

Introduced by

1 A BILL for an Act to create and enact chapters 4.1-72, 4.1-73, 4.1-75, 4.1-83, and 4.1-88 of the  
2 North Dakota Century Code, relating to livestock branding, estrays, and the licensing of  
3 livestock dealers and wool dealers; to repeal chapters 36-04, 36-09, 36-13, and 36-22 of the  
4 North Dakota Century Code, relating to livestock branding, estrays, and the licensing of  
5 livestock dealers and wool dealers; to provide a penalty; and to provide a continuing  
6 appropriation.

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

8 **SECTION 1.** Chapter 4.1-72 of the North Dakota Century Code is created and enacted as  
9 follows:

10 **4.1-72-01. North Dakota stockmen's association - Statutory authority.**

11 The North Dakota stockmen's association, a livestock association organized under the laws  
12 of this state and registered as a market agency under the Packers and Stockyards Act, 1921  
13 [7 U.S.C. 181 et seq.], for the better protection of the livestock industry of the state of North  
14 Dakota and for the purpose of securing uniformity of inspection and cooperation with the  
15 department of agriculture of the United States, shall inspect for the purpose of determining or  
16 verifying ownership of all cattle, horses, and mules, which are shipped or consigned to any  
17 livestock auction market, buying station, or packing plant, in this state, and all those that are  
18 shipped or consigned to a livestock auction market, buying station, or packing plant, located  
19 outside this state, if brand inspection services are provided in accordance with section  
20 4.1-73-24.

**SOURCE:** Section 36-22-02.

**NOTE:** Because the authority of the North Dakota Stockmen's Association extends to several chapters of the North Dakota Century Code, it is recommended that the general powers and duties be placed in a separate chapter.

Is there a need to provide statutory authority for the North Dakota Stockmen's Association to conduct brand inspections for purposes other than shipment or consignment to a livestock auction market, buying station, or packing plant, e.g., for removal from the state for recreational or competitive purposes, as envisioned by Section 4.1-73-22?

1       **4.1-72-02. Discrimination - Prohibited.**

2       The North Dakota stockmen's association may not discriminate between members of the  
3 association and persons who are not members of the association with respect to fees,  
4 recordings, complaints, requests for assistance, or any other duties assigned under this  
5 chapter.

**SOURCE:** Section 36-09-18.

6       **4.1-72-03. Office for recording brands - Employment of chief brand inspector.**

7       The North Dakota stockmen's association shall:

- 8       1. Maintain an office for recording brands; and  
9       2. Employ an individual to serve as the chief brand inspector of this state.

**SOURCE:** Section 36-09-01.

10       **4.1-72-04. Chief brand inspector - Deputy brand inspectors - Licensed peace officers.**

11       The chief brand inspector and any individual employed by the North Dakota stockmen's  
12 association to serve as a deputy brand inspector<sup>1</sup> must be licensed peace officers<sup>2</sup> in  
13 accordance with chapter 12-63 and may exercise the full authority of that license to enforce the  
14 brand laws and any other state laws relating to livestock. The chief brand inspector and the  
15 deputy brand inspectors may provide aid and assistance to other law enforcement agencies or  
16 officers, upon request, provided the requests are not for continuous or ongoing assistance.

**SOURCE:** Section 36-09-24.

**NOTE:**

<sup>1</sup>The North Dakota Stockmen's Association employs two individuals who serve as deputies under the Chief Brand Inspector. These individuals are referred to, within the business, as "fieldmen." Because this is colloquial terminology, it is proposed that the rewrite reflect a more formal statutory reference, i.e., deputy brand inspectors. This is also done to ensure that there is no confusion with respect to the powers and duties of the two fieldmen as opposed to the 200 individuals (a.k.a. "local inspectors") who go into the field to perform brand inspections.

<sup>2</sup>Current law provides that the Chief Brand Inspector and the two fieldmen have the power of a police officer, but it does not indicate whether they must in fact be licensed peace officers. (All three are so licensed.) Current law also authorizes certain activities, such as making arrests. As reworded, the section requires these individuals to be licensed peace officers, and it removes statutory examples of their authority. The examples are not necessary because their authority is defined by the scope of their license.

1        **4.1-72-05. Federally sponsored programs - Administration - Authorization.**

2        If requested by the agriculture commissioner or the state board of animal health, the North  
3 Dakota stockmen's association may serve as the state administrator for or assist in the  
4 administration of any federally sponsored program pertaining to livestock.

**SOURCE:** Section 36-09-25.

**NOTE:** Current law authorizes the North Dakota Stockmen's Association to serve as the state's administrator for that portion of any federally sponsored animal identification program which pertains to cattle, horses, and mules. In light of federal programmatic changes, the committee directed that the association's authority be retained and broadened.

5        **4.1-72-06. Federally sponsored programs - Administration - Records.**

6        1. Except as provided in subsection 2, any information created, collected, or maintained  
7 by the state veterinarian or the North Dakota stockmen's association with respect to  
8 the administration of any federally sponsored program pertaining to livestock as  
9 permitted by section 4.1-72-05 is confidential and not subject to the open records  
10 requirements of section 44-04-18.

11        2. Neither the state veterinarian nor the North Dakota stockmen's association may  
12 release any information designated as confidential under subsection 1, except:

13        a. Upon the written consent of every person identified or identifiable by the  
14 information;

15        b. In accordance with federal law;

16        c. To any state or federal agency for the purposes of animal disease control and  
17 animal disease traceback;

18        d. To the attorney general and any other law enforcement agency pursuing a  
19 criminal investigation; or

20        e. Pursuant to an order issued by a court upon a showing of good cause.

21        3. This section does not preclude the exchange of information between the state  
22 veterinarian and the North Dakota stockmen's association.

23        4. Any person violating this section is subject to the remedies set forth in section  
24 44-04-21.2. For purposes of applying section 44-04-21.2, "public entity" includes any  
25 person that has contracted with the state for the administration of any federally  
26 sponsored program pertaining to livestock.

**SOURCE:** Section 36-09-28.

1        **4.1-72-07. Collection of fees - Continuing appropriation.**

2        The North Dakota stockmen's association shall forward all moneys received under this title  
3 to the state treasurer for deposit in a special fund known as the North Dakota stockmen's  
4 association fund. All moneys in the North Dakota stockmen's association fund, together with all  
5 income earned on the moneys in the fund, are appropriated on a continuing basis to the North  
6 Dakota stockmen's association to carry out its statutory directives.

**SOURCE:** Sections 36-09-18 and 36-22-08.1.

7        **4.1-72-08. Biennial audit.**

8        At least once every two years the North Dakota stockmen's association shall provide for an  
9 audit by a certified public accountant or a licensed public accountant and shall submit an  
10 electronic copy of the audit report to the legislative council.

**SOURCE:** Section 36-22-09.

11        **SECTION 2.** Chapter 4.1-73 of the North Dakota Century Code is created and enacted as  
12 follows:

13        **4.1-73-01. Definition.**

14        For purposes of this chapter, "brand" means an identifying imprint that is placed on livestock  
15 by use of a hot branding iron or a freeze branding technique.

**SOURCE:** New section.

**NOTE:** We need to clarify that hot brands are the only ones that can be legally recorded.  
Freeze brands cannot be used on cattle to indicate ownership.

16        **4.1-73-02. Brand - Application for ownership.**

- 17        1. To acquire ownership of a brand, a person shall file an application with the North  
18 Dakota stockmen's association.
- 19        2. The application must contain a depiction of the proposed brand.
- 20        3. If the proposed brand is to be used for the purpose of determining or verifying  
21 livestock ownership in accordance with a brand inspection, the application must  
22 include a statement regarding:
- 23            a. The kind of livestock on which the brand will be placed; and  
24            b. The placement or position of the brand on each kind of livestock listed in  
25            subdivision a.
- 26        4. The chief brand inspector shall review each application to ensure compliance with the  
27 requirements of this chapter.

**SOURCE:** Section 36-09-02.

1        **4.1-73-03. Brands - Requirements for recording.**

2        1. The chief brand inspector shall approve an application for ownership of a brand, filed  
3        in accordance with section 4.1-73-02, and record the brand, unless:

4        a. The chief brand inspector determines that:

5            (1) Official records indicate the brand is owned by another person;

6            (2) The brand is deceptively similar to another recorded brand;

7            (3) The brand is recorded in another state;

8            (4) The brand may not be legible when placed on livestock; or

9            (5) The proposed placement or position of the brand does not meet the  
10           requirements of section 4.1-73-05; or

11        b. The brand:

12           (1) Consists of only one letter, number, or symbol, except as provided in  
13           subsection 2;

14           (2) Contains either the letter "g" or the letter "q";

15           (3) Contains a letter not found in the modern English alphabet;

16           (4) Contains the numeral "0" or "1";

17           (5) Contains a dot;

18           (6) Contains a letter, number, or symbol placed within another letter, number, or  
19           symbol; or

20           (7) Contains a symbol other than:

21            (a) A diamond;

22            (b) An arrow;

23            (c) A mill iron;

24            (d) A cross;

25            (e) A heart;

26            (f) A box;

27            (g) A triangle;

28            (h) A quarter circle;

29            (i) A bar; or

30            (j) A star.

- 1       2. The chief brand inspector may permit the recording of a brand that consists of one  
2           letter, number, or symbol, provided the brand meets all other statutory requirements  
3           for recording and is to be placed only on goats or sheep.

**SOURCE:** Section 36-09-02.1.

4       **4.1-73-04. Brand inspection certificate.**

- 5       Upon approving an application, the chief brand inspector shall provide a brand certificate to  
6       the owner. The certificate is evidence of the brand's ownership.

**SOURCE:** Section 36-09-04.

7       **4.1-73-05. Brands - Permissible locations.**

- 8       1. In the case of cattle, brands that meet all other statutory requirements for recording  
9           may be placed only on:  
10           a. A designated shoulder;  
11           b. A designated rib; or  
12           c. A designated hip.  
13       2. In the case of horses and mules, brands that meet all other statutory requirements for  
14           recording may be placed only on:  
15           a. A designated shoulder;  
16           b. A designated hip; or  
17           c. A designated jaw.  
18       3. In the case of bison, brands that meet all other statutory requirements for recording  
19           may be placed only on:  
20           a. A designated rib; or  
21           b. A designated hip.  
22       4. In the case of any other livestock, brands that meet all other statutory requirements for  
23           recording may be placed only on those locations designated by the chief brand  
24           inspector. For purposes of this subsection, the designation of locations is not subject  
25           to rulemaking under chapter 28-32.

**SOURCE:** Section 36-09-02(2).

26       **4.1-73-06. Recorded numerical brand - Impermissible placement.**

- 27       A person may not place a recorded brand that consists entirely of upright numbers on the  
28       hips of cattle.

**SOURCE:** Section 36-09-02(3).

1        **4.1-73-07. Numerical brands - Applicability of designated placement provisions.**

2        The design and placement restrictions set forth in this chapter do not apply to:

- 3        1. A numerical brand that was first recorded before July 1, 1957, and which has been  
4            continually rerecorded;  
5        2. An unrecorded numerical brand that is used for purposes such as herd or animal  
6            identification or registration; and  
7        3. Tattoos.

**SOURCE:** Section 36-09-02(3).

8        **4.1-73-08. Chief brand inspector - Determination regarding brand.**

9        A determination by the chief brand inspector regarding the acceptability of a brand or the  
10       permissibility of its location or placement, for purposes of recording, is final.

**SOURCE:** New section.

11       **4.1-73-09. Cancellation of brand.**

- 12       1. The chief brand inspector shall cancel a legally recorded brand if the chief brand  
13            inspector:  
14            a. Receives for filing a bill of sale for the brand, properly executed by the owner, as  
15                shown in the records of the chief brand inspector;  
16            b. Determines that the brand duplicates a previously recorded brand; or  
17            c. Determines that the brand was obtained through fraud, misrepresentation, or  
18                other illegal means.  
19       2. The chief brand inspector may cancel a legally recorded brand if the chief brand  
20            inspector determines that the brand has been recorded in another state.

**SOURCE:** Section 36-09-06.

**NOTE:** Subsection 2 is still under review.

21       **4.1-73-10. Expiration of brands.**

22       On January 1, 2016, and every five years thereafter, each livestock brand recorded in this  
23       state expires, unless:

- 24       1. The brand was issued within the six-month period immediately preceding the date of  
25            expiration; or  
26       2. The brand has been rerecorded in accordance with this chapter.

**SOURCE:** Section 36-09-09.1.

1        **4.1-73-11. Expiration of brand - Notice to owner.**

- 2        1. Before September 1, 2015, and every five years thereafter, the chief brand inspector  
3        shall provide to each owner of record:
- 4        a. Written notice of the brand's expiration date;  
5        b. Written notice of the owner's right to rerecord the brand; and  
6        c. A written statement indicating that if the brand is allowed to expire, the person will  
7        have lost ownership interest in the brand and may no longer use the brand.
- 8        2. The chief brand inspector shall send the notice and statement required by this section  
9        to the owner:
- 10       a. Electronically; or  
11       b. By first-class mail if requested by the owner.

**SOURCE:** Sections 36-09-09.1 and 36-09-11.

**NOTE:** Current law provides that by the required date, each livestock brand "must be canceled and no person may use or have any right, title, or interest in or to any livestock brand . . . previously recorded in this state." It is suggested that when the Chief Brand Inspector provides notice of the time for rerecording a brand, it might be appropriate to also require a statement indicating the purpose for the rerecording and the consequences for failing to rerecord the brand in a timely manner.

12       **4.1-73-12. Expiration of brands - Notice by publication.**

- 13       1. The chief brand inspector shall publish in the official newspaper of each county a  
14       notice of the date by which livestock brands must be rerecorded in accordance with  
15       this chapter.
- 16       2. The notice must be published at least once per week for three successive weeks. The  
17       first publication must occur between the first and fifteenth day of September, before  
18       the cancellation of all brands.

**SOURCE:** Section 36-09-12.

19       **4.1-73-13. Brands authorized for rerecording.**

20       Notwithstanding any other provision of this chapter, the chief brand inspector shall accept  
21       for rerecording:

- 22       1. Any brand that the owner previously recorded; and  
23       2. A brand that consists of one letter, number, or symbol, provided the brand is to be  
24       placed only on goats or sheep.

**SOURCE:** Section 36-09-02.1(3).

1        **4.1-73-14. Recording and rerecording brands - Fee.**

2        Each application for recording or rerecording a brand must be accompanied by a fee in the  
3 amount of twenty-five dollars.

**SOURCE:** Section 36-09-13.

4        **4.1-73-15. Reassignment of expired brand.**

5        1.    a.    Except as provided in subdivision b, for a period of one year from the date of a  
6            brand's expiration, the chief brand inspector may not reassign the expired brand  
7            to any person other than the registered owner at the time of the brand's  
8            expiration.

9            b.    If the person who owned the brand at the time it expired provides the chief brand  
10           inspector with written authorization, the chief brand inspector may reassign the  
11           brand to a new owner, at any time during the one-year period.

12        2.    Upon expiration of a brand and the passage of time or the procurement of  
13           authorization, as set forth in subsection 1, the chief brand inspector may accept an  
14           application to record the brand, provided the brand meets the requirements of this  
15           chapter.

**SOURCE:** Section 36-09-10.

16        **4.1-73-16. Use of unrecorded brand - Penalty.**

17        A person is guilty of a class B misdemeanor if the person places upon an animal a brand  
18 that has not been recorded in accordance with this chapter.

**SOURCE:** Section 36-09-13.1.

19        **4.1-73-17. Defacing brands - Unlawful branding - Penalty.**

20        A person is guilty of a class A misdemeanor for a first offense and a class C felony for a  
21 second or subsequent offense if the person:

22        1.    Alters, defaces, or attempts to alter or deface the brand on any animal owned by  
23           another for the purpose of deceiving others as to the animal's ownership; or

24        2.    Willfully brands, or causes to be branded, any animal owned by another for the  
25           purpose of deceiving others as to the animal's ownership.

**SOURCE:** Section 36-09-17.

26        **4.1-73-18. Bill of sale - Copy with shipment - Effect - Penalty.**

27        1.    A person may not sell any livestock carrying a recorded brand unless:

- 1           a. The seller is the owner of the recorded brand and delivers a bill of sale for the  
2           livestock to the purchaser; or
- 3           b. The seller delivers to the purchaser a bill of sale executed by the owner of the  
4           recorded brand and endorsed by the seller evidencing the later transaction.
- 5        2. The bill of sale must include:
- 6           a. The date;
- 7           b. The name, address, and signature of the seller;
- 8           c. The name, address, and signature of an individual who is at least eighteen years  
9           of age and who can verify the name and signature of the seller;
- 10          d. The name and address of the buyer;
- 11          e. The total number of animals sold;
- 12          f. A description of each animal sold as to sex and color; and
- 13          g. A depiction of the recorded brand.
- 14        3. The buyer shall retain the bill of sale for as long as the buyer owns any animals  
15        described in the bill of sale.
- 16        4. The seller shall provide a copy of the bill of sale to the individual hauling the livestock.  
17        The individual shall ensure that the document remains with the livestock while in  
18        transit.
- 19        5. The bill of sale or a copy of the bill of sale must be shown by the possessor on  
20        demand to any law enforcement officer or brand inspector.
- 21        6. The bill of sale is prima facie evidence of the sale of the livestock described in the bill  
22        of sale.
- 23        7. Subsections 1 through 6 do not apply to the sale of livestock for which a brand  
24        inspector has issued a certificate of ownership.
- 25        8. Any person willfully violating this section is guilty of a class B misdemeanor for a first  
26        offense and a class A misdemeanor for a second or subsequent offense.

**SOURCE:** Section 36-09-20.

**4.1-73-19. Proof of ownership - Alteration or falsification - Penalty.**

27        A person that knowingly makes, completes, alters, or in any way falsifies, any document  
28        evidencing proof of livestock ownership, with the intent to deceive or harm another, is guilty of a  
29        class B felony.

**SOURCE:** Section 36-09-20.2.

**NOTE:** Current law states "[a] person that, with intent to deceive or harm another, knowingly and falsely makes, completes, or alters any writing evidencing proof of livestock ownership is guilty of a class B felony."

1 **4.1-73-20. False proof of ownership - Sale of livestock - Penalty.**

2 A person willfully providing false proof of ownership in conjunction with the sale of livestock  
3 is guilty of a class B misdemeanor for a first offense and a class A misdemeanor for a second or  
4 subsequent offense.

**SOURCE:** Section 36-09-20.1.

5 **4.1-73-21. Sale of livestock under false registration certificate - Changing marking -**  
6 **Penalty.**

7 1. A person may not willfully:

8 a. Sell any livestock with a certificate of registration or breeding that does not  
9 pertain to the livestock;

10 b. Falsify a certificate of registration or breeding;

11 c. Misrepresent or falsify any production or performance information referenced in a  
12 certificate of registration;

13 d. Change the markings of livestock with the intent of deceiving a purchaser; or

14 e. Misrepresent the sire to which livestock has been bred.

15 2. A person violating this section is guilty of a class A misdemeanor for a first offense and  
16 a class C felony for a second or subsequent offense.

**SOURCE:** Section 36-09-22.

**NOTE:** Because this section pertains to registered livestock and not commercial livestock, the committee wanted to further consider whether the concept should be included as part of the North Dakota Century Code.

17 **4.1-73-22. Transportation of livestock from state - Brand inspection - Penalty.**

18 1. A person may not transport or attempt to transport cattle, horses, or mules from this  
19 state unless a brand inspector has inspected the livestock and issued a certificate of  
20 ownership. The certificate must remain with the livestock while in transit and be  
21 presented to the purchaser upon arrival at the destination. This subsection does not  
22 apply to a person that:

23 a. Transports cattle, horses, or mules from this state to obtain for the animals  
24 emergency medical treatment by a licensed veterinarian; or

- 1           b. Transports cattle, horses, or mules from this state to a livestock auction market,  
2           buying station, or packing plant, that is located in a bordering state and which is  
3           provided with brand inspection services in accordance with section 4.1-73-24.  
4        2. A person may not remove cattle, horses, or mules from a livestock auction market,  
5           buying station, or packing plant until a brand inspector has inspected the livestock and  
6           issued a certificate of ownership.  
7        3. Any person willfully violating this section is guilty of a class A misdemeanor. Any  
8           person willfully violating this section a second time within five years or willfully violating  
9           this section three or more times is guilty of a class C felony.

**SOURCE:** Section 36-09-23.

**NOTE:** Subsection 2 needs to be revisited.

10        **4.1-73-23. Request for reinspection - Cost.**

- 11        1. A person may request that a brand inspector conduct a reinspection if the person has  
12           reason to believe that:  
13           a. An error was made during the brand inspection; and  
14           b. Cattle, horses, or mules were shipped to an unintended destination as a result of  
15           the error.  
16        2. If it is determined that an error was made during the brand inspection, the North  
17           Dakota stockmen's association shall bear the cost of the reinspection. If it is  
18           determined that a brand inspection error was not made, the person that requested the  
19           reinspection shall reimburse the North Dakota stockmen's association for the cost of  
20           the reinspection.

**SOURCE:** Section 36-09-27.

**NOTE:** At the January 2012 meeting of the committee, a request was made for this section's legislative history. The pertinent record states:

Section 3 is the result of some things happening in brand states across the country. There are occasions when brand inspectors make a mistake and producers ask for a reinspection. There are also situations when a producer thinks their neighbor is stealing from them and have the brand inspectors come out to double check with the neighbor. This bill clarifies that if the brand inspectors need to do a reinspection due to their mistake, they will pay for it. However, if it is a "wild goose chase," the producer must pay for it. This is a result of some cattle that were in Nebraska. The only way the Nebraska brand inspectors would go out and look at it (the brand states often help each other) was if it was a mistake by North Dakota or if they knew who was going to pay for it. Many brand states are making these changes to their laws. The producer would be expected to reimburse for costs, which would be mileage and a day rate.

Current law provides that in the case of an error on the part of the brand inspector, the North Dakota Stockmen's Association will bear the cost of the reinspection. Is the association also responsible for the return of any livestock that were shipped to an unintended destination or any other costs that might be associated with the error?

1 **4.1-73-24. Brand inspection services - Out-of-state facilities.**

- 2 1. The state board of animal health may authorize the provision of brand inspection  
3 services at a livestock auction market, buying station, or packing plant, located outside  
4 this state.
- 5 2. In order to obtain brand inspection services under this section, an entity shall file a  
6 petition with the state board of animal health.
- 7 3. Before making a determination on the petition, the state board of animal health shall  
8 provide the North Dakota stockmen's association with an opportunity to comment.
- 9 4. The state board of animal health shall establish by rule the criteria to be considered in  
10 determining whether to authorize the services.

**SOURCE:** Section 36-09-26.

**NOTE:** Current law states:

"An out-of-state livestock facility that seeks to obtain brand inspection services from this state may file a written request with the North Dakota stockmen's association. Upon receiving a request for brand inspection services, the North Dakota stockmen's association shall petition the state board of animal health for permission to provide the services. The state board of animal health shall adopt rules setting forth the criteria that must be met before out-of-state brand inspections are approved."

The committee directed the section be "cleaned up" so that the North Dakota Stockmen's Association is not put in the position of having to formally petition for permission to provide inspection services, even if it is not supportive of the request. This has been done.

It is suggested that the committee examine the rulemaking requirement of this section. Current law requires the State Board of Animal Health to "adopt rules setting forth the criteria that must be met before out-of-state brand inspections are approved." The rewrite directs that the board establish by rule the criteria to be considered in determining whether to authorize the services. The question for the committee is whether this is a directive to implement a program approved by the legislative assembly or a delegation of legislative authority.

11 **4.1-73-25. Rules - Fees for brand inspection.**

12 The state board of animal health, after seeking advice from the North Dakota stockmen's  
13 association, shall adopt rules regarding:

- 14 1. The provision of brand inspection services at livestock auction markets, packing  
15 plants, and buying stations, including:
- 16 a. The fees to be charged for the provision of brand inspection services at livestock  
17 auction markets, packing plants, and buying stations; and

- 1            b. The time and manner in which the fees must be submitted to the North Dakota
- 2            stockmen's association; and
- 3        2. The provision of local brand inspections, including:
- 4            a. The fees to be charged for the provision of local brand inspections;
- 5            b. The collection of fees by the brand inspectors; and
- 6            c. The time and manner in which the brand inspectors must submit the fees to the
- 7            North Dakota stockmen's association.

**SOURCE:** Section 36-22-03.

**NOTE:** Current law provides that brand inspectors "shall charge and collect fees for inspections." According to testimony provided at the January 2012 meeting of the committee, livestock auction markets generally submit brand inspection fees to the North Dakota Stockmen's Association at the end of each month. The fees for local brand inspections are generally provided to the inspector at the time and place of the inspection. These concepts have all been incorporated in the rewrite of Section 36-22-03, which requires rules regarding brand inspections and fees.

8        **4.1-73-26. Slaughtering of cattle - Records - Penalty.**

- 9        1. Any person slaughtering cattle on a custom basis or for the purpose of selling the
- 10        meat at retail or wholesale shall record:
- 11            a. The date each animal was purchased or accepted for custom slaughtering;
- 12            b. The name and address of:
- 13                (1) The seller; or
- 14                (2) The person for whom custom slaughtering is being performed;
- 15            c. The animal's age or estimated age;
- 16            d. The animal's sex; and
- 17            e. Any brand found on the animal.
- 18        2. Any person required to record information in accordance with this section shall:
- 19            a. Compile the information in the manner directed by the North Dakota stockmen's
- 20            association; and
- 21            b. Forward the information to the North Dakota stockmen's association at least
- 22            quarterly.
- 23        3. Until such time as the information is forwarded to the North Dakota stockmen's
- 24        association, any person required to record information in accordance with this section
- 25        shall make the information available for inspection by a representative of the
- 26        association upon request.

1       4.   Any person violating this section is guilty of an infraction.

**SOURCE:** Section 36-09-15.

**NOTE:** The North Dakota Stockmen's Association is a private organization, not a governmental entity. Once the information is in the possession of the North Dakota Stockmen's Association, is it considered to be an open record or limited only to individuals or entities with legitimate enforcement interests?

2       **4.1-73-27. Record of brands.**

3       The chief brand inspector shall keep a record of all brands issued in this state. The record  
4 must include:

5       1.   The name and address of the person that owns the brand;

6       2.   A depiction of the brand;

7       3.   The type of livestock on which the brand is authorized for use; and

8       4.   The location or placement of the brand as authorized by the chief brand inspector.

**SOURCE:** Section 36-09-04.

9       **4.1-73-28. Chief brand inspector to issue brand book.**

10      1.   The chief brand inspector shall compile and issue a brand book from the records  
11       required by section 4.1-73-27, as of the final date for rerecording and shall compile  
12       and issue an annual supplement.

13      2.   a.   The chief brand inspector shall provide a paper or an electronic copy of the brand  
14       book and each annual supplement, free of charge to:

15       (1)   Each brand inspector; and

16       (2)   Any other law enforcement officer located in this state upon request.

17      b.   The chief brand inspector shall make paper copies of the brand books and  
18       annual supplements available for purchase by all other persons. The purchase  
19       price must be established by the North Dakota stockmen's association and  
20       approved by the state board of animal health.

21      3.   The chief brand inspector shall post the brand book and each annual supplement on  
22       the North Dakota stockmen's association website.

**SOURCE:** Section 36-09-14.

23      **4.1-73-29. Official brand book - Presumptive evidence.**

24      The official brand book published by the chief brand inspector must be received in all courts  
25 of this state as presumptive evidence of the recording and ownership of livestock brands.

**SOURCE:** Section 36-09-08.

1        **4.1-73-30. Effect of recorded brand - Bill of sale to be given and kept.**

2        A brand recorded in accordance with this chapter and properly located on livestock is prima  
3 facie evidence that the animal bearing the brand is the property of the brand's owner, unless  
4 covered by a bill of sale as provided by section 4.1-73-18.

**SOURCE:** Section 36-09-19.

5        **SECTION 3.** Chapter 4.1-75 of the North Dakota Century Code is created and enacted as  
6 follows:

7        **4.1-75-01. Definition.**

8        In this chapter, unless the context otherwise requires, "estrays" means cattle, horses, or  
9 mules, whether branded or unbranded, whose ownership has not been determined.

**SOURCE:** New section.

10       **4.1-75-02. Estrays - Possession.**

- 11       1. If an individual discovers an estray on property that the individual owns or controls, the  
12 individual shall make a good-faith effort to:
- 13       a. Take possession of the estray;
  - 14       b. Determine its ownership; and
  - 15       c. Facilitate its return.
- 16       2. If the individual is unable to take possession of the estray or to determine its  
17 ownership, the individual shall:
- 18       a. Notify the sheriff of the county in which the estray was found or the chief brand  
19 inspector, and:
    - 20       (1) Provide to the sheriff or the chief brand inspector any information that may  
21 assist in determining ownership of the estray;
    - 22       (2) Make the estray available for examination if requested by the chief brand  
23 inspector; and
    - 24       (3) Follow the directives of the chief brand inspector regarding the estray's care  
25 and disposal; or
  - 26       b. Deliver the estray to a livestock auction market in this state or to an out-of-state  
27 livestock auction market that receives brand inspection services under section  
28 4.1-73-24 and notify the brand inspector that it appears to be an estray.

- 1        3. Any person failing to comply with this section is liable to the owner of the estray for  
2            treble damages and may not claim reimbursement for any expenses otherwise  
3            allowed under this chapter.

**SOURCE:** Sections 36-13-01, 36-13-03.1, and 36-13-06.

**NOTE:** Based on the committee discussion at the January 2012 meeting, this section was reworked in an attempt to delineate the required response after an individual discovers an estray.

4        **4.1-75-03. Notification - Record of date and time.**

- 5            A county sheriff or the chief brand inspector shall make a record of the date and time that  
6        notification is received under section 4.1-75-02. The individual taking possession of the estray is  
7        not entitled to reimbursement for expenses incurred before the recorded date and time.

**SOURCE:** Section 36-13-01.

8        **4.1-75-04. Estrays - Notification of chief brand inspector.**

- 9            If an individual notifies a county sheriff that the individual has taken possession of an estray,  
10        the sheriff shall contact the chief brand inspector and relay any information regarding the estray.

**SOURCE:** Section 36-13-02.

11        **4.1-75-05. Claiming estrays.**

- 12        1. If before an estray is sold the chief brand inspector determines its owner, the individual  
13            who took possession of the estray shall return it to its owner, provided the owner  
14            reimburses the individual for all incurred expenses in accordance with the  
15            reimbursement schedule developed by the North Dakota stockmen's association or in  
16            any lesser agreed-to amount.
- 17        2. If the individual who took possession of the estray and its owner are unable to reach  
18            an agreement regarding the return of the estray, as provided for in subsection 1, the  
19            individual who took possession of the estray shall:
- 20            a. Deliver the estray to a livestock auction market in this state or to an out-of-state  
21            livestock auction market that receives brand inspection services under section  
22            4.1-73-24; and
- 23            b. Notify the brand inspector that the estray is to be sold and that reimbursement for  
24            the individual's expenses must be paid from the proceeds of the estray's sale, in  
25            accordance with the reimbursement schedule developed by the North Dakota  
26            stockmen's association.

**SOURCE:** Section 36-13-04.

1       **4.1-75-06. Reimbursement for costs - Schedule.**

- 2       1. Except as otherwise provided in section 4.1-75-05, the individual taking possession of  
3       an estray in accordance with this chapter is entitled to receive reimbursement for  
4       incurred expenses in accordance with a reimbursement schedule developed by the  
5       North Dakota stockmen's association.  
6       2. The amount reimbursable under this section must be deducted from the proceeds of  
7       the estray's sale. Any amount remaining thereafter must be forwarded to the North  
8       Dakota stockmen's association and submitted to the state treasurer for deposit in the  
9       North Dakota stockmen's association fund.

**SOURCE:** Sections 36-13-05 and 36-22-04.

10       **4.1-75-07. List of estrays - Publication - Proof of ownership.**

- 11       1. Each December, the North Dakota stockmen's association shall publish at least twice  
12       in the official newspaper of each county, a list of all estrays found in the county and for  
13       which the association received sale proceeds.  
14       2. The association shall maintain and make available on its website an updated list of all  
15       estrays for which the association received sale proceeds during the preceding  
16       seventy-two months.  
17       3. If a person demonstrates ownership of an estray to the satisfaction of the chief brand  
18       inspector within seventy-two months of the date on which the proceeds of its sale were  
19       distributed to the North Dakota stockmen's association, the association shall return to  
20       the owner the amount it received but shall retain any income earned on the amount.

**SOURCE:** Sections 36-22-06, 36-22-07, and 36-22-08.

21       **4.1-75-08. Possession of estray - Immunity from liability.**

22       If an individual, without being negligent, takes possession of an estray and complies with  
23       this chapter, that individual is not liable:

- 24       1. For any injury or damage caused by the estray while in the individual's possession or  
25       in the event the estray escapes; or  
26       2. For any economic loss incurred by:  
27        a. The owner of the estray, if later identified; or  
28        b. Any other person having a claim to the estray.

**SOURCE:** Section 36-13-07.

**NOTE:** Current law states:

"If the person that takes possession of an estray notifies either the sheriff or the chief brand inspector, as provided in this chapter, the person is not liable if, without fault on the part of the person, the estray dies, is stolen, or escapes and wanders away."

The rewrite suggests greater specificity with respect to the acts for which the individual taking possession of the estray is not liable and it includes a reference to economic loss.

1 **4.1-75-09. Failure to comply with chapter - Penalty.**

2 Any individual who takes possession of an estray and willfully fails to comply with this  
3 chapter is guilty of a class B misdemeanor.

**SOURCE:** Section 36-13-08.

4 **SECTION 4.** Chapter 4.1-83 of the North Dakota Century Code is created and enacted as  
5 follows:

6 **4.1-83-01. Definition.**

7 In this chapter, unless the context otherwise requires, "livestock dealer" means a person  
8 that buys horses, mules, cattle, hogs, goats, or sheep, from a producer or a livestock auction  
9 market:

- 10 1. On the person's own account, more than once per year for the purpose of resale  
11 within thirty days;
- 12 2. On commission; or
- 13 3. For slaughter.

**SOURCE:** Section 36-04-01.

14 **4.1-83-02. Livestock dealer - License required.**

- 15 1. Before a person may transact business as a livestock dealer, the person must be  
16 licensed by the agriculture commissioner.
- 17 2. This section does not apply to:
  - 18 a. A packing plant, provided the plant's annual purchases of cattle, goats, hogs,  
19 horses, mules, or sheep do not exceed five hundred thousand dollars; or
  - 20 b. The purchase of cattle, goats, hogs, horses, mules, or sheep:
    - 21 (1) By a livestock cooperative from a member of the cooperative; or
    - 22 (2) By one member of a livestock cooperative from another member.

**SOURCE:** Sections 36-04-02 and 36-04-04.

23 **4.1-83-03. Application for livestock dealer's license - Required information.**

24 To obtain a livestock dealer's license, a person must complete an application and submit it  
25 to the agriculture commissioner. The application must include:

- 26 1. The applicant's name and:

- 1           a. The name of each partner if the applicant is a partnership;
- 2           b. The name of each corporate officer and the state of incorporation if the applicant
- 3                 is a corporation; or
- 4           c. The name of each manager and the state of organization if the applicant is a
- 5                 limited liability company;
- 6         2. The applicant's mailing address; and
- 7         3. The applicant's principal place of business.

**SOURCE:** Section 36-04-04.

8         **4.1-83-04. License - Fee - Expiration.**

- 9           1. The fee for a livestock dealer's license is fifty dollars.
- 10          2. A livestock dealer's license issued under this chapter expires on June thirtieth of each
- 11                 year.
- 12          3. A livestock dealer's license is not transferable.

**SOURCE:** Section 36-04-07.

13         **4.1-83-05. Application for license - Posting of bond.**

- 14          1. As a condition of licensure, the applicant shall post a bond with the agriculture
- 15                 commissioner. The bond must be:
- 16                 a. A surety bond;
- 17                 b. A cash bond; or
- 18                 c. An irrevocable letter of credit.
- 19          2. The agriculture commissioner must be named as the obligee.
- 20          3. The bond required by this section must be:
- 21                 a. In an amount and form required by this chapter;
- 22                 b. Applicable to the period during which the livestock dealer's license is in effect;
- 23                 c. For the benefit of any person selling livestock to the livestock dealer or the
- 24                         dealer's agent; and
- 25                 d. Conditioned for the payment of any financial obligation owed by a livestock
- 26                         dealer to another person in conjunction with the sale of livestock.

**SOURCE:** Section 36-04-05.

27         **4.1-83-06. Bond requirements - Alternative.**

28         Any applicant having a bond on file with the United States department of agriculture

29         pursuant to the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.], may meet the

1 requirements of section 4.1-83-05 by filing a copy of that bond with the agriculture  
2 commissioner, provided the commissioner is named as the trustee of the bond.

**SOURCE:** Section 36-04-05.

3 **4.1-83-07. Out-of-state applicant - Trustee.**

4 A bond posted by an out-of-state applicant for a livestock dealer's license may name as  
5 trustee a financially responsible, disinterested person who is satisfactory to the commissioner.

**SOURCE:** Section 36-04-05.

6 **4.1-83-08. Bond - Minimum amount.**

7 1. The agriculture commissioner shall determine the amount of the bond required in  
8 accordance with this chapter by using the same basis as that prescribed for livestock  
9 dealers who are subject to the provisions of the Packers and Stockyards Act, 1921  
10 [7 U.S.C. 181 et seq.].

11 2. Notwithstanding subsection 1, if at the time of licensure or at any point during the  
12 period of licensure the agriculture commissioner has reason to believe that a bond is  
13 inadequate to secure the performance of the livestock dealer's obligations, the  
14 commissioner shall require an increase in the amount of the bond.<sup>1</sup>

15 3. A bond required by this chapter may not be in an amount less than ten thousand  
16 dollars.

**SOURCE:** Section 36-04-05.

**NOTE:**

<sup>1</sup>Under current law, it is not clear whether an increase in the amount of the bond may be requested by the Agriculture Commissioner only at the point of application or at any time during the period of the license. Department of Agriculture personnel indicated that the commissioner should be able to request an increase at any time. This suggestion has been incorporated and is subject to committee approval.

17 **4.1-83-09. Release of records - Confidentiality.**

18 1. As a condition of licensure, the applicant shall agree to provide to the agriculture  
19 commissioner, upon request, any financial record that the commissioner deems  
20 relevant for purposes related to:

21 a. The issuance of a livestock dealer's license; or

22 b. An investigation after issuance of a livestock dealer's license.

23 2. As a condition of licensure, the applicant shall file a records release with the  
24 agriculture commissioner, authorizing the commissioner to obtain, from any source<sup>1</sup>,  
25 any financial record that the commissioner deems relevant for purposes related to:

- 1           a. The issuance of a livestock dealer's license; or
- 2           b. An investigation after issuance of a livestock dealer's license.
- 3        3. Any information gained by the agriculture commissioner under this section is
- 4           confidential and may be provided only:
- 5           a. To federal authorities in accordance with federal law;
- 6           b. To the attorney general, state agencies, and law enforcement agencies, for use in
- 7           the pursuit of official duties; and
- 8           c. As directed by an order of a court pursuant to a showing of good cause.

**SOURCE:** Section 36-04-05.1.

**NOTE:**

<sup>1</sup>Section 36-04-10(4) provides that one ground for revocation of a license is that the "applicant [sic] has failed to keep and maintain suitable records, which disclose all purchases and sales of livestock, or has refused, during reasonable hours, to allow any authorized agent of the department to have access to inspect and copy any and all of such records relating to the dealer's business." If this concept is to be retained, this section needs to reference both records kept by the livestock dealer and records held by others on behalf of the dealer. This addition has been included for the committee's consideration.

9        **4.1-83-10. Dealer's license - Grounds for denial.**

- 10       1. The agriculture commissioner shall<sup>1</sup> deny an applicant a livestock dealer's license if:
- 11           a. The applicant's current assets do not exceed the applicant's current liabilities; or
- 12           b. The applicant submitted false or misleading information in connection with the
- 13           application.
- 14       2. The agriculture commissioner may deny an applicant a livestock dealer's license if:
- 15           a. After due investigation, the commissioner has reason to believe that the applicant
- 16           has failed to pay, in a timely manner and without reasonable cause, prior
- 17           obligations incurred in connection with livestock transactions;
- 18           b. The applicant has failed to pay brand inspection fees or veterinary inspection
- 19           fees, as required by law, within sixty days of the date on which they were due; or
- 20           c. The applicant has violated any of the laws of this state governing the handling,
- 21           shipment, or transportation of livestock.<sup>2</sup>

**SOURCE:** Sections 36-04-04 and 36-04-10.

**NOTE:**

<sup>1</sup>Current law, sets forth certain instances in which the Agriculture Commissioner "shall" deny an applicant a license, e.g., failure to file a bond, failure to demonstrate that assets exceed liabilities, failure to pay for livestock transactions without reasonable cause, and making a false entry or statement of fact in an application, financial statement, or report filed under

the chapter. At the January 2012 meeting, it had been suggested that the Agriculture Commissioner should have discretion in determining whether to issue or deny a license. Because discretion with respect to the application of a mandate is irreconcilable, this section has been reworded to require a denial of licensure in two instances and to provide discretion in other stated instances. The committee is asked to review these changes.

<sup>2</sup>Are there any other reasons that should serve as a ground for denial of an application? Should the section specify that there may be other reasons for a denial?

At the January 2012 meeting, it had been suggested that a person who is denied a license should be able to request a hearing. If such a provision is included, would the Agriculture Commissioner be "required" to provide a hearing upon an applicant's request? (This provision has not been included, pending further discussion by the committee.)

1 **4.1-83-11. Change of circumstance - Notification of agriculture commissioner.**

2 A livestock dealer shall notify the agriculture commissioner of:

- 3 1. Any legal change to the name in which the livestock dealer's license is issued;
- 4 2. Any change to the legal status of the livestock dealer; and
- 5 3. Any change in the nature and scope of the livestock dealer's business, if that change  
6 would warrant an increase in the amount of the bond posted by the dealer in  
7 accordance with this chapter.

**SOURCE:** New concept.

8 **4.1-83-12. Records.**

9 Each livestock dealer shall keep records regarding all purchases and sales of livestock for a  
10 period of two years. The records may be examined by the agriculture commissioner upon  
11 request.

**SOURCE:** New section.

**NOTE:** If a dealer's license can be revoked for failing to maintain adequate records, as it can under Section 36-04-10(4), the chapter needs to require that a dealer maintain such records. The two-year period for record retention was suggested by Department of Agriculture personnel.

12 **4.1-83-13. Agent's license.**

13 Before an individual may serve as the agent of a livestock dealer, the individual must be  
14 licensed by the agriculture commissioner. In order for an individual to obtain an agent's license,  
15 the agent's principal must request the license, at the time and in the manner determined by the  
16 agriculture commissioner.

**SOURCE:** Section 36-04-03.

17 **4.1-83-14. Agent's license - Requirements - Liability of principal.**

18 Before the agriculture commissioner issues an agent's license, the commissioner shall  
19 verify that:

- 1       1.   The agent's principal is a livestock dealer licensed in accordance with this chapter;  
2           and  
3       2.   The principal has filed with the agriculture commissioner a signed statement indicating  
4           that the principal is responsible for and will be held strictly liable for any acts and  
5           omissions arising out of the agent's livestock dealings, even if the dealings were not  
6           authorized by the principal.

**SOURCE:** Section 36-04-03.

7       **4.1-83-15. Agent's license - Grounds for denial.**

8       The agriculture commissioner may refuse to issue an agent's license if the individual  
9 seeking the agent's license:

- 10       1.   Was previously denied a livestock dealer's license or an agent's license;  
11       2.   Has had a livestock dealer's license or an agent's license revoked<sup>1</sup>; or  
12       3.   Has been convicted of an offense for which a term of imprisonment or a fine is  
13           authorized by statute.<sup>2</sup>

**SOURCE:** Section 36-04-03.

**NOTE:**

<sup>1</sup>Should the Agriculture Commissioner refuse to issue a license only if the person had a dealer's license or an agent's license "revoked" or should there also be a reference to the person having a license suspended?

<sup>2</sup>As rewritten, this section articulates instances in which the Agriculture Commissioner may deny licensure of an agent. In so doing, it eliminates the statutory reference to various determinations regarding rehabilitation that are currently in the North Dakota Century Code. It also includes the definition of an offense, rather than merely referencing the North Dakota Century Code section in which the definition is found.

Section 36-04-03(3) states:

No dealer may designate as an agent any person who has been denied a dealer's or agent's license or has had a dealer's or agent's license revoked for any reason or has otherwise acted in a manner which would be in violation of this chapter, except upon a determination by the commissioner that the person is sufficiently rehabilitated to serve the public as a dealer's agent and that the person does not owe any debt to any livestock seller or auction market. Conviction of an offense as defined by section 12.1-01-04 does not disqualify a person from licensure unless the commissioner determines that the offense has a direct bearing upon a person's ability to serve the public as a dealer's agent or that the person is not at present sufficiently rehabilitated under Section 12.1-33-02.1.

The committee might wish to compare the grounds for denying an agent's license with the grounds for denying a dealer's license, as set forth in Section 4.1-83-10.

14       **4.1-83-16. Agent's authority - Limitation.**

15       While acting as an agent, an individual may not conduct any transaction involving livestock  
16 in the agent's own name.

**SOURCE:** Section 36-04-03.

1 **4.1-83-17. Order to cease and desist - Hearing.**

2 The agriculture commissioner may issue an order to cease and desist if the commissioner  
3 has reason to believe that a person has committed or is about to commit a violation of this  
4 chapter. If the agriculture commissioner issues a cease and desist order, the commissioner  
5 shall hold a hearing within thirty days of the issuance and within sixty days of the issuance.  
6 revoke the order or make it permanent.

**SOURCE:** Section 36-04-09.1.

7 **4.1-83-18. Investigation of livestock dealer - Hearing.**

- 8 1. a. The agriculture commissioner shall investigate the conduct of any livestock  
9 dealer if the commissioner has reasonable cause to believe that the livestock  
10 dealer may have violated this chapter or engaged in any activity that constitutes a  
11 ground for license suspension or revocation under this chapter.<sup>1</sup>  
12 b. Subdivision 1 does not apply if an investigation is being conducted by the grain  
13 inspection, packers and stockyards administration.  
14 2. If after conducting an investigation the agriculture commissioner has probable cause  
15 to believe that a violation of the chapter occurred or that the livestock dealer engaged  
16 in any activity that constitutes a ground for license suspension or revocation under this  
17 chapter, the commissioner may conduct a hearing to determine whether the license of  
18 the livestock dealer should be suspended or revoked.

**SOURCE:** Section 36-04-09.2.

**NOTE:** Section 36-04-04 appears to indicate that the Agriculture Commissioner may suspend the license of an individual, as well as revoke the license, if certain violations have occurred. Section 36-04-09.2 references only revocation. At the recommendation of Department of Agriculture personnel, this section references suspension and revocation. Given the relatively short time span of a livestock dealer's license, should suspension even be an option?

<sup>1</sup>Section 36-04-09.2 references investigations pertaining to a dealer's sales and transactions, the conditions under which a dealer's business is conducted, and violations of the chapter. Section 36-04-10 calls for a revocation of the dealer's license upon the occurrence of certain acts that are not violations of the chapter. The rewrite attempts to combine the concepts by providing that the Agriculture Commissioner shall investigate the conduct of any livestock dealer if the commissioner has reasonable cause to believe that the dealer may have violated this chapter or engaged in any activity that constitutes a ground for license suspension or revocation under this chapter.

19 **4.1-83-19. Grounds for suspension or revocation of license.**

20 The agriculture commissioner may<sup>1</sup> suspend or revoke the license of a livestock dealer if:

- 1     1. The livestock dealer has violated this chapter;<sup>2</sup>
- 2     2. The livestock dealer has violated any of the laws of this state governing the handling,
- 3       shipment, or transportation of livestock;
- 4     3. The livestock dealer has been found guilty of deceit, fraud, dishonesty, forgery, or
- 5       theft, as a dealer in livestock;
- 6     4. The livestock dealer submitted false or misleading information in connection with the
- 7       application for licensure;<sup>3</sup>
- 8     5. The livestock dealer has failed to maintain records<sup>4</sup> that disclose all purchases and
- 9       sales of livestock, as required by section 4.1-83-12;
- 10    6. The livestock dealer has refused the commissioner's request to provide financial
- 11      records to the commissioner, as required by section 4.1-83-09;<sup>5</sup>
- 12    7. The livestock dealer has failed to pay brand inspection fees or veterinary inspection
- 13      fees, as required by law, within sixty days of the date on which they were due;<sup>6</sup>
- 14    8. The livestock dealer is convicted under section 4.1-03-13 of failing to submit beef
- 15      promotion assessments; or
- 16    9. The livestock dealer has failed to pay for livestock purchased in a timely manner and
- 17      without reasonable cause.<sup>7</sup>

**SOURCE:** Section 36-04-10.

**NOTE:**

<sup>1</sup>In establishing the grounds for denial, the word "may" is used rather than "shall," which is in current law.

<sup>2</sup>Because Section 4.1-83-18 calls for an investigation and a determination regarding license suspension or revocation if there is reasonable cause to believe that a violation of the chapter might have occurred, the rewrite adds the act of violating the chapter to the list of grounds for revocation of a dealer's license.

<sup>3</sup>According to Section 4.1-83-10, the Agriculture Commissioner "shall" deny an applicant a livestock dealer's license if the applicant submitted false or misleading information in connection with the application. However, once the license has been issued, and it is then discovered that the applicant submitted false or misleading information in connection with the application, the dealer's license may be suspended or revoked. Is this the desired consequence?

<sup>4</sup>If a dealer's license can be suspended or revoked for failing to maintain adequate records, the chapter needs to require that a dealer maintain such records. This has been done in Section 4.1-83-12.

<sup>5</sup>Section 36-04-05.1 requires that a dealer file, "together with the license application, a release authorizing the access of the commissioner to financial records of the dealer held by financial institutions, accountants, and other sources." Once filed, the records release gives the Agriculture Commissioner access to records held by financial institutions, etc.

However, some of the pertinent financial records could also be retained by the dealer. Failure to provide these records was added as another ground for possible license revocation. This addition is subject to committee review and approval.

<sup>6</sup>Is it the dealer's responsibility to pay the brand inspection fees and veterinary inspection fees?

<sup>7</sup>Section 36-04-10(9) states that a license may be revoked if the "licensee has failed to pay for livestock purchased." The section goes on to provide that "[s]uch failure includes the issuance of a check as payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds." The rewrite simplifies this concept. If a nonsufficient funds check is written by a dealer, the dealer has effectively failed to pay for the livestock.

1 **4.1-83-20. License suspension or revocation - Hearing - Appeal.**

- 2 1. Before the agriculture commissioner may suspend or revoke a livestock dealer's  
3 license, the commissioner shall:
- 4 a. Prepare a complaint;  
5 b. Designate the time and place for a hearing; and  
6 c. Serve a copy of the complaint and a notice of the hearing upon the livestock  
7 dealer at least fifteen days before the date of the hearing.
- 8 2. The agriculture commissioner shall serve the required notice by registered mail or in  
9 the manner provided by the North Dakota Rules of Civil Procedure for the service of a  
10 summons.
- 11 3. At the hearing, the agriculture commissioner shall take and receive testimony and  
12 evidence.
- 13 4. After the hearing, the agriculture commissioner shall issue an order to:
- 14 a. Dismiss the proceedings;  
15 b. Suspend the livestock dealer's license; or  
16 c. Revoke the livestock dealer's license.
- 17 5. The aggrieved party may appeal the order to the district court of the county in which  
18 the party maintains its principal place of business.

**SOURCE:** Section 36-04-11.

**NOTE:** At the request of Department of Agriculture personnel, this section has been rewritten to include an option for suspension, as well as revocation, of a livestock dealer's license.

19 **4.1-83-21. Bond - Claim for relief.**

20 If a livestock dealer defaults in the provisions of any bond required by this chapter, the  
21 livestock dealer is deemed to be insolvent within the meaning of this chapter. The claim for relief

1 for damages upon the bond, and the amount recovered in any claim for relief for the conversion  
2 of livestock purchased by the livestock dealer while the license is in force and effect, constitutes  
3 a trust fund in the hands of the agriculture commissioner for all persons having a claim for relief  
4 against the livestock dealer on the bond.

**SOURCE:** Section 36-04-12.

5 **4.1-83-22. Appointment of trustee.**

- 6 1. Upon the insolvency of a livestock dealer, the agriculture commissioner may apply to  
7 the district court of the county in which the dealer maintains its principal place of  
8 business for appointment as the trustee.
- 9 2. Upon notice to the livestock dealer, as the court shall prescribe but not exceeding ten  
10 days, or upon a written waiver of notice by the dealer, the court shall hear and make a  
11 determination regarding the application in a summary manner.
- 12 3. If the court determines that the livestock dealer is insolvent within the meaning of this  
13 chapter and that it would be in the best interest of persons holding claims against the  
14 dealer for the purchase price of livestock sold to the dealer or to the dealer's agent  
15 that the agriculture commissioner execute the trust, the court shall issue an order  
16 appointing the commissioner as the trustee, without bond.
- 17 4. Upon being appointed as the trustee, the agriculture commissioner shall perform the  
18 duties of a trustee as set forth in this chapter.

**SOURCE:** Section 36-04-13.

19 **4.1-83-23. Possession of records and property - Notice to file claims.**

- 20 1. a. Upon being appointed trustee, the agriculture commissioner shall take  
21 possession of all accounts and records pertaining to the livestock dealer's  
22 business. After reviewing the records, the agriculture commissioner may return to  
23 the dealer any records that are not necessary to the settlement of claims under  
24 this chapter.
- 25 b. Upon being appointed trustee, the agriculture commissioner shall take  
26 possession of all livestock purchased by the dealer under the dealer's license  
27 and remaining in the dealer's possession.
- 28 2. The agriculture commissioner, as trustee, shall publish a notice once each week for  
29 three consecutive weeks in the official newspaper of each county in which the  
30 livestock dealer was conducting business, directing any person having a claim against

1           the dealer to file the claim and all supporting documentation with the commissioner no  
2           later than forty-five days from the last date of publication. Any person failing to meet  
3           the filing requirements set forth in the notice is barred from participating in any funds  
4           marshalled by the agriculture commissioner under this chapter.

**SOURCE:** Section 36-04-14.

**NOTE:** At the January 2012 meeting of the committee, it was suggested that the Agriculture Commissioner be directed to take possession only of the "pertinent" records and not "all accounts and records pertaining to the dealer's business." Because the purpose of this effort is to determine assets that could be used to satisfy claims against the dealer, the rewrite authorizes the Agriculture Commissioner to take all of the accounts and records and then permits the commissioner to return those that are not necessary to the claims settlement process.

5           **4.1-83-24. Maintenance of action - Marshalling of assets.**

- 6           1. The agriculture commissioner, as trustee, may in the name of the state upon its own  
7           relation but for the benefit of all claimants against the livestock dealer's bond, maintain  
8           suits or special proceedings upon the bond and against any person who has  
9           converted any of the livestock, for the purpose of marshalling all of the trust assets of  
10           the insolvent dealer and distributing the assets among the claimants.  
11           2. However, recourse must be had against the bond before recourse is had against a  
12           person who knowingly and in good faith converted any of the livestock, unless the  
13           agriculture commissioner determines it necessary that all of the remedies be pursued  
14           at the same time.

**SOURCE:** Section 36-04-15.

15           **4.1-83-25. Remedy of claimants - Pursuit of separate action.**

- 16           1. A claimant may not pursue a separate claim for relief against the livestock dealer's  
17           bond unless the agriculture commissioner fails or refuses to apply for appointment as  
18           trustee.  
19           2. A claimant may pursue concurrently with the agriculture commissioner, however, any  
20           other remedy against the livestock dealer or the dealer's property that the claimant  
21           may have for the entire claim or for any deficiency that occurs after all payments have  
22           been made from the trust fund.

**SOURCE:** Section 36-04-16.

23           **4.1-83-26. Actions by agriculture commissioner - Exoneration.**

- 24           1. The agriculture commissioner may:

- 1           a. Prosecute an action for any claim arising under this chapter;
- 2           b. Appeal from any adverse judgment to the court of last resort; and
- 3           c. Settle and compromise any action if the commissioner determines that doing so
- 4                 is in the best interests of the claimant.
- 5        2. When the agriculture commissioner receives a compromise payment or the full
- 6           amount of any bond or conversion claim, the commissioner may exonerate the person
- 7           compromising or paying the claim from further liability growing out of the action.

**SOURCE:** Section 36-04-17.

8        **4.1-83-27. Moneys collected on claims - Required deposit.**

9        All moneys collected and received by the agriculture commissioner as trustee must be  
10 deposited in the Bank of North Dakota pending the marshalling of the fund.

**SOURCE:** Section 36-04-18.

11       **4.1-83-28. Report of amounts payable - Distribution of trust fund.**

- 12        1. Upon recovery of the trust fund, or so much of the fund as is recoverable or necessary
- 13           to pay the outstanding claims, the agriculture commissioner shall file with the court a
- 14           report showing the amount payable on each claim, after recognition of all proper liens,
- 15           pledges, assignments, and deductions.
- 16        2. If the trust fund is insufficient to pay all claims in full, the agriculture commissioner
- 17           shall prorate the fund among the claimants.
- 18        3. The court shall notify the claimants by mail regarding the proposed distribution and
- 19           direct that the claimants show cause why the report and distribution should not be
- 20           approved.
- 21        4. After holding a hearing on the matter, the court shall:
  - 22           a. Approve or modify the report;
  - 23           b. Issue an order directing that the trust fund be distributed; and
  - 24           c. Discharge the agriculture commissioner from all duties as trustee.

**SOURCE:** Section 36-04-19.

25       **4.1-83-29. Court costs.**

26        The agriculture commissioner is not required to pay any filing fee or other court cost or  
27 disbursement in connection with an application for appointment as trustee or with any action  
28 brought under this chapter if the fee, cost, or disbursement accrues to the state or to a county in  
29 this state.

**SOURCE:** Section 36-04-20.

1 **4.1-83-30. Violations of chapter - Criminal penalty - Civil penalty.**

- 2 1. Any person violating this chapter is guilty of a class A misdemeanor.<sup>1</sup>  
3 2. Any person violating this chapter is subject to a civil penalty in an amount not to  
4 exceed five thousand dollars for each violation. The civil penalty may be adjudicated  
5 by a court or by the agriculture commissioner through an administrative hearing.

**SOURCE:** Section 36-04-21.

**NOTE:**

<sup>1</sup>The committee might wish to consider whether subsection 1 should impose the penalty for any violation of the chapter or only for a "willful" violation of the chapter.

6 **SECTION 5.** Chapter 4.1-88 of the North Dakota Century Code is created and enacted as  
7 follows:

8 **4.1-88-01. Definition.**

9 In this chapter, unless the context otherwise requires, "wool dealer" means a person that  
10 buys wool from a producer.

**SOURCE:** Section 36-04-01.

11 **4.1-88-02. Wool dealer - License required.**

- 12 1. Before a person may transact business as a wool dealer, the person must be licensed  
13 by the agriculture commissioner.  
14 2. This section does not apply to the purchase of wool:  
15 a. By a wool cooperative from a member of the cooperative; or  
16 b. By one member of a wool cooperative from another member.

**SOURCE:** Sections 36-04-02 and 36-04-04.

17 **4.1-88-03. Application for wool dealer's license - Required information.**

18 To obtain a wool dealer's license, a person must complete an application and submit it to  
19 the agriculture commissioner. The application must include:

- 20 1. The applicant's name and:  
21 a. The name of each partner if the applicant is a partnership;  
22 b. The name of each corporate officer and the state of incorporation if the applicant  
23 is a corporation; and  
24 c. The name of each manager and the state of organization if the applicant is a  
25 limited liability company;  
26 2. The applicant's mailing address; and

1        3. The applicant's principal place of business.

**SOURCE:** Section 36-04-04.

2        **4.1-88-04. License - Fee - Expiration.**

3        1. The fee for a wool dealer's license is ten dollars.

4        2. A wool dealer's license issued under this chapter expires on June thirtieth of each  
5        year.

6        3. A wool dealer's license is not transferable.

**SOURCE:** Section 36-04-07.

7        **4.1-88-05. Application for license - Posting of bond.**

8        1. As a condition of licensure, the applicant must post a bond with the agriculture  
9        commissioner. The bond must be:

10        a. A surety bond;

11        b. A cash bond; or

12        c. An irrevocable letter of credit.

13        2. The agriculture commissioner must be named as the obligee.

14        3. The bond required by this section must be:

15        a. In an amount and form required by this chapter;

16        b. Applicable to the period during which the wool dealer's license is in effect;

17        c. For the benefit of any person selling wool to the wool dealer or the dealer's agent;  
18        and

19        d. Conditioned for the payment of any financial obligation owed by a wool dealer to  
20        another person in conjunction with the sale of wool.

**SOURCE:** Section 36-04-05.

21        **4.1-88-06. Out-of-state applicant - Trustee.**

22        A bond filed by an out-of-state applicant for a wool dealer's license may name as trustee a  
23        financially responsible, disinterested person who is satisfactory to the agriculture commissioner.

**SOURCE:** Section 36-04-05.

24        **4.1-88-07. Bond - Minimum amount.**

25        1. The agriculture commissioner shall determine the amount of the bond required in  
26        accordance with this chapter, provided that the amount of the bond is not less than ten  
27        thousand dollars.

- 1       2. If at the time of licensure or at any point during the period of licensure the agriculture  
2           commissioner has reason to believe that a bond is inadequate to secure the  
3           performance of the wool dealer's obligations, the commissioner shall require an  
4           increase in the amount of the bond.

**SOURCE:** Section 36-04-05.

5       **4.1-88-08. Release of records - Confidentiality.**

- 6       1. As a condition of licensure, the applicant shall agree to provide to the agriculture  
7           commissioner, upon request, any financial record that the commissioner deems  
8           relevant for purposes related to:  
9           a. The issuance of a wool dealer's license; or  
10           b. An investigation after issuance of a wool dealer's license.  
11       2. As a condition of licensure, the applicant shall file a records release with the  
12           agriculture commissioner, authorizing the commissioner to obtain, from any source,  
13           any financial record that the commissioner deems relevant for purposes related to:  
14           a. The issuance of a wool dealer's license; or  
15           b. An investigation after issuance of a wool dealer's license.  
16       3. Any information gained by the agriculture commissioner under this section is  
17           confidential and may be provided only:  
18           a. To federal authorities in accordance with federal law;  
19           b. To the attorney general, state agencies, and law enforcement agencies, for use in  
20           the pursuit of official duties; and  
21           c. As directed by an order of a court pursuant to a showing of good cause.

**SOURCE:** Section 36-04-05.1.

22       **4.1-88-09. Wool dealer's license - Grounds for denial.**

- 23       1. The agriculture commissioner shall deny an applicant a wool dealer's license if:  
24           a. The applicant's current assets do not exceed the applicant's current liabilities; or  
25           b. The applicant submitted false or misleading information in connection with the  
26           application.  
27       2. The agriculture commissioner may deny an applicant a wool dealer's license if, after  
28           due investigation, the commissioner has reason to believe that the applicant has failed  
29           to pay, in a timely manner and without reasonable cause, prior obligations incurred in  
30           connection with wool transactions.

**SOURCE:** Sections 36-04-04 and 36-04-10.

1 **4.1-88-10. Change of circumstance - Notification of agriculture commissioner.**

2 A wool dealer shall notify the agriculture commissioner of:

- 3 1. Any legal change to the name in which the wool dealer's license is issued;  
4 2. Any change to the legal status of the wool dealer; and  
5 3. Any change in the nature and scope of the wool dealer's business, if that change  
6 would warrant an increase in the amount of the bond posted by the dealer in  
7 accordance with this chapter.

**SOURCE:** New concept.

8 **4.1-88-11. Records.**

9 Each wool dealer shall keep records regarding all purchases and sales of wool for a period  
10 of two years. The records may be examined by the agriculture commissioner upon request.

**SOURCE:** New section.

11 **4.1-88-12. Agent's license.**

12 Before an individual may serve as the agent of a wool dealer, the individual must be  
13 licensed by the agriculture commissioner. In order for an individual to obtain an agent's license,  
14 the agent's principal must request the licensure, at the time and in the manner determined by  
15 the agriculture commissioner.

**SOURCE:** Section 36-04-03.

16 **4.1-88-13. Agent's license - Requirements - Liability of principal.**

17 Before the agriculture commissioner issues an agent's license, the commissioner shall  
18 verify that:

- 19 1. The agent's principal is a wool dealer licensed in accordance with this chapter; and  
20 2. The principal has filed with the agriculture commissioner a signed statement indicating  
21 that the principal is responsible for and will be held strictly liable for any acts and  
22 omissions arising out of the agent's wool dealings, even if the dealings were not  
23 authorized by the principal.

**SOURCE:** Section 36-04-03.

24 **4.1-88-14. Agent's license - Grounds for denial.**

25 The agriculture commissioner may refuse to issue an agent's license if the individual  
26 seeking the agent's license:

- 27 1. Was previously denied a wool dealer's license or an agent's license;

- 1       2. Has had a wool dealer's license or an agent's license revoked; or  
2       3. Has been convicted of an offense for which a term of imprisonment or a fine is  
3       authorized by statute.

**SOURCE:** Section 36-04-03.

4       **4.1-88-15. Agent's authority - Limitation.**

5       While acting as an agent, an individual may not conduct any transaction involving livestock,  
6 in the agent's own name.

**SOURCE:** Section 36-04-03.

7       **4.1-88-16. Order to cease and desist - Hearing.**

8       The agriculture commissioner may issue an order to cease and desist if the commissioner  
9 has reason to believe that a person has committed or is about to commit a violation of this  
10 chapter. If the commissioner issues a cease and desist order, the commissioner shall hold a  
11 hearing within thirty days of the issuance and within sixty days of the issuance, revoke the order  
12 or make it permanent, as the facts require.

**SOURCE:** Section 36-04-09.1.

13       **4.1-88-17. Investigation of wool dealer - Hearing.**

- 14       1. The agriculture commissioner shall investigate the conduct of any wool dealer if the  
15       commissioner has reasonable cause to believe that the wool dealer may have violated  
16       this chapter or engaged in any activity that constitutes a ground for license revocation  
17       under this chapter.  
18       2. If after conducting an investigation the agriculture commissioner has probable cause  
19       to believe that a violation of the chapter occurred or that the wool dealer engaged in  
20       any activity that constitutes a ground for license suspension or revocation under this  
21       chapter, the commissioner may conduct a hearing to determine whether the license of  
22       the wool dealer should be suspended or revoked.

**SOURCE:** Section 36-04-09.2.

23       **4.1-88-18. Grounds for suspension or revocation of license.**

24       The commissioner may revoke the license of a wool dealer if:

- 25       1. The wool dealer has violated this chapter;  
26       2. The wool dealer has been found guilty of deceit, fraud, dishonesty, forgery, or theft, as  
27       a dealer in wool;

- 1       3. The wool dealer submitted false or misleading information in connection with the
- 2       application for licensure;
- 3       4. The wool dealer has failed to maintain records that disclose all purchases and sales of
- 4       wool, as required by section 4.1-88-11;
- 5       5. The wool dealer has refused the commissioner's request to provide financial records
- 6       to the commissioner, as required by section 4.1-88-08; or
- 7       6. The wool dealer has failed to pay for wool purchased in a timely manner and without
- 8       reasonable cause.

**SOURCE:** Section 36-04-10.

9       **4.1-88-19. License suspension or revocation - Hearing - Appeal.**

- 10      1. Before the agriculture commissioner may suspend or revoke a wool dealer's license,
- 11      the commissioner shall:
  - 12      a. Prepare a complaint;
  - 13      b. Designate the time and place for a hearing; and
  - 14      c. Serve a copy of the complaint and a notice of the hearing upon the wool dealer at
  - 15      least fifteen days before the date of the hearing.
- 16      2. The agriculture commissioner shall serve the required notice by registered mail or in
- 17      the manner provided by the North Dakota Rules of Civil Procedure for the service of a
- 18      summons.
- 19      3. At the hearing, the agriculture commissioner shall take and receive testimony and
- 20      evidence.
- 21      4. After the hearing, the agriculture commissioner shall issue an order to:
  - 22      a. Dismiss the proceedings;
  - 23      b. Suspend the wool dealer's license; or
  - 24      c. Revoke the wool dealer's license.
- 25      5. The aggrieved party may appeal the order to the district court of the county in which
- 26      the party maintains its principal place of business.

**SOURCE:** Section 36-04-11.

27      **4.1-88-20. Bond - Claim for relief.**

28      If a wool dealer defaults in the provisions of any bond required by this chapter, the wool

29      dealer is deemed to be insolvent within the meaning of this chapter. The claim for relief for

30      damages upon the bond, and the amount recovered in any claim for relief for the conversion of

1 wool purchased by the wool dealer, while the license is in force and effect, constitutes a trust  
2 fund in the hands of the agriculture commissioner for all persons having a claim for relief  
3 against the wool dealer on the bond.

**SOURCE:** Section 36-04-12.

4 **4.1-88-21. Appointment of trustee.**

- 5 1. Upon the insolvency of a wool dealer, the agriculture commissioner may apply to the  
6 district court of the county in which the dealer maintains its principal place of business  
7 for appointment as the trustee.
- 8 2. Upon notice to the wool dealer, as the court shall prescribe but not exceeding ten  
9 days, or upon a written waiver of notice by the dealer, the court shall hear and make a  
10 determination regarding the application in a summary manner.
- 11 3. If the court determines that the wool dealer is insolvent within the meaning of this  
12 chapter and that it would be in the best interest of persons holding claims against the  
13 dealer for the purchase price of wool sold to the dealer or to the dealer's agent that the  
14 agriculture commissioner execute the trust, the court shall issue an order appointing  
15 the commissioner as the trustee, without bond.
- 16 4. Upon being appointed as the trustee, the agriculture commissioner shall perform the  
17 duties of a trustee as set forth in this chapter.

**SOURCE:** Section 36-04-13.

18 **4.1-88-22. Possession of records and property - Notice to file claims.**

- 19 1. a. Upon being appointed trustee, the agriculture commissioner shall take  
20 possession of all accounts and records pertaining to the wool dealer's business.  
21 After reviewing the records, the agriculture commissioner may return to the  
22 dealer any records that are not necessary to the settlement of claims under this  
23 chapter.
- 24 b. Upon being appointed trustee, the agriculture commissioner shall take  
25 possession of all wool purchased by the dealer under the dealer's license and  
26 remaining in the dealer's possession.
- 27 2. The agriculture commissioner, as trustee, shall publish a notice once each week for  
28 three consecutive weeks in the official newspaper of each county in which the wool  
29 dealer was conducting business, directing any person having a claim against the  
30 dealer to file the claim and all supporting documentation with the commissioner no

1 later than forty-five days from the last date of publication. Any person failing to meet  
2 the filing requirements set forth in the notice is barred from participating in any funds  
3 marshalled by the commissioner under this chapter.

**SOURCE:** Section 36-04-14.

4 **4.1-88-23. Maintenance of action - Marshalling of assets.**

- 5 1. The agriculture commissioner, as trustee, may in the name of the state upon its own  
6 relation but for the benefit of all claimants against the wool dealer's bond, maintain  
7 suits or special proceedings upon the bond and against any person who has  
8 converted any of the wool, for the purpose of marshalling all of the trust assets of the  
9 insolvent dealer and distributing the assets among the claimants.  
10 2. However, recourse must be had against the bond before recourse is had against a  
11 person who knowingly and in good faith converted any of the wool, unless the  
12 agriculture commissioner determines it necessary that all of the remedies be pursued  
13 at the same time.

**SOURCE:** Section 36-04-15.

14 **4.1-88-24. Remedy of claimants - Pursuit of separate action.**

- 15 1. A claimant may not pursue a separate claim for relief against the wool dealer's bond  
16 unless the agriculture commissioner fails or refuses to apply for appointment as  
17 trustee.  
18 2. A claimant may pursue concurrently with the agriculture commissioner, however, any  
19 other remedy against the wool dealer or the dealer's property that the claimant may  
20 have for the entire claim or for any deficiency that occurs after all payments have been  
21 made from the trust fund.

**SOURCE:** Section 36-04-16.

22 **4.1-88-25. Actions by agriculture commissioner - Exoneration.**

- 23 1. The agriculture commissioner may:  
24 a. Prosecute an action for any claim arising under this chapter;  
25 b. Appeal from any adverse judgment to the court of last resort; and  
26 c. Settle and compromise any action if the commissioner determines that doing so  
27 is in the best interests of the claimant.

- 1        2. When the agriculture commissioner receives a compromise payment or the full  
2            amount of any bond or conversion claim, the commissioner may exonerate the person  
3            compromising or paying the claim from further liability growing out of the action.

**SOURCE:** Section 36-04-17.

4        **4.1-88-26. Moneys collected on claims - Required deposit.**

- 5        All moneys collected and received by the agriculture commissioner as trustee must be  
6 deposited in the Bank of North Dakota pending the marshalling of the fund.

**SOURCE:** Section 36-04-18.

7        **4.1-88-27. Report of amounts payable - Distribution of trust fund.**

- 8        1. Upon recovery of the trust fund, or so much of the fund as is recoverable or necessary  
9            to pay the outstanding claims, the agriculture commissioner shall file with the court a  
10          report showing the amount payable on each claim, after recognition of all proper liens,  
11          pledges, assignments, and deductions.
- 12        2. If the trust fund is insufficient to pay all claims in full, the agriculture commissioner  
13          shall prorate the fund among the claimants.
- 14        3. The court shall notify the claimants by mail regarding the proposed distribution and  
15          direct that the claimants show cause why the report and distribution should not be  
16          approved.
- 17        4. After holding a hearing on the matter, the court shall:
- 18            a. Approve or modify the report;
- 19            b. Issue an order directing that the trust fund be distributed; and
- 20            c. Discharge the agriculture commissioner from all duties as trustee.

**SOURCE:** Section 36-04-19.

21        **4.1-88-28. Court costs.**

- 22        The agriculture commissioner is not required to pay any filing fee or other court cost or  
23 disbursement in connection with an application for appointment as trustee or with any action  
24 brought under this chapter if the fee, cost, or disbursement accrues to the state or to a county of  
25 this state.

**SOURCE:** Section 36-04-20.

26        **4.1-88-29. Violations of chapter - Criminal penalty - Civil penalty.**

- 27        1. Any person violating this chapter is guilty of a class A misdemeanor.<sup>1</sup>

- 1        2. Any person violating this chapter is subject to a civil penalty in an amount not to  
2            exceed five thousand dollars for each violation. The civil penalty may be adjudicated  
3            by a court or by the agriculture commissioner through an administrative hearing.

**SOURCE:** Section 36-04-21.

**NOTE:**

<sup>1</sup>The committee might wish to consider whether subsection 1 should impose the penalty for any violation of the chapter or only for a "willful" violation of the chapter.

- 4        **SECTION 6. REPEAL.** Chapters 36-04, 36-09, 36-13, and 36-22 of the North Dakota  
5 Century Code are repealed.