dealer; and

8       c. The dealer has notified the department;

9       (1) Notified the agriculture commissioner of the appointment inauthorization  
10       either as part of the dealer's application for a license or inby means of a  
11       separate written instrument and requested;

12       (2) Requested that the department tocommissioner issue to such agent an  
13       agent's license in such form as may be prescribed byto the dealer's agent;  
14       and

15       (3) Provided the commissioner and haswith a signed a statement in  
16       substantially the following form:

17       I, the undersigned applicant for a North Dakota livestock dealer's license,  
18       understand that I am strictly indicating that the dealer is responsible for and will be  
19       held strictly liable for all the acts; and omissions, or failures<sup>1</sup> arising out of the  
20       agent's livestock dealings ~~of the agents listed above, whether or not even if the~~  
21       dealings have been were not personally authorized by me the dealer.<sup>2</sup>

**NOTE:**

<sup>1</sup>The standard phrase in this context is "acts and omissions." A failure is an omission.

<sup>2</sup>Subdivision c is quite specific with respect to steps that a dealer must take in order to create the agency relationship. The committee is asked to consider whether, given this level of specificity, subdivision b is necessary. The committee is also asked to consider whether the level of specificity is greater than it needs to be.

22       3. ~~No dealer may designate as an agent any person~~The agriculture commissioner may  
23       not issue an agent's license to any individual who has;

24       a. Has been denied a dealer's license or an agent's license<sup>1</sup> ~~or has;~~

25       b. Has had a dealer's license or an agent's license revoked<sup>2</sup> ~~for any reason or has~~  
26       otherwise; or

- 1           c. Has acted in a manner which would be in violation of this chapter<sup>3</sup>, except upon a  
2           determination by the commissioner that the person is sufficiently rehabilitated to  
3           serve the public as a dealer's agent and that the person does not owe any debt to  
4           any livestock seller or auction market.<sup>4</sup> ~~Conviction~~

**NOTE:** This subsection contains a number of problematic points which have been footnoted below. After reviewing the footnotes, personnel from the Department of Agriculture indicated that the subsection is not reflective of the manner in which business is conducted and should therefore be removed.

<sup>1</sup>Is there a need to specify whether this is referencing denials in North Dakota or in any other state? How would the Agriculture Commissioner know if another state denied an application for license?

<sup>2</sup>Is there a need to specify whether this is referencing revocations in North Dakota or in any other state? How would the Agriculture Commissioner know if another state revoked a license?

<sup>3</sup>The grounds for denying a license are in need of clarification. This seems to imply that an individual could have been found innocent of charges yet still be denied a license by the Agriculture Commissioner.

<sup>4</sup>Would it be correct to assume that this last phrase, which allows the Agriculture Commissioner to determine whether the individual is sufficiently rehabilitated, refers to all of the conditions for licensure denial?

- 5           4. An individual who has been convicted of an offense as defined by section 12.1-01-04  
6           ~~does not disqualify a person~~ is not disqualified from licensure unless the agriculture  
7           commissioner determines that the offense has a direct bearing upon a ~~person's~~the  
8           individual's ability to serve ~~the public~~ as a dealer's agent or that the ~~person~~individual is  
9           not at present sufficiently rehabilitated under section 12.1-33-02.1.

**NOTE:** "Offense" is defined in Section 12.1-01-04 as "conduct for which a term of imprisonment or a fine is authorized by statute after conviction."

This subsection allows licensure of a person who has been "convicted," provided the person is deemed to have been rehabilitated. The previous subsection requires a denial of licensure based on a person having "**acted** in a manner which would be in violation of this chapter." It makes an exception for sufficient rehabilitation then adds the requirement that the person does not owe any debt to a livestock seller or auction market. It is recommended that the committee address these inconsistencies by clarifying the grounds upon which licensure must be denied.

- 10       4.5. Agents may not deal in their own names or issue a check or any other commercial  
11       paper except in the name of their principals when acting as agents.  
12       6. A dealer is accountable and responsible for all ~~the~~ acts and omissions arising out of  
13       livestock dealings of a designated agent, whether authorized or unauthorized by the  
14       dealer.

**NOTE:** It appears that the content of subsection 6 could be included with subsection 2(c) since both address a dealer's responsibility for the acts and omissions of an agent.

**NOTE:** During the course of the rewrite, it might be preferable to address dealer licenses first and thereafter provide for the licensing of a dealer's agent.

1       **SECTION 4. AMENDMENT.** Section 36-04-04 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **36-04-04. Application for license - Contents - Refusal to license - Suspension and**  
4 **revocation.**

5       1. ~~Before entering into a person may engage in the business of a kind described in this~~  
6 ~~chapter and annually, on or before July first, each dealer shall file~~livestock dealer, the  
7 person must be licensed by the agriculture commissioner.

8       2. To obtain a livestock dealer's license, a person must complete an application for a  
9 license to transact such business with the department on a form prescribed by it and  
10 submit it to the agriculture commissioner.

11       3. The application must ~~show~~include:

12           a. ~~The nature of the business for which a license is desired and whether it is for the~~  
13 ~~business of buying livestock or wool, or for both such businesses.~~

**NOTE:** If the licensing of wool dealers is to be placed in a separate chapter, this subsection is not necessary.

14           b. ~~The name or names of the person~~of each person applying for the license.

**NOTE:** How many applicants can there be per license?

15           c. The full name<sup>1</sup> of each member thereof if the applicant is a firm<sup>2</sup>, association, or  
16 partnership, the names of the officers thereof if the applicant is a corporation, or  
17 the names of the managers thereof if the applicant is a limited liability company.<sup>3</sup>

**NOTE:**

<sup>1</sup>This is the only place where a "full name" is required, as opposed to a "name." Is this significant?

<sup>2</sup>The legal entity being contemplated by use of the word "firm" is not clear. Section 1-01-49 defines a "person" as "an individual, organization, government, political subdivision, or government agency or instrumentality."

<sup>3</sup>Some verbiage to consider might be as follows:

[The application must include:]

c. (1) The name of each partner if the applicant is a partnership;

(2) The name of each corporate officer and the state of incorporation if the applicant is a corporation; and

(3) The name of each manager and the state of organization if the applicant is a limited liability company;

- 1           d.    The name of the ~~agent or agents of the applicant~~each individual for whom an  
2                    agent's license is being sought.

**NOTE:** Because statutorily dealers' licenses and agents' licenses have been separated, it is at the very least awkward to intermingle the references.

- 3           e.    The ~~post office~~mailing address and the principal place of business of the  
4                    applicant.

- 5           f.    ~~If the applicant is a foreign corporation, its principal place of business without this~~  
6                    ~~state, the name of the state in which it is incorporated, and that it has complied~~  
7                    ~~with the laws of this state relating to foreign corporations.~~<sup>1,2</sup>

**NOTE:**

<sup>1</sup>The language suggested after subdivision c would eliminate the need for this subdivision.

<sup>2</sup>The final phrase is without sufficient direction.

- 8           g.    ~~If the applicant is a foreign limited liability company, its principal place of business~~  
9                    ~~without this state, the name of the state in which it is organized, and that it has~~  
10                  ~~complied with the laws of this state relating to foreign limited liability companies.~~<sup>1,2</sup>

**NOTE:**

<sup>1</sup>The language suggested after subdivision c would eliminate the need for this subdivision.

<sup>2</sup>The final phrase is without sufficient direction.

- 11          h.    ~~Such other facts as the department may prescribe.~~

**NOTE:** If the subsection begins with a phrase such as "the application must **include**," it is not necessary to maintain subdivision h.

- 12          2.    The agriculture commissioner shall refuse to issue ~~or renew~~<sup>1</sup> a license if the applicant:  
13            a.    ~~Has not filed a surety bond in the form and amount required under the provisions~~  
14                  ~~of this chapter;~~<sup>2</sup>  
15            b.    Has not satisfactorily demonstrated<sup>3</sup> that the applicant's current assets exceed  
16                  the applicant's current liabilities;  
17            c.    Has been found by the commissioner to have failed to pay, without reasonable  
18                  cause, obligations incurred in connection with livestock transactions<sup>4</sup>; or  
19            d.    Has made or caused to be made any false entry or statement of fact in any  
20                  application, financial statement, or report filed with the ~~department~~commissioner  
21                  under this chapter.

1 Whenever the agriculture commissioner finds that any livestock dealer has violated the  
2 provisions of this subsection, the commissioner may suspend ~~or refuse to issue or~~  
3 ~~renew~~ the license of such offender in the manner provided by law.<sup>5</sup>

**NOTE:**

<sup>1</sup>Department of Agriculture personnel indicated that the procedure and requirements for initial licensure and for licensure "renewal" are the same. That being the case, there would be no statutory need to reference a renewal.

<sup>2</sup> Because Section 36-04-05 requires the applicant to file a surety bond, it is not necessary to provide that the Agriculture Commissioner must refuse to issue a license if certain requirements of the chapter are not met.

<sup>3</sup>It is suggested that the committee discuss this requirement and articulate what is intended by the phrase "satisfactorily demonstrated."

<sup>4</sup>It is not clear whether subdivision c is referencing documented legal actions, administrative actions, or conversations and common knowledge. If the subdivision is intended to give the Agriculture Commissioner a basis for denying licensure and thereby denying one's livelihood, it is recommended that the criteria be more readily defined, e.g., "criminal convictions, etc."

<sup>5</sup>It would be preferable to have a separate section pertaining to grounds for suspension or revocation of a license.

4 **SECTION 5. AMENDMENT.** Section 36-04-05 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **36-04-05. Dealer to file bond with departmentagriculture commissioner - Additional**  
7 **bond may be required.**

8 ~~Each applicant for a license under this chapter shall file with the application a bond issued~~  
9 ~~by an approved surety company.~~

10 1. As a condition of licensure, the agriculture commissioner shall require an applicant to  
11 file a surety bond. The ~~department~~commissioner must be named as the obligee in-  
12 ~~each bond but~~and shall hold the bond ~~will be held for the purpose of protecting and~~ for  
13 the benefit of any person selling livestock ~~or wool, as the case may be,~~ to the licensed  
14 dealer or the dealer's agent. The bond must be conditioned for:

15 4. a. The faithful performance by the dealer and the dealer's designated agent of the  
16 duties as such;  
17 2. b. The compliance by the dealer and the dealer's designated agent with all of the  
18 provisions of this code relating to the purchase of livestock ~~or wool, as the case~~  
19 ~~may be;~~



1        5. Bonds from out-of-state applicants may be in favor of a trustee who is a financially  
2                responsible, disinterested person satisfactory to the commissioner. ~~The minimum-~~  
3                ~~amount of such bond is ten thousand dollars, unless the department determines that~~  
4                ~~the amount of such bond is insufficient in any instance, in which event the department~~  
5                ~~shall require the reasonable amount of the bond required to protect the public interest.~~

**NOTE:** The standards for determining the sufficiency of a bond, as articulated in subsection 3, would also apply to out-of-state bonds and therefore do not need to be reiterated.

6        **SECTION 6. AMENDMENT.** Section 36-04-05.1 of the North Dakota Century Code is  
7        amended and reenacted as follows:

8        **36-04-05.1. Records release required with application for licensure.**

9        1. A dealer shall file, together with the license application, a release authorizing the  
10                ~~access of the agriculture~~ commissioner to access all of the dealer's financial records of  
11                ~~the dealer~~ held by financial institutions, accountants, and other sources. ~~The release-~~  
12                ~~must be in a form approved by the commissioner.~~

**NOTE:** If the release is part of the license application, it is not necessary to provide that the release must be in a form approved by the Agriculture Commissioner.

- 13        2. The commissioner may use the release in the course of licensing ~~or relicensing~~ a  
14                ~~dealer or in the course of an investigation of~~ investigating a dealer.
- 15        3. Any information gained through the use of a release is confidential. ~~The commissioner-~~  
16                and may furnish information obtained through the use of the records release be  
17                provided only to the:
- 18                a. Federal authorities in accordance with federal law;
  - 19                b. The attorney general, other state agencies, and any prosecuting officials-  
20                requiring the information law enforcement agencies for use in the pursuit of official  
21                duties; and
  - 22                c. Pursuant to an order issued by a court upon a showing of good cause.

**NOTE:** The language of this subsection has been altered to reflect the entities generally entitled to confidential information.

23        **SECTION 7. AMENDMENT.** Section 36-04-07 of the North Dakota Century Code is  
24        amended and reenacted as follows:

25        **36-04-07. Issuance of licenses - Fees - Term of license - Licenses not transferable.**

26        ~~The department~~

- 1        1. Upon payment of a fee in the amount of fifty dollars, the agriculture commissioner shall  
2            issue a livestock dealer's license to each applicant who has complied with the  
3            provisions of been approved in accordance with this chapter a license of the kind  
4            applied for upon the payment by the applicant of fees as follows:
- 5        1. For a livestock dealer's license, fifty dollars.  
6        2. For a wool dealer's license, ten dollars.  
7        3. Penalty fee for any late applicant's application or late fee shall be five dollars per  
8            month after July first of any year.<sup>1</sup>

**NOTE:**

<sup>1</sup>If a dealer does not renew his or her license before the expiration date, the dealer is in fact operating without a license and would be in violation of the chapter. In accordance with a recommendation by Department of Agriculture personnel, this subsection has been removed.

- 9        2. Each license issued under the provisions of this chapter shall license the conduct of  
10           the business described therein at the place or places named in the application  
11           therefor, and shall expire expires on the thirtieth day of June next following the date of  
12           its issue, except that all licenses issued by the department pursuant to this chapter  
13           prior to July 1, 1977, shall be valid until June 30, 1978, and shall expire upon June 30,  
14           1978. Licenses issued hereunder are
- 15        3. A license issued under this chapter is not transferable between persons or places.<sup>1</sup>

**NOTE:**

<sup>1</sup>There appears to be no requirement to notify the Agriculture Commissioner if there has been a material change in the information provided on the application or regarding the status of the licenseholder. Are there any circumstances that would require notification?

16        **SECTION 8. AMENDMENT.** Section 36-04-07.1 of the North Dakota Century Code is  
17        amended and reenacted as follows:

18        **36-04-07.1. Notice - Nonsufficient funds checks.**

19        A dealer that receives a check for the sale of horses, mules, cattle, hogs, goats, or sheep,  
20        ~~or wool~~ which is returned unpaid with a notation that the payment has been refused because of  
21        nonsufficient funds shall notify the agriculture commissioner within forty-eight hours after receipt  
22        of the check.

**NOTE:** According to Section 36-04-10, the "department shall refuse to grant a license, or shall revoke a license which it has granted, when it is satisfied that . . . [t]he applicant has failed to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1 . . . ." In addition, Section 36-04-21 provides that a violation of this

section is a Class A misdemeanor and subjects the violator to a civil penalty in an amount up to \$5,000.

How must the notification take place--orally, in writing, or in electronic form?

Must there be a record of the notification?

Is the 48-hour period calculated literally, or does it mean within two business days? What happens if the nonsufficient funds check is received at 5:00 p.m. on a Friday or immediately prior to a long weekend?

Department of Agriculture personnel recommended that this section be deleted.

1       **SECTION 9. AMENDMENT.** Section 36-04-09 of the North Dakota Century Code is

2 amended and reenacted as follows:

3       ~~**36-04-09. Disposition of fees -- Inspections.**~~

4       ~~All fees collected by the department under the provisions of this chapter shall be credited to~~  
5 ~~the general fund of the state treasury. The provisions of this chapter shall be enforced by the~~  
6 ~~commissioner and the regular inspectors of the department.~~

**NOTE:** Because Section 12, Article X, of the Constitution of North Dakota, provides that "[a]ll public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state," it is unnecessary to statutorily reiterate the provision.

7       **SECTION 10. AMENDMENT.** Section 36-04-09.1 of the North Dakota Century Code is

8 amended and reenacted as follows:

9       ~~**36-04-09.1. Cease and desist authority.**~~

10       ~~Thelf the agriculture commissioner determines that a person has committed or is about to~~  
11 ~~commit a violation of this chapter, the commissioner may issue an order to cease and desist~~  
12 ~~when, in the opinion of the commissioner, any person within the state is taking or planning any~~  
13 ~~action which is or may be in violation of this chapter. If an order is granted, a cease and desist~~  
14 ~~order is issued, the commissioner shall conducthold a hearing within thirty days of the issuance~~  
15 ~~of the order to determine whether the actions of the person named in the order violated or~~  
16 ~~would have violated this chapter. The commissioner shall, after the hearing but not later than,~~  
17 ~~Within forty-five days afterof the issuance of the order, the commissioner shall revoke the order~~  
18 or make it permanent, as the facts require.

**NOTE:** The Office of Administrative Hearings was contacted regarding the appropriateness of holding a hearing within 30 days after the issuance of a cease and desist order and requiring that the order be revoked or made permanent within 45 days after issuance of the order. The response was that 30 days is the standard amount of time within which a hearing of this sort is held. However, 45 days is considered to be an insufficient amount of time within which to give notice of the hearing, hold the hearing, require the hearing officer to issue a recommendation, and require the Agriculture Commissioner to issue a final

decision. It was suggested that the timeframe for the final order be extended to at least 60 days.

1       **SECTION 11. AMENDMENT.** Section 36-04-09.2 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **36-04-09.2. Investigation of dealers - Hearing conducted to determine whether license**  
4 **should be issued or revoked.**

5       1.    a.    The ~~department upon its own motion or upon a complaint by any~~  
6            ~~person~~agriculture commissioner may enter into conduct an investigation  
7            of~~regarding~~ the sales and transactions of any livestock dealer and ~~of the~~  
8            ~~conditions under which its business is conducted.~~<sup>1</sup>

9        b.    The ~~department~~commissioner may conduct a hearing to determine whether the  
10            license of any dealer should be revoked or whether the application of the dealer  
11            for an original or renewal license should be denied.<sup>2</sup>

**NOTE:**

<sup>1</sup>The authority to conduct an investigation regarding the transactions of a livestock dealer is clear. The authority to conduct an investigation regarding the "conditions" under which the dealer's business is conducted is nebulous. It is recommended that the committee review the intended scope of authority for investigations by the Agriculture Commissioner. Thereafter, language can be crafted to accurately reflect the intent.

<sup>2</sup>This provision should be relocated.

12       2.    The ~~department~~commissioner shall conduct an investigation of an alleged violation of  
13            this chapter when:  
14            a.    A complaint, allegation, or order to show cause, alleging an act which would  
15            constitute a violation of this chapter, is issued by or sought by the grain  
16            inspection, packers, and stockyards administration of the United States;

**NOTE:** This language suggests that the Agriculture Commissioner is required to conduct an investigation when the Grain Inspection, Packers, and Stockyards Administration (GIPSA) issues a formal complaint alleging specific violations of the Packers and Stockyards Act and the commissioner determines that the alleged violations are also violations of this chapter. Is the commissioner also required to conduct an investigation when GIPSA is in the investigatory stage?

Department of Agriculture personnel recommended that this subdivision be deleted.

17        b.    The ~~department~~commissioner has information sufficient to form a reasonable  
18            belief that a violation of this chapter has occurred; or

**NOTE:** Subsection 1 provides that the Agriculture Commissioner "may" conduct an investigation on his own motion. This subdivision mandates that the commissioner conduct an investigation when he has a reasonable belief that a violation has occurred. Presumably, the commissioner's decision to conduct an investigation (on his own motion)

under subsection 1 is based on a reasonable belief that a violation might have occurred? If that is not the case, what is the basis for a subsection 1 investigation?

Department of Agriculture personnel recommended that this subdivision be deleted.

- 1           c. The ~~department~~commissioner has received a sworn statement, affidavit, or other  
2           evidence, from any person alleging a violation of this chapter.

**NOTE:** Subsection 1 provides that the Agriculture Commissioner may conduct an investigation upon a "complaint" by any person. This subsection requires an investigation. These inconsistencies will be eliminated when there is a clear articulation pertaining to the circumstances under which the commissioner must investigate the transactions of a livestock dealer.

Department of Agriculture personnel recommended that this subdivision be deleted.

- 3           3. The ~~department~~commissioner shall conduct a hearing when, pursuant to an  
4           investigation, probable cause exists that a violation of this chapter has occurred.

**NOTE:** Is the purpose of this hearing to gather evidence before the filing of charges? This subsection affords the Agriculture Commissioner no latitude. It requires a hearing, even in the case of a seemingly insignificant violation.

Department of Agriculture personnel recommended that this subsection be deleted.

- 5           4. The ~~department~~commissioner shall conduct an audit, or cause an audit to be  
6           conducted, when probable cause exists that any dealer has violated subdivision a, b,  
7           c, or d of subsection 2 of section 36-04-04 or any of the financial provisions of this  
8           chapter.

**NOTE:** If an applicant for licensure does not file a surety bond or satisfactorily demonstrate that his assets exceed his liabilities, the Agriculture Commissioner is statutorily required to deny the person a dealer's license. Why would this trigger an audit?

Department of Agriculture personnel recommended that this subsection be deleted.

- 9           **SECTION 12. AMENDMENT.** Section 36-04-10 of the North Dakota Century Code is  
10          amended and reenacted as follows:

11          **36-04-10. Refusal or revocation of license.**

**NOTE:** Under current law, the Agriculture Commissioner shall refuse to grant a license or shall revoke a license that has been granted under the stated circumstances. Upon review, some of the circumstances requiring action are appropriate in the case of a license application process, but not necessarily appropriate as grounds for license revocation, or vice versa. In order to provide an opportunity for the committee to consider the provisions independently, the current language has been divided into two subsections. The first subsection pertains to the license application process. The second subsection pertains to the license revocation process.

- 12          1. The ~~department~~commissioner shall ~~refuse to grant a license, or shall revoke a license~~  
13          ~~which it has granted, when it is satisfied that~~deny an application for license if:

1 4. a. The applicant ~~or licensee~~ has violated any of the laws of this state governing the  
2 handling, shipment, or transportation of livestock ~~or wool~~;

**NOTE:** In referencing the "laws of this state," this subsection includes both statutory and regulatory language.

3 2. b. The applicant ~~or licensee~~ has been guilty of deceit, fraud, dishonesty, forgery, or  
4 theft as a dealer in livestock ~~or wool, or in dealing therein~~;

**NOTE:**

- Is it the intent to reference an individual who has been "convicted" of violating such laws?
- If this language is to pertain to an initial "applicant," that individual should not have been dealing in livestock. If this is intended to reference activities that occurred under a prior license, a drafting change is in order.
- The listed crimes appear to be covered by subdivision a, which references the violation of any state law governing the "handling" of livestock.

5 3. c. The applicant made ~~or caused to be made any~~ false entry in or statement of fact  
6 in any on an application, financial statement, or report filed ~~with the~~  
7 department commissioner under this chapter;

**NOTE:** Generally, a subdivision such as this would reference "fraud or misrepresentation" on the part of an applicant.

8 4. d. The applicant<sup>1</sup> has failed to keep and maintain suitable records, which disclose  
9 all purchases and sales of livestock, or has refused, during reasonable hours, to  
10 allow any authorized agent of the department to have access to inspect and to  
11 copy any and all of such records relating to the dealer's business;<sup>2</sup>

**NOTE:**

<sup>1</sup>An applicant is not required to keep and maintain suitable records under North Dakota Century Code.

<sup>2</sup>The latter part of this subdivision causes confusion. Is it referencing a dealer that refuses to make records available for inspection or is it referencing an applicant who provides a records release under Section 36-04-05.1 but refuses to make the records available?

Department of Agriculture personnel recommended that this subdivision be deleted.

12 5. e. The applicant has failed or refused to furnish the information required under this  
13 chapter and as prescribed by the department commissioner;

**NOTE:** This would constitute an incomplete application and therefore would not even warrant a decision by the Agriculture Commissioner.

Department of Agriculture personnel recommended that this subdivision be deleted.

14 6. f. The applicant has failed to notify the commissioner of the receipt of a  
15 nonsufficient funds check as required by section 36-04-07.1;

**NOTE:** Section 36-04-07.1 requires a "dealer" to notify the Agriculture Commissioner, not an applicant.

Department of Agriculture personnel recommended that this subdivision be deleted.

- 1       7.   g.   The applicant ~~or licensee~~ has failed to pay brand inspection fees or  
2            veterinarian veterinary inspection fees<sup>1</sup>, as required by law, within thirty days of  
3            the date on which the fees were due;<sup>2</sup>

**NOTE:**

<sup>1</sup>The suggested change adds specificity to the statute so that it applies to veterinary inspection fees incurred in conjunction with the sale of livestock and not to a veterinarian's charges for other unrelated services.

<sup>2</sup>Because there is a need to clarify the point at which the named fees are deemed "unpaid," it is suggested that there be a reference to a time certain, e.g., "thirty days."

- 4       8.   h.   The applicant ~~or licensee~~ has failed to collect beef promotion assessments  
5            pursuant to chapter 4.1-03; or

**NOTE:** The requirement to collect beef promotion assessments is statutorily placed on livestock auction markets and livestock dealers, not applicants. However, if this is intended to reference activities that occurred under a prior license, a drafting change is in order.

- 6       9.   i.   The applicant ~~or licensee~~ has failed to pay for livestock<sup>1</sup> purchased.<sup>2</sup> Such failure  
7            includes the issuance of a check as payment for livestock purchased, when such  
8            check is returned unpaid with a notation that the payment has been refused  
9            because of nonsufficient funds.

**NOTE:**

<sup>1</sup>Does this extend to all livestock purchases (see Section 36-04-02) or just those that require a license under Section 36-04-01, i.e., "horses, mules, cattle, hogs, goats, and sheep"?

<sup>2</sup>The determination regarding a "failure to pay" requires either a specific time within which the payment must be made or some form of documented proof that payment is outstanding.

- 10       2.   The ~~department~~ commissioner shall ~~refuse to grant a license, or shall~~ revoke a license  
11            ~~which it has~~ that was granted, ~~when it is satisfied that if:~~

**NOTE:** By use of the word "shall" rather than "may," this subsection would require the Agriculture Commissioner to revoke a license under the stated circumstances. No latitude is given. Is this the intent?

- 12       4.   a.   The ~~applicant or licensee~~ has violated any of the laws of this state governing the  
13            handling, shipment, or transportation of livestock ~~or wool~~;

**NOTE:** In referencing the "laws of this state," this subsection includes both statutory and regulatory language.

- 14       2.   b.   The ~~applicant or licensee~~ has been guilty of deceit, fraud, dishonesty, forgery, or  
15            theft as a dealer in livestock ~~or wool, or in dealing therein~~;



**NOTE:** It would be appropriate to provide that a license may be revoked (or shall be revoked) if the licensee is convicted under Section 4.1-03-13 of failing to submit beef promotion assessments.

- 1        9.    i.    The applicant or licensee has failed to pay for livestock<sup>1</sup> purchased.<sup>2</sup> Such failure  
2                    includes the issuance of a check as payment for livestock purchased, when such  
3                    check is returned unpaid with a notation that the payment has been refused  
4                    because of nonsufficient funds.

**NOTE:**

<sup>1</sup>Does this extend to all livestock purchases (see Section 36-04-02) or just those that require a license under Section 36-04-01, i.e., "horses, mules, cattle, hogs, goats, and sheep?

<sup>2</sup>The determination regarding a "failure to pay" requires either a specific time within which the payment must be made or some form of documented proof that payment is outstanding.

- 5        **SECTION 13. AMENDMENT.** Section 36-04-10.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7        **36-04-10.1. Unlawful acts.**

8        It is a violation of this chapter for any applicant or licensee to:

- 9        1.    ~~Violate any of the laws of this state governing the handling, shipment, or transportation~~  
10                    ~~of livestock or wool;~~  
11        2.    ~~Make or cause to be made any false entry or statement of fact in any application,~~  
12                    ~~financial statement, or report filed with the department under this chapter;~~  
13        3.    ~~Fail to keep and maintain suitable records that disclose all purchases and sales of~~  
14                    ~~livestock or refuse, during reasonable hours, to allow any authorized agent of the~~  
15                    ~~department to have access to inspect and to copy any or all of such records relating to~~  
16                    ~~the dealer's business;~~  
17        4.    ~~Fail or refuse to furnish the information required under this chapter as prescribed by~~  
18                    ~~the department;~~  
19        5.    ~~Fail to notify the commissioner of the receipt of a nonsufficient funds check as required~~  
20                    ~~by section 36-04-07.1;~~  
21        6.    ~~Fail to pay brand inspection fees or veterinarian fees as required by law;~~  
22        7.    ~~Fail to collect beef promotion assessments pursuant to chapter 4.1-03; or~~  
23        8.    ~~Fail to pay for livestock purchased. Such failure includes the issuance of a check or~~  
24                    ~~payment for livestock purchased, when such check is returned unpaid with a notation~~  
25                    ~~that the payment has been refused because of nonsufficient funds.~~

**NOTE:** If the North Dakota Century Code places a duty or a prohibition on a person, and that person ignores the directive, that person is in violation of the law. It is not necessary to have a section that reiterates the violations. In fact, doing so can create significant confusion and legal difficulties. As an example, consider subsection 7 which provides that it is a violation of this chapter for any applicant or licensee to fail to collect beef promotion assessments pursuant to Chapter 4.1-03. Chapter 4.1-03 imposes a requirement for the collection of the assessments and provides that the failure to submit beef promotion assessments is a Class B misdemeanor. Subsection 7 makes the failure to collect beef promotion assessments a violation of Chapter 36-04, which is a Class A misdemeanor.

1       **SECTION 14. AMENDMENT.** Section 36-04-11 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **36-04-11. Hearing had before license revoked - ~~Regulations governing~~ Appeal from**  
4 **order.**

5       1. ~~Before any~~the agriculture commissioner may revoke a livestock dealer's license  
6 ~~issued is revoked, the licensee must be furnished with a copy of the complaint made~~  
7 ~~against the licensee, and a hearing must be had thereon before the department to~~  
8 ~~determine whether or not the license shall be revoked. The licensee must be given~~  
9 ~~notice of the hearing, the commissioner shall:~~

10       a. Prepare a complaint;

11       b. Designate the time and place for a hearing; and

12       c. Serve a copy of the complaint and a notice of the hearing upon the licensee at  
13 least fifteen days prior thereto~~before the date of the hearing.~~

14       2. The commissioner shall serve the required notice ~~may be served either by registered<sup>1</sup>~~  
15 ~~or certified mail addressed to the given address of the licensee or in the manner~~  
16 ~~provided by the North Dakota Rules of Civil Procedure for the service of a summons.~~

**NOTE:** Section 1-02-36 provides that wherever "the term 'registered mail' appears in the laws of the state of North Dakota it means 'registered or certified mail'."

17       3. ~~At the time and place fixed for the hearing, the department, or any member or duly~~  
18 ~~authorized agent thereof,~~commissioner shall take and receive testimony and evidence,  
19 ~~administer oaths, examine witnesses, and take the testimony offered, and shall submit~~  
20 ~~and file the same with the department. The department upon the evidence received~~  
21 ~~shall make and file.~~

22       4. After the hearing, the commissioner shall issue an order either dismissing the  
23 proceedings or revoking the dealer's license.

24       5. The aggrieved party may take an appeal the order to the district court of the county in  
25 which the licensee~~party~~ maintains its principal place of business.

1       **SECTION 15. AMENDMENT.** Section 36-04-11.1 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       ~~**36-04-11.1. Rules and regulations.**~~

4       ~~The department may prepare, adopt, promulgate, modify, repeal, and enforce rules and~~  
5 ~~regulations necessary to carry out the purposes and provisions of this chapter.~~

**NOTE:** Because the authority to adopt rules exists within Chapter 28-32, it is not necessary  
to include this verbiage.

6       **SECTION 16. AMENDMENT.** Section 36-04-12 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8       ~~**36-04-12. Department**~~**Agriculture commissioner to become trustee upon default in**  
9 **dealer's bond.**

10       If any dealer defaults in the provisions of any bond ~~provided for in~~required by this chapter,  
11 the dealer is deemed to be insolvent within the meaning of this chapter. The claim for relief for  
12 damages upon the bond, and the amount recovered in any claim for relief for the conversion of  
13 livestock ~~or wool, as the case may be,~~ purchased by the dealer while the license is in force and  
14 effect, constitutes a trust fund in the hands of the ~~department~~agriculture commissioner for all  
15 persons having a claim for relief against the dealer on ~~said~~the bond.

16       **SECTION 17. AMENDMENT.** Section 36-04-13 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18       ~~**36-04-13. Application by department for appointment of trustee -- Hearing --**~~  
19 **Appointment of trustee - Requirements.**

20       Upon the insolvency of a livestock dealer as defined in section 36-04-01, the department,  
21 the agriculture commissioner may apply to the district court of the county in which the dealer  
22 maintains its principal place of business for the appointment of itself as trustee. Upon such  
23 notice to the dealer as the court shall prescribe, but not exceeding ten days, or upon a written  
24 waiver of such notice ~~in writing~~ by the dealer, the court shall ~~proceed to hear and determine~~  
25 ~~such~~make a determination regarding the application in a summary manner. If it ~~appears to the~~  
26 court determines that the dealer is insolvent, within the meaning of this chapter, and that it  
27 would be for the best interest of persons holding claims against the dealer for the purchase  
28 price of livestock ~~or wool~~ sold to ~~such~~the dealer or to the dealer's agent that the department  
29 ~~shall~~commissioner execute ~~such~~the trust, the court shall issue an order appointing the  
30 ~~department~~commissioner as a trustee, without bond, and the ~~department~~commissioner shall

1 proceed to perform ~~its~~the duties as ~~such~~of a trustee in ~~the manner set out, as set forth~~ in this  
2 chapter without further direction from the court.

3 **SECTION 18. AMENDMENT.** Section 36-04-14 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **36-04-14. Department Agriculture commissioner to take possession of records and**  
6 **property as trustee - Notice to file claims - When claims barred.**

7 1. Upon its appointment as being appointed trustee, the department is entitled-  
8 to agriculture commissioner shall take possession of all the books;

9 a. All accounts and records of the dealer which were kept by the dealer in-  
10 connection with such pertaining to the dealer's business, and shall take-  
11 possession thereof, and of all; and

12 b. All livestock or wool purchased by such the dealer under the dealer's license  
13 granted to the dealer and still remaining in the dealer's possession.

14 2. The department, as such commissioner, as trustee, by publication of shall publish a  
15 notice published once each week for three successive consecutive weeks in the official  
16 newspaper of the each county in which the dealer operated, shall notify all persons-  
17 having claims against the dealer to file the same with the department. Any such-  
18 person who fails to file that person's claim with the department and to surrender to it-  
19 any receipts which that person obtained from such dealer within was conducting  
20 business, directing any person having a claim against the dealer to file the claim and  
21 all supporting documentation with the commissioner within forty-five days after from the  
22 last date of publication of such. Any person failing to meet the filing requirements set  
23 forth in the notice is barred from participation upon such claim in any fund participating  
24 in any funds marshalled by the department as prescribed commissioner in this chapter.

25 **SECTION 19. AMENDMENT.** Section 36-04-15 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **36-04-15. Maintenance of actions to marshall assets of insolvent dealer.**

28 1. The department commissioner, in its capacity as trustee, may maintain suits or special  
29 proceedings in the name of the state of North Dakota upon its the commissioner's own  
30 relation but for the benefit of all claimants against the dealer's bond, upon such the  
31 bond and against any person who has converted any of the livestock or wool, for the

1           purpose of marshalling all of the trust assets of the insolvent dealer and distributing  
2           the same among the claimants.

3           2. Recourse must be had against the bond, however, before recourse is had against a  
4           person who knowingly and in good faith converted any of such ~~the~~ livestock or wool  
5           unless the ~~department~~ commissioner deems it necessary that all such ~~the~~ remedies be  
6           pursued at the same time.

7           **SECTION 20. AMENDMENT.** Section 36-04-16 of the North Dakota Century Code is  
8           amended and reenacted as follows:

9           **36-04-16. Remedy of claimants - Separate action by claimant permissible.**

10          ~~No~~ A claimant has ~~may not pursue~~ a separate claim for relief against the dealer's bond  
11          unless the ~~department~~ agriculture commissioner fails or refuses to apply for its ~~own~~ appointment  
12          as trustee as ~~provided in this chapter~~. This chapter does not prohibit any claimant, ~~either~~  
13          ~~independently or in conjunction with other claimants,~~ from pursuing concurrently with the  
14          ~~department~~ commissioner any other remedy ~~which~~ that the claimant or claimants may have  
15          against the dealer, or against the dealer's property of the dealer, for the ~~whole of the claimant's~~  
16          ~~or claimants' claims~~ entire claim or for any deficiency ~~which~~ that occurs after payments have  
17          been made from the trust fund.

18          **SECTION 21. AMENDMENT.** Section 36-04-17 of the North Dakota Century Code is  
19          amended and reenacted as follows:

20          **36-04-17. Appeal or compromising of action by the ~~department~~ commissioner.**

21          The ~~department~~ agriculture commissioner may ~~prosecute~~;

22          1. Prosecute an action for any ~~claims~~ claim arising under the ~~provisions of this chapter in~~  
23          any court, ~~may appeal~~;

24          2. Appeal from any adverse judgment to the ~~court~~ court of last resort, ~~and may settle~~;  
25          and

26          3. a. Settle and compromise any such action ~~whenever in its judgment it will be for if~~  
27          the commissioner determines that doing so is in the best interests of the  
28          claimants; and

29          b. Upon receiving a compromise payment ~~to it of the amount of any such~~  
30          ~~compromise,~~ or upon receiving the full amount of any bond or conversion claim,

1           the departmentcommissioner may exonerate the person compromising or paying  
2           the ~~same~~claim from further liability growing out of ~~such~~the action.

3           **SECTION 22. AMENDMENT.** Section 36-04-18 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **36-04-18. Moneys collected on claims to be deposited in Bank of North Dakota.**

6           All moneys collected and received by the departmentcommissioner as trustee must be  
7 deposited in the Bank of North Dakota pending the marshalling of ~~said~~the fund.

8           **SECTION 23. AMENDMENT.** Section 36-04-19 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10           **36-04-19. Department to file report upon recovery of trust fund**~~Report - Notice to~~  
11 ~~claimants - Approving or modifying report~~Payment of claims.

12           Upon recovery of the trust fund, or so much thereof as it is possible to recover or as is  
13 necessary to pay all outstanding claims, the departmentagriculture commissioner shall file ~~its~~a  
14 report in court showing the amount payable ~~upon~~on each claim, after recognizing any proper  
15 liens ~~or~~, pledges ~~thereon~~or, assignments ~~thereof~~, or deductions ~~therefrom~~, with legal interest  
16 ~~thereon~~. If the fund ~~proves~~is insufficient to ~~redeem~~pay all claims in full, the commissioner shall  
17 prorate the fund must be prorated among the claimants in such manner as the department  
18 ~~deems fair and equitable. Thereupon the~~. The court shall cite suchnotify the claimants ~~upon~~  
19 such notice by mail as it shall ~~prescribe to appear upon a day fixed in the notice and~~regarding  
20 the proposed distribution and direct that the claimants show cause why ~~such~~the report should  
21 not be approved and distribution ~~of said fund~~ made as ~~outlined in~~ accordance with the report.  
22 ~~Upon such~~After holding a hearing on the matter, the court shall approve ~~such report~~ or modify  
23 the ~~same as justice may require and shall~~report, issue an order directing the distribution of the  
24 fund, ~~and discharging the department from its trust~~discharge the commissioner from all the  
25 duties as trustee.

26           **SECTION 24. AMENDMENT.** Section 36-04-20 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28           **36-04-20. Attorney general to represent department and may employ assistants --**  
29 ~~Department need not pay court~~Court costs.

30           The attorney general shall represent the department in any action or proceeding brought  
31 under the provisions of this chapter, and may employ outside legal assistance when the

1 ~~attorney general deems it necessary to do so and may deduct the expense in connection-~~  
2 ~~therewith from the trust fund. The department~~agriculture commissioner is not required to pay  
3 any filing fee or other court cost or disbursement in connection with an application for  
4 appointment as trustee or with any action brought ~~by it under the provisions of this chapter~~  
5 ~~when such~~if the fee, cost, or disbursement accrues to the state or to a county of this state.

**NOTE:** Section 54-12-01 provides that the Attorney General shall "[i]nstitute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer."

Section 54-12-08 provides that the Attorney General may appoint assistant or special assistant attorneys general to represent the state board, commission, committee, or agency.

6 **SECTION 25. AMENDMENT.** Section 36-04-21 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **36-04-21. Penalties - Criminal - Civil - Injunctions.**

- 9 1. Any person ~~who violates any of the provisions of~~violating this chapter is guilty of a  
10 class A misdemeanor.
- 11 2. Any person ~~who violates any of the provisions of~~violating this chapter is subject to a  
12 civil penalty in an amount not to exceed five thousand dollars for each violation. The  
13 civil penalty may be adjudicated by ~~the courts~~a court or by the agriculture  
14 commissioner through an administrative hearing ~~under chapter 28-32.~~
- 15 ~~3. The department may, in accordance with the laws of this state governing injunctions-~~  
16 ~~and other process, maintain an action in the name of the state against any person-~~  
17 ~~violating any provision of this chapter.~~

**NOTE:** Section 54-12-01 provides that the Attorney General shall "[i]nstitute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer." Therefore, the inclusion of subsection 3 is not necessary.

**WOOL DEALERS - NOTE:** After the recommendations of the interim Agriculture Committee are addressed, a separate chapter pertaining to wool dealers will be drafted to parallel the language regarding livestock dealers.