

# AGRICULTURE

## CHAPTER 61

### SENATE BILL NO. 2026

(Legislative Management)  
(Agriculture and Natural Resources Committee)

AN ACT to create and enact chapters 4.1-01, 4.1-15, 4.1-19, 4.1-54, 4.1-55, 11-38, 11-39, and 15-12.1, a new section to chapter 19-02.1, and chapter 54-60.3 of the North Dakota Century Code, relating to revisions of agriculture laws regarding the agriculture commissioner, the northern crops institute, eggs, miscellaneous agriculture laws, the state fair association, county extension agents, the county fair association, agricultural experiment stations, and the agricultural products utilization commission; to amend and reenact subsection 2 of section 57-15-06.7 of the North Dakota Century Code, relating to counties levying taxes to fund extension agents; to authorize the legislative council to make certain statutory redesignations; to repeal chapters 4-01, 4-02, 4-02.1, 4-05.1, 4-08, 4-11.1, 4-13.2, 4-14, 4-14.1, 4-14.2, 4-19, 4-21.1, 4-21.2, 4-22, 4-23, 4-24, 4-30, 4-32, 4-33, 4-35, 4-35.1, 4-35.2, 4-36, 4-37, 4-40, 4-41, 4-43, and 19-07 of the North Dakota Century Code, relating to the agriculture commissioner, agricultural fair associations, the state fair association, agricultural experiment stations, county agents, potato production contracts, the poultry division, unfair discrimination in the purchase of farm products, the agriculturally derived fuel tax fund, the northern crops institute, forestry and tree distribution, nurseries and nursery stock, the trees for North Dakota program, soil conservation districts, agricultural conservation and adjustment, miscellaneous agriculture laws, dairy products regulations, the interstate pest control compact, plant pests, the pesticide act, chemigation regulation, pesticide and pesticide container disposal, the agricultural development act, agriculture in the classroom, crop production products, industrial hemp, meatpacking plant assistance, and eggs; to provide a penalty; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

##### **4.1-01-01. Definitions.**

As used in this title, unless otherwise provided:

1. "Commissioner" means the agriculture commissioner or the designee or authorized representative of the commissioner.
2. "Department" means the North Dakota department of agriculture.

**4.1-01-02. Salary of agriculture commissioner.**

The annual salary of the agriculture commissioner is one hundred five thousand four hundred ninety-one dollars through June 30, 2016, and one hundred eight thousand six hundred fifty-six dollars after that date.

**4.1-01-03. Compelling attendance of witnesses and production of books and papers.**

The commissioner may compel the attendance of persons at hearings before the commissioner, and the production of books and papers. The commissioner may examine witnesses under oath and may administer oaths. The commissioner's office must file and preserve any testimony taken by the commissioner.

**4.1-01-04. Exhibits at fairs.**

The commissioner shall have charge of the exhibits of products or resources of the state which are shown at any fair or exposition in the United States. The commissioner shall cooperate with any railroad company doing business in the state, and with any person interested in securing an exhibit at any fair or exposition in the United States.

**4.1-01-05. Cooperation with federal agencies in destruction of predatory animals, destructive birds, and injurious field rodents.**

1. The commissioner may cooperate with the United States department of agriculture, animal and plant health inspection service, or other appropriate federal agency, in the control and destruction of:
  - a. Fur-bearers and field rodents that are injurious to:
    - (1) Livestock;
    - (2) Poultry; or
    - (3) Big and small game.
  - b. Big game threatening human health or domestic livestock; and
  - c. Birds causing crop damage or substantial economic loss or threatening human health.
2. The control and destruction of animals must be approved by the director of the game and fish department. The commissioner may enter written agreements with the animal and plant health inspection service or other appropriate federal agency, and the director of the game and fish department to determine:
  - a. The methods and procedures for the control and destruction of the birds and animals;
  - b. The extent of supervision required by the commissioner and the animal and plant health inspection service or other appropriate federal agency; and
  - c. The use and expenditure of the funds appropriated by the legislative assembly for the control and destruction of the animals.

3. The commissioner, in cooperation with the animal and plant health inspection service or other appropriate federal agency, may enter agreements with other governmental agencies and with counties, associations, corporations, limited liability companies, or individuals for control and destruction of birds and animals under this section.

#### **4.1-01-06. Expenditures authorized - Who to approve vouchers - Qualifications of hunters and trappers hired - When bounties not payable.**

The commissioner may authorize expenditures from funds available for equipment, supplies, and other expenses, including expenditures for personal services of hunters and trappers, as may be necessary to execute the functions of the commissioner under section 4.1-01-05. Hunters and trappers employed under section 4.1-01-05 must be state residents. Hunters and trappers employed under section 4.1-01-05 are not entitled to bounty provided by state laws for the killing or extermination of birds and animals under that section. All vouchers for expenditures made by the commissioner under this section must be approved by the duly authorized agent of the animal and plant health inspection service or other appropriate federal agency.

#### **4.1-01-07. Disposition of proceeds of furs, skins, and specimens taken.**

All furs, skins, and specimens taken by hunters and trappers paid out of funds appropriated to carry out section 4.1-01-05 must be disposed of in a manner the commissioner determines is in the best interest of the state. If furs, skins, or specimens are sold, the net proceeds of the sales, up to fifteen thousand dollars per biennium, must be used by the United States department of agriculture wildlife services to fund program activities benefiting the state's livestock producers.

#### **4.1-01-08. Marketing bureau.**

The commissioner shall establish and maintain a marketing bureau to gather and disseminate statistical information on any agricultural marketing problems of the state and to engage in marketing services of agricultural products. Any moneys received or generated by the pride of Dakota program must be deposited in the agriculture department operating fund in the state treasury.

#### **4.1-01-09. Certified beef program.**

The commissioner may collaborate with the state board of animal health, the North Dakota stockmen's association, North Dakota state university beef systems, and the United States secretary of agriculture to develop a source-verified and process-verified beef marketing program known as the certified beef program.

#### **4.1-01-10. Sustainably grown in North Dakota - Application - Logo - Promotion of commodities.**

1. The commissioner may implement a program to promote agricultural commodities sustainably grown in North Dakota.
2. If a program under subsection 1 is implemented, the program must require a producer to file an application with the commissioner. If a producer demonstrates the producer's growing practices with respect to a particular commodity meet the commissioner's established criteria for sustainability, the commissioner shall authorize the producer to label and market the commodity as being sustainably grown in North Dakota.

3. The commissioner may develop, and make available for use by authorized producers, a logo indicating the commodity is sustainably grown in North Dakota. The commissioner may actively support and promote the sale and use of products identified as sustainably grown in North Dakota.
4. The commissioner may establish and charge producers a fee for participating in the program. The commissioner shall forward all fees collected under this section to the state treasurer for deposit in the general fund.
5. The commissioner may engage in research and educate members of the public regarding agricultural commodities that are sustainably grown in this state.
6. For purposes of this section, "sustainably grown" means a crop grown using research-based practices resulting in:
  - a. Increased efficiencies in soil and nutrient preservation;
  - b. Decreased reliance on tillage and other soil-depleting practices;
  - c. Increased efficiencies in the use of water;
  - d. Increased efficiencies in the use of other necessary and measurable agricultural inputs;
  - e. Increased yield efficiencies; and
  - f. Greater economic benefit to producers.

**4.1-01-11. Advisory committee on sustainable agriculture - Creation - Duties - Powers - Compensation - Report to legislative management - Continuing appropriation.**

1. The commissioner shall appoint an advisory committee on sustainable agriculture.
  - a. The committee must include:
    - (1) The chairman of the house agriculture committee or the chairman's designee;
    - (2) The chairman of the senate agriculture committee or the chairman's designee;
    - (3) The commissioner of the department of commerce or the commissioner's designee;
    - (4) The director of the North Dakota state university agricultural experiment station;
    - (5) An agricultural producer who utilizes innovative research-based technologies in farming operations;
    - (6) A representative of an international agricultural corporation; and

- (7) An individual specializing in the domestic and international marketing of agricultural products.
- b. If both houses of the legislative assembly are controlled by the same party, the committee also must include one member of the legislative assembly from the minority party, appointed by the chairman of the legislative management.
2. The committee shall:
- a. Examine sustainability with respect to conventional farming practices and modern technology-based production practices;
- b. Examine production practices that are efficient and able to meet current and future global food and nutritional needs;
- c. Examine production practices that promote increased efficiencies in resource use, improve human health through access to safe and nutritious food, and enhance economic opportunities for individual producers;
- d. Explore metric evaluations to measure the attainment, maintenance, and certification of sustainability;
- e. Advise the commissioner regarding the development of a sustainability certification program and the marketing and packaging of products containing the certification;
- f. Explore the standards held by international private sector certifying groups which have the potential to increase sales of North Dakota products; and
- g. Report to the legislative management on the status of committee activities.
3. The committee may accept gifts, grants, and donations of money, property, and services. All moneys received as gifts, grants, or donations are appropriated on a continuing basis to the commissioner for the purpose of carrying out this section.
4. Each legislative member of the committee is entitled to receive per diem compensation in the amount established by subsection 1 of section 54-03-20 plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the committee.

#### **4.1-01-12. Commodity groups - Agriculture commissioner - Meetings.**

1. The commissioner may participate, as a nonvoting member, in any regular or special meeting of a commodity group, including any executive session held by a commodity group.
2. Annually, the commissioner shall call a meeting of representatives from each commodity group to engage in collaborative efforts to promote and market agricultural commodities.
3. For purposes of this section, "commodity group" means the:
- a. North Dakota barley council;

- b. North Dakota beef commission;
- c. North Dakota beekeepers association;
- d. North Dakota corn utilization council;
- e. North Dakota dairy promotion commission;
- f. North Dakota dry bean council;
- g. North Dakota dry pea and lentil council;
- h. North Dakota oilseed council;
- i. North Dakota potato council;
- j. North Dakota soybean council;
- k. North Dakota turkey federation; and
- l. North Dakota wheat commission.

#### **4.1-01-13. Publicly owned land - Noxious weed control or eradication.**

1. The commissioner shall arrange a noxious weed control or eradication program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state.
2. Each weed control officer shall arrange a noxious weed control or eradication program with political subdivisions owning or controlling public land within the weed control officer's jurisdiction.
3. If a federal agency does not control or eradicate noxious weeds on land under its jurisdiction and does not develop a management plan for controlling or eradicating the noxious weeds, the appropriate weed control office shall notify the agency of the failure to control or eradicate the noxious weeds. The federal agency shall provide a report to the weed control authorities detailing the methods used by the federal agency and showing cause why the federal agency is not controlling or eradicating the noxious weeds. The commissioner may specify the forms on which the federal agency report must be submitted.
4. Upon being notified by a weed board of the federal agency's failure to control or eradicate noxious weeds, the commissioner may hold a public hearing to determine the reason for the failure.

#### **4.1-01-14. Equine slaughter - Establishments.**

The commissioner shall monitor federal statutory and regulatory actions related to the slaughter of horses, mules, and other equines, and in particular, actions pertaining to the establishments in which the slaughter and preparation of the carcasses may take place. The commissioner may pursue or support federal legislative, regulatory, or contractual avenues allowing for the slaughter and processing of horses, mules, and other equines in this state, without the restriction that the slaughter or product preparation be conducted in establishments separate from any in which cattle, sheep, swine, or goats are slaughtered or their products are prepared.

**4.1-01-15. Agricultural wetland credits - Database.**

The commissioner shall create and maintain an electronic database of wetland credits available for purchase by an agricultural landowner.

**4.1-01-16. Grape and wine advisory committee - Membership.**

The commissioner shall appoint a grape and wine advisory committee. The committee must include:

1. Two individuals who are grape producers;
2. One individual who is the producer of a fruit, other than grapes, used in vinification;
3. Two individuals who own wineries located in this state; and
4. One representative of the North Dakota grape and wine association.

**4.1-01-17. Pipeline restoration and reclamation oversight pilot program - Generally.**

1. The commissioner shall establish a pilot program providing technical assistance and support to surface owners and surface tenants on pipeline restoration and followup support to surface owners and surface tenants on pipeline reclamation.
2. The commissioner may contract for ombudsmen to be a resource for technical assistance and followup on pipeline issues. The ombudsmen may not investigate or assist with any pipeline installed before January 1, 2006, or regulated by the public service commission under title 49, and may not assist in easement negotiations.
3. The pilot program may provide technical education, support, and outreach on pipeline-related matters in coordination with other entities.
4. The commissioner may contract with local individuals, deemed trustworthy by the surface owners and surface tenants, to be ombudsmen. The commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.

**4.1-01-18. Federal environmental law impact review committee.**

1. The federal environmental law impact review committee consists of:
  - a. The commissioner, who shall serve as the chairman;
  - b. The governor or the governor's designee;
  - c. The majority leader of the house of representatives, or the leader's designee;
  - d. The majority leader of the senate, or the leader's designee;
  - e. One member of the legislative assembly from the minority party, selected by the chairman of the legislative management;

- f. One individual appointed by the lignite energy council;
  - g. One individual appointed by the North Dakota corn growers association;
  - h. One individual appointed by the North Dakota grain growers association;
  - i. One individual appointed by the North Dakota petroleum council;
  - j. One individual appointed by the North Dakota soybean growers association; and
  - k. One individual appointed by the North Dakota stockmen's association.
2. The committee shall review federal environmental legislation and regulations detrimentally impacting or potentially detrimentally impacting the state's agricultural, energy, or oil production sectors. The committee shall confer with the attorney general with respect to participation in administrative or judicial processes pertaining to the legislation or regulations.
  3.
    - a. Any member of the legislative assembly serving on the committee is entitled to compensation at the rate provided for attendance at interim committee meetings and reimbursement for expenses, as provided by law for state officers, if the member is attending meetings of the committee or performing duties directed by the committee.
    - b. The compensation and reimbursement of expenses, as provided for in this subsection, are payable by the legislative council.

#### **4.1-01-19. Environmental impact - Cost of participation.**

1. Any expenses incurred by the commissioner or by the federal environmental law impact review committee in meeting the requirements of section 4.1-01-18 must be paid by the commissioner from the federal environmental law impact fund.
2. If the attorney general elects to participate in an administrative or judicial process pertaining to federal environmental legislation or regulations, which detrimentally impact or potentially detrimentally impact the state's agricultural, energy, or oil production sectors, any expenses incurred by the attorney general in the participation must be paid by the commissioner from the federal environmental law impact review fund.
3. For purposes of this section, "expenses" include administrative costs, consulting fees, research costs, expert witness fees, attorney fees, and travel costs.

#### **4.1-01-20. Gifts - Grants - Donations.**

The commissioner may accept gifts, grants, and donations for the purposes set forth in section 4.1-01-19, provided the commissioner posts the amount and source of any gifts, grants, and donations on the department's website. Any moneys received in accordance with this section must be deposited in the federal environmental law impact review fund.

**4.1-01-21. Federal environmental law impact review fund - Continuing appropriation.**

1. The federal environmental law impact review fund consists of:
  - a. Any moneys appropriated or transferred for the purposes set forth in section 4.1-01-19; and
  - b. Any gifts, grants, and donations forwarded to the commissioner for the purposes set forth in section 4.1-01-19.
2. All moneys in the federal environmental law impact review fund are appropriated to the commissioner on a continuing basis for the purposes set forth in section 4.1-01-19.

**4.1-01-22. Agriculture in the classroom program.**

1. The agriculture commissioner shall administer an agriculture in the classroom program with the advice of the agriculture in the classroom council.
2. The agriculture in the classroom council consists of seven individuals. The agriculture commissioner shall appoint six council members. The seventh council member is the superintendent of public instruction or the superintendent's designee. Annually, the council shall elect one of its members to serve as the chairman.
3. At the call of the chairman, the council shall meet at least twice each year, to confer with and advise the agriculture commissioner regarding issues related to the agriculture in the classroom program.
4. The agriculture commissioner may award grants and contract with any person for the provision of an agriculture in the classroom program, the development of agricultural curriculum activities applicable to students from kindergarten through grade twelve, and the training of teachers in agricultural curriculum activities.
5. The agriculture commissioner may:
  - a. Consult and work with the superintendent of public instruction, the department of career and technical education, the United States department of agriculture, and any other public or nonpublic entities to provide and promote an agriculture in the classroom program;
  - b. Prepare instructional, informational, and reference publications on the North Dakota agricultural economy and rural lifestyles;
  - c. Provide training programs for public school teachers in agricultural curriculum activities;
  - d. Encourage research on and identification of new instructional, informational, and reference publications relating to this state's agricultural economy and rural lifestyles; and
  - e. Monitor the quality and condition of the agriculture in the classroom program.

6. The agriculture commissioner may accept and expend gifts, grants, and donations in support of the agriculture in the classroom program. If any gifts, grants, or donations are designated for a specific purpose, the commissioner shall honor the purpose provided the purpose is consistent with this chapter.
7. Members of the agriculture in the classroom council may not receive any compensation for their services on the council, but are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided by law for state employees.

**SECTION 2.** Chapter 4.1-15 of the North Dakota Century Code is created and enacted as follows:

**4.1-15-01. Northern crops institute - Northern crops council - Powers and duties - Gifts and grants - Continuing appropriation.**

1. The northern crops institute is administered by and in conjunction with North Dakota state university.
2. The northern crops council, in consultation with the president of North Dakota state university, shall appoint the director of the northern crops institute and may remove the director for cause. The director shall manage the institute, hire and compensate necessary personnel within the limits of legislative appropriations, prepare a biennial budget, and serve as executive secretary to the northern crops council. The council shall fix the salary of the director, within the limits of legislative appropriations, in consultation with the president of North Dakota state university.
3. The president of North Dakota state university may participate in the hiring of a director for the institute, including serving on search committees, advertising, and interviewing and negotiating with candidates.
4. Funds appropriated to the northern crops institute may not be commingled with funds appropriated to North Dakota state university. Appropriation requests of the northern crops institute must be separate from appropriation requests of North Dakota state university.

**4.1-15-02. Northern crops council - Duties - Chairman - Meetings.**

The northern crops council shall establish policies for the operation of the northern crops institute.

1. The council consists of:
  - a. The agriculture commissioner or the commissioner's designee;
  - b. The president of North Dakota state university of agriculture and applied science or the president's designee;
  - c. The president and general manager of the North Dakota mill and elevator association;
  - d. An individual selected by the North Dakota barley council;
  - e. An individual selected by the North Dakota oilseed council;

- f. An individual selected by the North Dakota soybean council;
  - g. An individual selected by the North Dakota wheat commission;
  - h. No fewer than five nor more than seven individuals who produce northern crops, selected by the members referenced in subdivisions a through g; and
  - i. No more than four representatives of industries that process northern crops, selected by the members designated in subdivisions a through g.
2. a. The term of office for each member of the council referenced in subdivisions d through i of subsection 1 is three years, and those members are limited to two 3-year terms.
  - b. Each term of office begins with the first meeting after the member's appointment.
3. Annually, the council members shall select one of the individuals referenced in subdivisions d through i of subsection 1 to serve as the chairman.
  4. The council shall meet at least three times annually at the times and places as determined by the council and may meet in special meeting upon the call and notice as may be prescribed by rules adopted by the council.
  5. If a member is unable to attend a meeting of the council, the member may be represented by an individual who has a written proxy from the member.

#### **4.1-15-03. Purpose - Powers and duties.**

The northern crops institute shall provide technical and marketing assistance through specialized training courses and technical services that facilitate domestic and market development and expanded sales of northern grown crops. The institute shall render services including:

1. In-plant consultations regarding crop quality problems, product manufacturing, and possible purchasing methods and standards.
2. Short courses in product milling and processing, plant management, county elevator management, grain grading, and marketing of crops.
3. Educational and career and technical education training programs in milling, processing, manufacturing, purchasing methods, marketing procedures, product sales techniques, and other related subjects to be conducted for users of northern crops.
4. Short-term investigations, consultation, evaluation, and research to solve technical problems involved in the maintenance of quality and utilization of northern crops.
5. Annual surveys and quality analyses of new northern crops and monitoring of the quality and condition of commodities in market channels.
6. Research on northern crop damage problems and solutions.
7. Identification of problem areas in marketing northern crops abroad.

8. Preparation of instructional, informational, and reference publications on the end use, technical aspects of marketing, and utilization of northern crops for distribution domestically and abroad.

#### **4.1-15-04. Gifts and grants - Continuing appropriation.**

The northern crops institute may contract for and accept private contributions and gifts and grants-in-aid from the federal government, private industry, and other sources. Those funds may be spent only for the purposes of this chapter and for any purposes designated in the gift, grant, or donation and those funds are appropriated on a continuing basis to the northern crops institute for those purposes.

**SECTION 3.** Chapter 4.1-19 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-19-01. Definitions.**

As used in this chapter:

1. "Eggs" means eggs in the shell which are the product of a domesticated chicken.
2. "Poultry" means domesticated fowl bred for the primary purpose of producing eggs, meat, or both, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, but excluding doves and pigeons.

#### **4.1-19-02. Administration - Enforcement.**

The agriculture commissioner shall administer and enforce this chapter.

#### **4.1-19-03. Purposes - Duties.**

The agriculture commissioner shall:

1. Promote improved poultry breeding practices and cooperate with the board of animal health in controlling and eradicating contagious or infectious diseases of poultry.
2. Act as the official state agency for North Dakota in cooperation with the veterinary services, animal plant health inspection service, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan.
3. Act as the state agency to cooperate with the United States department of agriculture to provide federal-state grading service for poultry and poultry products offered for sale at the retail level, to supervise the federal-state poultry grading service, and to enforce regulations at the retail level as to identification by grade of all poultry sold.
4. Promote the welfare and improvement of the poultry industry and the marketing of poultry and poultry products within the state.
5. Adopt rules under chapter 28-32 as necessary to effectuate the purposes of this chapter.

#### **4.1-19-04. Licensing - Fees - Bonding.**

A person must be licensed by the agriculture commissioner to engage in the business of poultry buyer, processor, packer, hatchery operator, or salesperson. Licenses issued under this chapter expire on July first and must be issued or renewed only upon payment to the commissioner of the license fee of five dollars for each business activity subject to licensing and the furnishing of the bond required by rules adopted by the agriculture commissioner. Engaging in a business activity subject to licensing under this chapter without a valid license or failure to pay any license fee or to furnish the required bond within ten days after it becomes due or required is a violation of this chapter.

#### **4.1-19-05. Penalty.**

1. Any person who violates any provision of this chapter or rule adopted under this chapter is guilty of a class A misdemeanor.
2. Any person who violates any provision of this chapter or rule adopted under this chapter may be subject to a civil penalty not to exceed one thousand dollars for each violation. This penalty may be adjudicated by the courts or by the agriculture commissioner through an administrative hearing conducted by an independent hearing officer pursuant to chapter 28-32.
3. The agriculture commissioner may maintain an appropriate civil action in the name of the state against any person violating this chapter or rule adopted under this chapter.
4. Any person who knowingly makes a false statement, representation, or certification in any application, record, report, or other document is guilty of a class A misdemeanor.
5. For purposes of this section, "person" means an individual, partnership, corporation, limited liability company, association, cooperative, or any business entity.

#### **4.1-19-06. Eggs to be graded - Exemption.**

1. All eggs sold or offered for sale to an ultimate consumer in this state must be candled, graded, and labeled with the correct grade designation.
2. The agriculture commissioner may adopt appropriate rules under chapter 28-32 to provide for registration of egg dealers and standards for candling, grading, and inspecting eggs as to size, quality, purity, strength, holding requirements, transportation, labeling, and sanitation in conformity with United States department of agriculture regulations governing the grading and inspecting of eggs.

**SECTION 4.** Chapter 4.1-54 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-54-01. Sale of chemically treated grain - Misdemeanor.**

A person may not sell grain for the purpose of human or animal consumption which has been chemically treated for insect or fungus control, without informing the purchaser of the treatment. Any person selling chemically treated grain without informing the purchaser of the treatment is guilty of a class B misdemeanor.

**4.1-54-02. North Dakota winter show - Official site of the North Dakota agricultural hall of fame.**

The North Dakota winter show, an annual exhibition, shall be held in Valley City. No other event may be designated as, nor call itself, the North Dakota winter show, or any similar name designed to confuse the public with the exhibition sponsored every year in Valley City by the North Dakota winter show. The North Dakota winter show is a nonprofit corporation organized under the laws of this state. The North Dakota winter show is the official site of the North Dakota agricultural hall of fame.

**4.1-54-03. Agricultural commodity assessments funds - Investment income allocation.**

1. Notwithstanding any other provision of law, the state treasurer shall invest in accordance with section 21-10-07 all available moneys in:
  - a. The potato fund;
  - b. The oilseed fund;
  - c. The dry bean fund;
  - d. The dry pea and lentil fund;
  - e. The barley fund;
  - f. The soybean fund;
  - g. The corn fund;
  - h. The honey fund;
  - i. The turkey fund;
  - j. The milk marketing fund;
  - k. The dairy promotion commission fund;
  - l. The state wheat commission fund;
  - m. The ethanol fund; and
  - n. The North Dakota beef commission fund.
2. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer shall establish rules, in cooperation with the agricultural commodity organizations, to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

**4.1-54-04. Agricultural commodity promotion groups to report to the legislative assembly - Report contents.**

1. From the first to the tenth legislative day of each regular legislative session, the following entities must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly:
  - a. The North Dakota ethanol council;
  - b. The North Dakota potato council;
  - c. The North Dakota oilseed council;
  - d. The North Dakota dry bean council;
  - e. The North Dakota dry pea and lentil council;
  - f. The North Dakota barley council;
  - g. The North Dakota soybean council;
  - h. The North Dakota corn utilization council;
  - i. The North Dakota beekeepers association;
  - j. The North Dakota turkey federation;
  - k. The North Dakota milk marketing board;
  - l. The North Dakota dairy promotion commission;
  - m. The North Dakota state wheat commission; and
  - n. The North Dakota beef commission.
2. The presiding officer of each house of the legislative assembly may direct the reports be filed with some other standing committee of that house. Each report must contain a summary of the activities of the commodity group during the current biennium, and a single-page uniform statement of revenues and expenditures for the next biennium. Each report, except the reports of the North Dakota beekeepers association and the North Dakota turkey federation, also must include a state auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years.

**4.1-54-05. North Dakota agricultural hall of fame - Establishment - Induction.**

The North Dakota agricultural hall of fame is established at the North Dakota winter show.

1. To be eligible for induction into the North Dakota agricultural hall of fame, an individual must:
  - a. Have reached the age of forty-five;



2. The committee, by a two-thirds majority, may add a new agricultural organization to select a representative on the North Dakota agricultural hall of fame committee. The committee, by a majority vote, may remove the name of an organization that no longer exists from the North Dakota agricultural hall of fame committee.
3. The representative of the North Dakota winter show shall serve as the chairman of the committee and the secretary of the North Dakota winter show shall serve as the secretary of the committee. The chairman shall determine the time and location of all committee meetings.
4. The committee shall determine the number of nominees to be inducted into the North Dakota agricultural hall of fame each year. Any person who is nominated for induction into the North Dakota agricultural hall of fame and fails to receive the requisite votes for induction but receives at least one vote is automatically carried over for consideration for induction the following year. The nominee may provide the committee with updated or additional information to be considered.
5. The committee shall select the inductees by secret ballot and shall announce the selection at the North Dakota agricultural hall of fame banquet, to be held each year during the North Dakota winter show. Inductees must receive a plaque and have their photographs displayed at the North Dakota agricultural hall of fame.

**4.1-54-07. Purple coneflowers (Echinacea purpurea or Echinacea angustifolia) - Unauthorized removal - Penalty.**

1. It is a class A misdemeanor for any person to willfully enter upon state-owned land or land owned by another and remove or attempt to remove a purple coneflower, Echinacea purpurea or Echinacea angustifolia, from the land without the express written consent of the landowner. A person in violation of this section is subject to court-ordered restitution to the landowner, and is also subject to a civil penalty of up to ten thousand dollars.
2. It is a class A misdemeanor for any person to willfully possess a purple coneflower removed from land in violation of this section. A person in violation of this section is also subject to a civil penalty of up to ten thousand dollars.
3. Any vehicle used to transport a purple coneflower removed or possessed in violation of this section is forfeitable property under chapter 29-31.1.

**4.1-54-08. Genetically modified seed - Patent infringement - Sampling - Mediation.**

1. For purposes of this section, "farmer" means the person responsible for planting a crop on, managing the crop, and harvesting the crop from land on which a patent infringement is alleged to have occurred.
2. a. Before a person holding a patent on a genetically modified seed may enter upon any land farmed by another for the purpose of obtaining crop samples to determine whether patent infringement has occurred, the person holding the patent shall:

- (1) Provide written notice to the agriculture commissioner of the person's belief that a patent infringement has occurred and include facts supporting the allegation;
  - (2) Provide written notice to the farmer of the allegation that a patent infringement has occurred and request written permission to enter upon the farmer's land; and
  - (3) Obtain the written permission of the farmer.
- b. If the farmer withholds written permission, the person holding a patent may petition the district court of the judicial district in which the property is located for an order granting permission to enter upon the farmer's land.
3. The farmer may accompany the person holding the patent at the time any samples are taken.
4. If requested by the farmer or the person holding the patent, the state seed commissioner shall accompany the person holding the patent at the time any sample is taken. The state seed commissioner may impose a fee for providing that service. The patent holder and the farmer shall each pay one-half of the fee charged by the commissioner.
5. If the person holding a patent believes that the crop from which samples are to be taken may be subject to intentional damage or destruction, the person may seek a protection order from the district court. The protection order may not interrupt or interfere with normal farming practices, including harvest and tillage.
6. The person holding the patent may take samples from a standing crop, from representative standing plants in the field, or from crops remaining in the field after harvest.
7. The person holding the patent may not obtain more samples than are reasonably necessary to make a determination regarding patent infringement. An equal number of samples must remain in the custody of the state seed commissioner or the farmer for future comparison and verification purposes. All samples taken must be placed in containers labeled as to the date, time, and location from which they were taken. The labels must be signed by the farmer, the person who took the samples, and the state seed commissioner if the commissioner was present at the time the samples were taken. The patent holder and the farmer shall share equally the cost of the containers needed for the second set of samples that are retained by the state seed commissioner or the farmer. The farmer and the person holding the patent shall share equally the cost of the containers and the cost of obtaining the samples.
8. Within sixty days from the date the samples are taken, an independent laboratory shall conduct all tests to determine whether patent infringement has occurred. The person holding the patent shall notify the farmer of the test results, by certified mail or by any other method of delivery for which a signature is required, within twenty-one days from the date the results were reported to the person holding the patent.
9. The parties may participate in mediation at any time. The mediation must be conducted by a mediator jointly selected by the farmer and the person holding

the patent. If the farmer and the person holding the patent are unable to select a mediator, the mediation must be conducted by an independent mediation service.

10. If the case is not settled after mediation, either party may file a claim for relief with the federal district court having jurisdiction over the claim. Unless otherwise specified in a contract between the farmer and the person holding the patent, the appropriate state district court is the one that has jurisdiction over that portion of this state in which the farmer's land is located.

**SECTION 5.** Chapter 4.1-55 of the North Dakota Century Code is created and enacted as follows:

**4.1-55-01. State fair association - North Dakota state fair.**

The North Dakota state fair association shall conduct an annual North Dakota state fair, including exhibition of the agricultural, stockbreeding, horticultural, mining, mechanical, industrial, and other products and resources of this state. The North Dakota state fair must be held at Minot, North Dakota, at a site to be selected by the state fair association. No other fair in the state may include in its name the words "state fair".

**4.1-55-02. State fair association members.**

1. The state fair association membership must be selected in the following manner:
  - a. Three members must be chosen annually from each county, who are residents of the county. From each county, one member must be selected by the county fair board, one member selected by the board of county commissioners, and one member selected by the county agent. In a county in which there is no county fair board or county agent, or neither, the board of county commissioners shall select the members for which there is no other appointing authority under this subsection. A majority of the members must be selected under this subsection.
  - b. By a two-thirds vote of the board of directors, the directors may elect individuals as nonvoting honorary life members in recognition of eminent services in agriculture, horticulture, or associated arts and sciences; long and faithful service in the association; or benefits conferred upon the association.
2. The election and selection of members must be made and certified to the state fair association on or before each annual meeting. The term of each member, except honorary life members, begins at the opening of the annual meeting after being chosen under subsection 1 and continues until the opening of the succeeding annual meeting. Each member holds office until that member's successor is chosen and qualified. A member who is a director remains a member through that member's term of office as director. Any member may resign from membership by filing a written resignation with the secretary of the association but memberships are not transferable or assignable. By majority vote of all members of the board, the board of directors may suspend or expel a member for cause.

**4.1-55-03. Meetings of the association - Time and place - Notice.**

1. The annual meeting of the state fair association must be held as provided in the bylaws of the association. The annual meeting must include election of directors and the transaction of other business of the association. If the election of directors is not held on the day designated for the annual meeting or at an adjournment of the annual meeting, the board of directors shall cause the election to be held at a special meeting as soon thereafter as convenient. The failure to hold the annual meeting at the designated time does not result in a forfeiture or dissolution of the association.
2. A special meeting may be held upon the call of the president or by order of the board of directors. The president shall call a special meeting upon request by ten percent or more of the association members.
3. The president or board of directors, whichever calls the meeting, may designate any place within the state as the place of an annual or special meeting.
4. At least ten but not more than fifty days before an association meeting, written or printed notice stating the place, day, and hour of any meeting of the association must be delivered to each member entitled to vote at the meeting, personally or by mail or by any form of digital communication directed with verification of receipt to a digital communication address at which the member has consented to receive notice. Delivery of notice must be done by, or at the direction of, the president or the secretary or the officers or persons calling the meeting. For a special meeting, or when required by law or the bylaws, the purpose for which the meeting is called must be stated in the notice. If mailed, the notice of the meeting is deemed to be delivered when deposited in the United States mail, addressed to the member at the member's address as it appears on the records of the association with prepaid postage.

**4.1-55-04. Compensation and expenses of members.**

Each member of the board of directors is entitled to receive compensation in the amount of one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers while attending meetings or performing duties directed by the board. The board of directors may pay to members rendering unusual or special services to the association special compensation appropriate to the value of the services.

**4.1-55-05. Board of directors - Terms.**

The affairs of the state fair association must be managed by its board of directors, which must consist of nine members unless otherwise provided in the association bylaws. A decrease in the number of directors may not affect the term of any incumbent director. Each director shall hold office for a term of three years, and until that director's successor has been elected and qualified. The terms of the directors must be staggered so three directors are elected annually. The directors must be members of the state fair association and residents of the state.

**4.1-55-06. Annual meeting of the board of directors - Special meetings - Notice.**

1. A regular annual meeting of the board of directors must be held immediately after and at the same place as the annual meeting of the association. Notice

of the regular annual meeting of the board of directors must be included in the notice of the annual meeting of the state fair association. The board of directors may provide by resolution the time and place for the holding of additional regular meetings of the board without other notice than that resolution.

2. Special meetings of the board of directors may be called by the president or upon the written request of two of the directors. The president shall fix the time and place for the holding of any special meeting of the board of directors.
3. Notice of any special meeting of the board must be given to each director at least three days before the meeting by written notice delivered personally, sent by mail, or by any form of digital communication directed with verification of receipt to a digital communication address at which the director has consented to receive notice. Any director may waive notice of any meeting. The attendance of a director at any meeting constitutes a waiver of notice of that meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted, nor the purpose of any regular or special meeting of the board of directors, need be specified in the notice or waiver of notice of such meeting.

#### **4.1-55-07. Quorum of board of directors to transact business.**

A majority of the board of directors constitutes a quorum for the transaction of business at any meeting of the board. If less than a majority of the directors are present at a meeting, a majority of those present may adjourn the meeting from time to time without further notice. The act of a majority of the directors present at a meeting at which a quorum is present is the act of the board of directors unless the act of a greater number is required by law or by the bylaws. A director participating in a meeting through an electronic communication medium may be considered to be present at the meeting for purposes of this chapter.

#### **4.1-55-08. Vacancies and special compensation of board members.**

Any vacancy occurring on the board of directors must be filled by the board of directors for the unexpired term of the vacancy. The board of directors may contract for and pay directors rendering unusual or exceptional services to the association special compensation appropriate to the value of those services.

#### **4.1-55-09. Officers - Removal - Vacancies.**

The officers of the association must be a president, vice president, secretary, treasurer, and such other officers as may be created by the board of directors. An officer of the association shall perform the duties of the office as prescribed by law, the bylaws, or the board of directors. Any two or more offices may be held by the same individual except the offices of president and secretary. The president, vice president, secretary, and treasurer must be elected annually by the board of directors. Any office created by the board may be filled by appointment at any meeting of the board. Each elected officer holds office until that officer's successor has been duly elected and qualified. Any officer elected or appointed may be removed by the board. The removal of any officer is without prejudice to any contractual rights of the officer. Election or appointment of an officer or agent does not create contractual rights. A vacancy in any office may be filled by the board of directors for the unexpired portion of the term.

**4.1-55-10. Officers - Duties.**

1. The president is the principal executive officer of the association and shall supervise and control the business and affairs of the association and preside at all meetings of the association and the board of directors. The president may sign, with the secretary or any other officer of the association authorized by the board of directors, any deeds, mortgages, bonds, contracts, or other instruments the board of directors has authorized to be executed, except when the signing is expressly delegated by the board of directors, the bylaws, or law to some other officer or agent of the association. The president shall perform all duties incident to the office of president and duties as may be prescribed by the board of directors.
2. In the absence, inability, or refusal to act of the president, the vice president shall perform the duties of the president and when so acting has all the power of and is subject to all the restrictions upon the president. If there is more than one vice president, the vice president elected or appointed earliest in time shall perform the duties of the president. A vice president shall perform such duties as assigned by the president or board of directors.
3. If required by the board of directors, the treasurer shall give a bond for the faithful discharge of the treasurer's duties in a sum with that surety as determined by the board. The treasurer shall perform or supervise the performance of all the duties incident to the office of the treasurer and shall:
  - a. Keep accurate financial records for the association;
  - b. Deposit all money, drafts, and checks in the name of and to the credit of the association in the depositories designated by the board;
  - c. Endorse for deposit all notes, checks, and drafts received by the association as directed by the board, making proper vouchers;
  - d. Disburse association funds and issue checks and drafts in the name of the association, as directed by the board;
  - e. Give to the president and the board, when requested, an account of all transactions by the treasurer and of the financial condition of the association; and
  - f. Perform other duties assigned by the board or the president.
4. The secretary shall keep the minutes of the meetings of the board of directors; see that all notices are duly given in accordance with the bylaws or as required by law; be custodian of the association records; keep a register of the post-office address of each member as furnished to the secretary by the member; and, in general, perform or supervise the performance of all duties incident to the office of secretary and other duties as assigned by the president or by the board of directors.
5. Any other officers created by the board of directors may be required to give bonds for the faithful discharge of their duties in such sum and with such sureties as determined by the board of directors and shall perform duties assigned to them by the treasurer, secretary, president, or board of directors.

**4.1-55-11. Director's liability limited.**

The individual members of the board of directors of the state fair association are not liable for the negligence of any person, firm, corporation, or limited liability company staging any show, race, or other amusement at the state fair, nor for the negligence of any person employed by them.

**4.1-55-12. Bylaws, rules, and regulations.**

The state fair association may make all bylaws, rules, and regulations, not inconsistent with law, which it deems necessary or proper to carry out its responsibilities under this chapter and for the government of the state fair grounds, and for all activities on the state fair grounds, and for the protection, health, safety, and comfort of the public. The bylaws, rules, and regulations are in effect from the time of filing with the secretary of the association.

**4.1-55-13. Appointment of necessary employees.**

The president, or any other person delegated the authority by the board of directors, shall appoint and employ deputies and other subordinates; contractors, architects, builders, clerks, accountants, and other experts; and agents and servants as required to carry out the functions of the state fair association. Salaries and other compensation must be set by the president and board of directors and any expenses incurred in the performance of employment must be reimbursed in the same manner and for the same amounts as is provided for officials and employees of the state.

**4.1-55-14. State fair operating fund - Continuing appropriation.**

A special fund for the North Dakota state fair association to be known as the state fair operating fund must be maintained in the state treasury. All income, fees, rents, interest, and any other moneys, from any source derived by the state fair association, must be deposited in that fund for the use of the North Dakota state fair association. Moneys credited to the fund are appropriated as a standing appropriation for the purposes provided in this chapter. The fund is not subject to section 54-44.1-11.

**4.1-55-15. Organization under corporation laws - Real property transactions - Contracts.**

The state fair association has the rights, privileges, and liabilities of a corporation under the corporation laws of this state except as provided by this chapter. The association may purchase, hold, lease, exchange, trade, or sell real estate for the purpose of promoting and conducting a state fair. Real estate controlled by the state fair association may be leased, subleased, rented, or used for other than fair purposes when the property is not needed for fair purposes. The state fair association may contract in its own name, but as an agency of the state, and shall make all of its purchases under the purchasing laws of the state, except as exempted by the director of the office of management and budget.

**4.1-55-16. Name in which business conducted and titles taken - Execution of written instruments.**

All business of the association must be conducted under the name of "North Dakota state fair association". Title to property obtained in regard to the operation of the association must be obtained and conveyed in the name of the state of North Dakota, doing business as the North Dakota state fair association. Written instruments must be executed in the name of the state of North Dakota.

**4.1-55-17. Certified audit of state fair association.**

The state fair association shall submit annually to the governor and the legislative audit and fiscal review committee an audit report prepared by a certified public accountant based upon an audit of all records and accounts of the association.

**4.1-55-18. Attorney general to act as legal adviser.**

The attorney general shall appoint an assistant attorney general or a special assistant attorney general to provide legal assistance to the state fair association. The appointment is revocable at the pleasure of the attorney general. This section does not prohibit the state fair association from employing any other attorney to carry out the legal functions of the association or provide additional legal services, other than those provided through the office of the attorney general, necessary for the proper administration of the state fair association.

**4.1-55-19. Law enforcement - Arrangements with local law enforcement agencies.**

The state fair association shall make arrangements with local law enforcement agencies for the provision of law enforcement personnel. For the purpose of enforcing any state and local laws, rules, regulations, bylaws, and ordinances of the state fair association, negotiations may be entered with local law enforcement agencies for the use of law enforcement personnel or the deputizing of employees of the state fair association. The cost of providing law enforcement personnel is the responsibility of the state fair association, except in the case of law enforcement officials who are functioning in their normal capacity as agents of the state or its political subdivisions. Law enforcement personnel shall wear appropriate badges of office while acting as such.

**4.1-55-20. Service of process.**

In any action or proceeding upon a claim arising out of the conduct of the state fair, service of process may be made as provided in section 53-05-04.

**4.1-55-21. Regulation and licensing.**

The state fair association shall regulate all shows, exhibitions, performances, establishments, and privileges carried on during the state fair and ensure those enterprises are properly licensed according to local and state laws. The state fair association may license any enterprises not required to be licensed by state or local laws. The state fair association shall ensure that shows, exhibitions, performances, establishments, and exercise of fair privileges are conducted in compliance with all state and local laws and all rules and regulations of the state fair association.

**4.1-55-22. Nonliability of state for debts - Exception.**

The state is not liable for any of the debts or liabilities of the state fair association except as appropriations are made for that purpose by the legislative assembly.

**4.1-55-23. Annual report.**

The secretary or other officer charged with compiling an annual report of the proceedings of the state fair association and its financial condition for the preceding fiscal year by the annual meeting shall file a copy in the office of the agriculture commissioner. The commissioner shall include it, in whole or in part, in the commissioner's biennial report to the governor and the secretary of state.

#### **4.1-55-24. The Iverson grandstand.**

The grandstand constructed by the state fair association on the state fairgrounds during the 2009-11 biennium is designated the Iverson grandstand.

**SECTION 6.** Chapter 11-38 of the North Dakota Century Code is created and enacted as follows:

#### **11-38-01. County extension agent - Petition to authorize or discontinue levy - Election - Levy limitations.**

1. Upon the filing with the county auditor at least sixty-four days before the date of a general election of a petition to authorize or discontinue a tax levy for extension work, containing the names of twenty percent of the qualified electors of the county as determined by the votes cast for governor in the county in the most recent gubernatorial election, the board of county commissioners shall submit to the qualified electors at the next general election the question of authorizing or discontinuing a tax levy for extension work. Upon approval by a majority of qualified electors of the county voting on the question of authorizing a tax levy for extension work, the board of county commissioners may levy a tax of up to two mills as provided in subsection 2 of section 57-15-06.7. Upon approval by a majority of qualified electors of the county voting on the question of discontinuing a tax levy for extension work, the board of county commissioners shall terminate any levy or additional levy previously authorized under this chapter and may terminate county expenditures for extension work.
2. The board of county commissioners may submit to the electors at a primary or general election the question of approval of voter-approved additional levy authority for extension work for a period not exceeding ten years and if approved by a majority of the electors voting on the question, the board of county commissioners may levy an additional tax not exceeding the limitation in subsection 2 of section 57-15-06.7. Voter-approved additional levy authority authorized by electors of a county before January 1, 2015, remains in effect through taxable year 2024 or for the time period authorized by the electors, whichever expires first. After January 1, 2015, approval or reauthorization by electors of voter-approved additional levy authority under this section may not be effective for more than ten taxable years.
3. The board of county commissioners may appropriate funds out of the county general fund to cover any unanticipated deficiency in funding for extension work. All funds raised by levies under this chapter must be appropriated by the board of county commissioners for the purposes set forth in this chapter.

#### **11-38-02. Form of petitions.**

The petitions provided for in section 11-38-01 must be in substantially the following form:

#### **PETITION REGARDING LEVY FOR EXTENSION WORK**

We, the undersigned, qualified electors of \_\_\_\_\_ County, North Dakota, petition the board of county commissioners that it [levy or discontinue the levy of] a tax not to exceed two mills to employ an extension agent for the purpose of carrying on extension work in cooperation with the North Dakota state university extension service.

**11-38-03. Form of ballot.**

The question to be voted upon as provided in section 11-38-01 must be submitted on a separate ballot and must be worded as follows:

1. For a petition to authorize a levy:

For extension work \_\_\_\_\_

Against extension work \_\_\_\_\_

2. For a petition to discontinue a levy:

For discontinuing the extension work levy \_\_\_\_\_

Against discontinuing the extension work levy \_\_\_\_\_

**11-38-04. Extension agent selection.**

When a majority of the votes are cast to authorize a tax levy for extension work, by the following July first the North Dakota state university extension service shall conduct interviews and select a candidate for extension agent.

If a vacancy occurs in the extension agent position, the North Dakota state university extension service, with approval of the board of county commissioners, shall conduct interviews and select a candidate for extension agent.

**11-38-05. Discontinuance of extension work levy - Transfer of unobligated funds.**

If a majority of the votes cast at an election to discontinue authority for a tax levy under section 11-38-01 are in favor of discontinuing authority for the levy for extension work, the tax levy and the services of the extension agent must be discontinued on the thirty-first day of December following the date of election. Upon the discontinuance of extension work, accumulated and unobligated funds remaining in the special fund for that purpose must be transferred to the county general fund and the special fund must be closed out.

**11-38-06. Budgeting for extension work.**

1. When the board of county commissioners is authorized to make a levy for the employment of an extension agent, the board shall provide an annual budget that stipulates the salary of the agent, field and office expenses, and allowance for staff.
2. The budget must be revised annually to account for changes in agent and staff salaries and operating expenses. The board of county commissioners annually shall provide the North Dakota state university extension service input on the extension agent's performance. The extension agent's annual salary adjustment must be agreed upon by the board of county commissioners and the extension service based on the agent's annual performance and consideration of county and extension service budget limitations.
3. After agreeing upon a budget and after deducting the amount of funds contributed from federal and state funds, the board of county commissioners shall levy within the authorization under this chapter or appropriate funds out of the county general fund, or both, to cover the county's share of the budget.

**11-38-07. Extension agent to submit monthly account of expenditures.**

The extension agent shall submit monthly an accurate itemized account of all expenditures incurred by the agent in the regular conduct of duties to the North Dakota state university extension service for examination and audit. When charges are made by an extension agent for money expended in the performance of official duties and consistent with the approved budget, expenditures must be covered by a subvoucher or receipt according to county policy for reimbursement. The subvoucher or receipt must show at what place, on what date, and for what the money expended was paid. The extension agent shall forward the subvouchers or receipts with the bill, claim, account, or demand against the county. Charges made for transportation expenses may not exceed the amounts provided by section 11-10-15, and must be in itemized form showing the mileage traveled, the days when and how traveled, and the purpose of travel, verified by affidavit. The account must be transmitted and recommended for payment by the North Dakota state university extension service which shall audit and approve or disallow any expense item.

**11-38-08. Achievement days - Premiums - Report of extension agent.**

In July of each year the office of management and budget shall pay from funds appropriated for boys' and girls' clubwork a sum not to exceed five hundred dollars to the extension agent of each county within the state conducting boys' and girls' achievement days, to be used exclusively for the payment of premiums at the boys' and girls' achievement days. Within thirty days following the boys' and girls' achievement days, the extension agent shall refund to the office of management and budget any balance not expended, which must be remitted to the state treasurer and placed to the credit of the general fund.

**11-38-09. Direction and supervision of extension agent.**

The North Dakota state university extension service shall actively direct and supervise the work of the extension agent. The extension agent regularly shall request feedback from the board of county commissioners on county programs, based on local and state needs considerations. The work of the county agent may not conflict with state or federal laws or regulations governing appropriations for extension work.

**11-38-10. Report to board of county commissioners.**

An extension agent shall file a statement of the agent's work with the board of county commissioners either monthly or within a mutually agreed upon timeframe not to exceed one year.

**11-38-11. Dissatisfaction with extension agent - Meeting to be arranged.**

If the North Dakota state university extension service or the board of county commissioners becomes dissatisfied with the performance of an extension agent or the level of funding support required, the dissatisfied entity shall arrange a joint meeting at which detailed information as to the dissatisfaction with the performance of the agent or the level of funding support required must be presented and such joint action taken as is justified by the evidence.

**11-38-12. Administration - Position adjustments - Budget section report.**

The state board of agricultural research and education and the president of North Dakota state university shall control and administer the North Dakota state university extension service subject to the supervision of the state board of higher education.

Funds appropriated to the North Dakota state university extension service may not be commingled with funds appropriated to North Dakota state university. An appropriation request to defray expenses of the North Dakota state university extension service must be separate from an appropriation request to defray expenses of North Dakota state university. Subject to the availability of funds, the director of the North Dakota state university extension service may adjust or increase full-time or part-time equivalent positions to carry out the mission of the extension service. All full-time or part-time positions must be separate from North Dakota state university. Annually, the director of the North Dakota state university extension service shall report to the office of management and budget and to the budget section any adjustments or increases made under this section.

**SECTION 7.** Chapter 11-39 of the North Dakota Century Code is created and enacted as follows:

**11-39-01. County fair association organization as nonprofit corporation.**

A county fair association must be organized under the nonprofit corporation laws of this state. In addition to the powers and duties of nonprofit corporations under the laws of this state, a county fair association has the powers and duties specified in this chapter.

**11-39-02. Fair association - County funding.**

1. A fair association may be organized in any county. The officers and directors must be residents of the county or, if the association is to conduct a multicounty fair, residents of one of the participating counties. The association may make written application to the board of county commissioners for a grant to aid in the erection of buildings and other improvements suitable to conduct the fair and to pay premiums and expenses that may be awarded on fair exhibits. An application must include evidence that the association is incorporated in this state as a nonprofit corporation, the names and places of residence of all its officers and directors, and evidence of ownership or right to use of sufficient real property in the county to conduct the fair.
2. The board of county commissioners may not provide county funding or official county fair authorization under this chapter to more than one fair association or to any association organized for profit.
3. If the board of county commissioners is satisfied the statements in the application are true and the association intends in good faith to annually hold a fair within the county for the exhibition of agricultural, livestock, horticultural, mining, mechanical, industrial, and manufactured products of the county, and of those articles as are usually exhibited at fairs, and other public displays of human art, industry, and skill, the board may provide the association official county fair authorization and funding from revenues derived from the county general fund levy authority. If the funding is approved, the county treasurer shall pay to the secretary of the association, by the following July thirty-first, the amount of funding approved and shall take the receipt of the association for the payment.
4. Any amount received by the county fair association must be deposited by the secretary of the association in a special fund.
5. To promote holding a county fair, the board of county commissioners may purchase or lease in the name of the county not to exceed two hundred forty



If the county fair association fails to hold a fair within the county for two consecutive years, the board of county commissioners may direct that any county property on hand be sold and the proceeds of the sale and any unexpended balance in the county fair fund be transferred to the county general fund.

**11-39-06. County funding to cease when fair not held - Misappropriation of funds.**

The board of county commissioners shall refuse to provide funding for a county fair association that failed to hold a fair within the county in any year for which it has received funding from the county. In such a case, the board of county commissioners shall inquire into the disposition of moneys paid by the county to the association after its last annual report, and if there has been any misappropriation it shall institute proceedings at once to recover the sum misappropriated. For any such misappropriation, the officers, trustees, or directors of the association shall be liable personally to the county.

**11-39-07. Power to make regulations governing premises.**

Fair associations may make rules, regulations, and provisions necessary and proper for the government, management, and control of the premises used by them for the holding of fairs and expositions and for the regulation of the use of the premises.

**11-39-08. Director's civil immunity.**

The individual members of the board of directors of any fair association are immune from civil liability for any act or omission relating to service as a director for the negligence of any person, firm, corporation, or limited liability company staging any show, race, or other amusement at any county or municipal fair and are immune from civil liability for any negligence of any person employed by the board of directors or the association conducting such fair.

**11-39-09. Treasurer to give bond - Duty of officers and directors.**

The officers and directors of any fair association shall require the treasurer of the association to give a sufficient bond to those officers and directors, conditioned for the faithful keeping of that money as may come into the treasurer's hands as the treasurer. The treasurer may not receive funds of a fair association until the treasurer is properly bonded.

**11-39-10. Nonliability of state for debts - Exception.**

The state is not liable for any of the debts or liabilities of a fair association except to the extent appropriations are made for that purpose by the legislative assembly.

**SECTION 8.** Chapter 15-12.1 of the North Dakota Century Code is created and enacted as follows:

**15-12.1-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Agricultural experiment station" means the North Dakota state university main research center, the Dickinson research extension center, the Williston research extension center, the Langdon research extension center, the central grasslands research extension center, the Carrington research extension center, the Hettinger research extension center, the north central research

extension center, the agronomy seed farm, and any other department or agency designated by the state board of higher education.

2. "Center director" means the administrator in charge of a research or research extension center.
3. "Station director" means the administrator of the agricultural experiment station.

#### **15-12.1-02. Agricultural experiment station.**

The state board of agricultural research and education and the president of North Dakota state university shall control and administer the North Dakota agricultural experiment station subject to the supervision of the state board of higher education. Funds appropriated to the agricultural experiment station may not be commingled with funds appropriated to North Dakota state university. Appropriation requests to defray expenses of the agricultural experiment station must be separate from appropriation requests to defray expenses of North Dakota state university.

#### **15-12.1-03. Center directors - Research and research extension centers - Records and information.**

The station director has jurisdiction over the research and research extension centers of the agricultural experiment station. The center director shall administer each research or research extension center. The center director shall report to the station director. Each research or research extension center shall keep detailed records of all research activities. The research or research extension center shall publish and disseminate research results and information for the benefit of this state.

#### **15-12.1-04. Reports.**

Each center director shall submit an annual report to the station director. Each report must set forth in detail the investigations and experiments made during the preceding year, recommendations for the welfare of the center, the financial condition of the center, how all moneys have been expended during the preceding year, and the results of all experiments that have been completed during the preceding year. By September first of each year, the station director shall submit these reports, with a report of the North Dakota state university main research center, to the state board of agricultural research and education and the state board of higher education.

#### **15-12.1-05. North Dakota state university main research center position adjustments - Budget section report.**

The North Dakota state university main research center must be located on the campus of North Dakota state university of agriculture and applied science. The center is the administrative location of the agricultural experiment station. The center shall conduct research and coordinate all research activities of the agricultural experiment station. The research must have, as a purpose, the development and dissemination of technology important to the production and utilization of food, feed, fiber, and fuel from crop and livestock enterprises. The research must provide for the enhancement of quality of life, sustainability of production, and protection of the environment. The station director may adjust or increase full-time equivalent positions to carry out activities to accomplish the mission of the agricultural experiment station, subject to the availability of funds. All full or partial positions must be separate from North Dakota state university. The station director shall report annually to the office of management and budget and to the budget section any adjustments or increases made under this section. The center may conduct baseline research, including

production and processing in conjunction with the research and extension centers of the state, regarding industrial hemp and other alternative industrial use crops. The center may collect feral hemp seed stock and develop appropriate adapted strains of industrial hemp which contain less than three-tenths of one percent tetrahydrocannabinol in the dried flowering tops. The agriculture commissioner shall monitor the collection of feral hemp seed stock and industrial hemp strain development and shall certify appropriate stocks for licensed commercial cultivation.

**15-12.1-06. Dickinson research extension center.**

The Dickinson research extension center must be located in or near Dickinson in Stark County. The center shall conduct research:

1. On increasing the carrying capacity of native rangeland, with emphasis on conservation and preservation for future generations;
2. On grass production to determine how to best compensate for the vagaries of the weather as it influences forage production in the agriculture of western North Dakota;
3. At the ranch location in Dunn County with beef cattle and swine on breeding, feeding, management, and disease control for the benefit of livestock producers of western North Dakota and the entire state; and
4. Designed to increase productivity of all agricultural products of the soil by maintaining or improving the soil resource base in the agricultural region of southwestern North Dakota by:
  - a. The identification of adapted crop species and superior crop cultivars;
  - b. Propagation and distribution of selected seed stock; and
  - c. Development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources.

**15-12.1-07. Williston research extension center.**

The Williston research extension center must be located in or near Williston in Williams County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the agricultural region of northwestern North Dakota by:

1. The identification of adapted crop species and superior crop cultivars;
2. Propagation and distribution of selected seed stocks; and
3. Development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources.

**15-12.1-08. Langdon research extension center.**

The Langdon research extension center must be located in or near Langdon in Cavalier County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the agricultural region of northeastern North Dakota by:

1. The identification of adapted crop species and superior crop cultivars;

2. Propagation and distribution of selected seed stocks; and
3. Development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources.

**15-12.1-09. Central grasslands research extension center.**

The central grasslands research extension center must be located within an area bounded by the Missouri River on the west and the James River on the east. The center shall conduct research:

1. Designed to fulfill needs within an area bounded by the Missouri River on the west and the James River on the east; and
2. To increase the range-carrying capacity of native range, with emphasis on:
  - a. The conservation and preservation for future generations;
  - b. The stabilization of grass production to discover how to best compensate for the vagaries of the weather and precipitation as it influences forage production in agriculture;
  - c. The identification of the impact of different management systems upon beef production in the central region of the state; and
  - d. The exploration of increased use of crop residues and byproducts for the maintenance of the cowherd.

**15-12.1-10. Carrington research extension center.**

The Carrington research extension center must be located in or near Carrington in Foster County. The center shall conduct research designed to:

1. Determine the potential of irrigated agriculture in the region proposed for irrigation development in the state which must be related to both crop and livestock production; and
2. Increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the agricultural region of east central North Dakota by:
  - a. The identification of adapted crop species and superior crop cultivars;
  - b. Propagation and distribution of selected seed stocks; and
  - c. Development of profitable cropping and integrated crop and livestock systems that achieve the necessary balance between profitability and conservation of all natural resources.

**15-12.1-11. Hettinger research extension center.**

The Hettinger research extension center must be located in or near Hettinger in Adams County. The center shall develop the best available technology in breeding, feeding, management, and disease control pertinent to the production of sheep in the state. The center shall conduct research designed to increase productivity of all

agricultural products of the soil while maintaining or improving the soil resource base in southwestern North Dakota by:

1. The identification of adapted crop species and superior crop cultivars;
2. Propagation and distribution of selected seed stocks; and
3. Development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources.

**15-12.1-12. North central research extension center.**

The north central research extension center must be located in or near Minot in Ward County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the agricultural region of north central North Dakota by:

1. The identification of adapted crop species and superior crop cultivars;
2. Propagation and distribution of selected seed stocks; and
3. Development of profitable cropping systems which achieve the necessary balance between profitability and conservation of all natural resources.

**15-12.1-13. Agronomy seed farm - Investment of reserve income fund.**

At the direction of the center director of the agronomy seed farm with the approval of the station director, the state treasurer shall provide for the investment of available moneys in the agronomy seed farm reserve income fund. The state treasurer shall credit the investment income to the agronomy seed farm reserve income fund. The moneys in the fund may be spent only within the limits of legislative appropriation.

**15-12.1-14. State board of agricultural research and education - Membership - Terms.**

1. The state board of agricultural research and education consists of:
  - a. The president of North Dakota state university or the president's designee;
  - b. The vice president of agricultural affairs at North Dakota state university, who serves in an ex officio nonvoting capacity;
  - c. The administrator of the agricultural experiment station, who serves in an ex officio nonvoting capacity;
  - d. The five persons appointed to the state board of agricultural research and education by the ag coalition;
  - e. The five persons appointed to the state board of agricultural research and education by the extension service's multicounty program units;
  - f. The agriculture commissioner, who serves in an ex officio nonvoting capacity;
  - g. The director of the North Dakota state university extension service, who serves in an ex officio nonvoting capacity; and



**15-12.1-17. State board of agricultural research and education - Duties.**

Within the policies of the state board of higher education, the state board of agricultural research and education is responsible for budgeting and policymaking associated with the agricultural experiment station and the North Dakota state university extension service. The state board of agricultural research and education shall:

1. Determine the causes of any adverse economic impacts on crops and livestock produced in this state;
2. Develop ongoing strategies for the provision of research solutions and resources to negate adverse economic impacts on crops and livestock produced in this state;
3. Develop proactive strategies for the extension service to fulfill the mission of improving the lives and livelihood of the citizens of North Dakota by providing research-based education;
4. Implement the strategies developed under subsections 2 and 3, subject to approval by the state board of higher education;
5. Develop, with the agricultural experiment station and the North Dakota state university extension service, an annual budget for the operations of these entities;
6. Develop a biennial budget request based on its prioritized needs list and submit that request to the president of North Dakota state university and the state board of higher education, and forward its prioritized needs list and request without modification to the office of management and budget and the appropriations committees of the legislative assembly;
7. Maximize the use of existing financial resources, equipment, and facilities to generate the greatest economic benefit from research and extension efforts and to promote efficiency;
8. Annually evaluate the results of research and extension activities and expenditures and report the findings to the legislative management and the state board of higher education;
9. Advise the president of North Dakota state university regarding the recruitment, selection, and performance of the vice president of agricultural affairs, the extension service director, and the station director; and
10. Provide a status report to the budget section of the legislative management.

**15-12.1-18. Agricultural research fund - Continuing appropriation.**

The agricultural research fund is a special fund in the state treasury. Moneys in the fund are appropriated to the state board of agricultural research and education for purposes of agricultural research. Any interest earned by the fund must be returned to the fund.

**15-12.1-19. State board of agricultural research and education - Apportionment of research funds.**

1. The state board of agricultural research and education may use up to ten percent of the moneys in the agricultural research fund, not to exceed fifty thousand dollars per year, for administrative expenses and annually shall apportion the remaining proceeds of the agricultural research fund as follows:
  - a. Seventy percent to research activities affecting North Dakota agricultural commodities that account for at least two percent of the gross sales of all agricultural commodities grown or produced in the state. The percentage of the dollars available for each agricultural commodity under this section may not exceed the percentage that the gross sales of the agricultural commodity bear to the North Dakota gross sales of all agricultural commodities grown or produced during the previous year, as determined by the agricultural statistics service;
  - b. Eighteen percent to research activities affecting North Dakota animal agriculture; and
  - c. Twelve percent to research activities affecting new and emerging crops in North Dakota.
2. The state board of agricultural research and education shall solicit proposals for research from the public and private sectors and shall appoint committees to review the proposals and award the agricultural research grants on a competitive basis. Each committee must consist of a majority of agricultural producers selected in consultation with the agricultural commodity groups representing commodities that are the subjects of the proposed research and may include researchers and other individuals knowledgeable about the proposed area of research. Whenever possible, the committees shall require a grant recipient commit matching funds.
3. The state board of agricultural research and education shall develop policies regarding the award of research grants, including requirements for matching funds, cooperation with other in-state and out-of-state researchers, and coordination with other in-state and out-of-state proposed or ongoing research projects.

**SECTION 9.** A new section to chapter 19-02.1 of the North Dakota Century Code is created and enacted as follows:

**Eggs - Labeling and temperature rules.**

The state department of health may adopt appropriate rules under chapter 28-32 to establish standards for proper labeling and temperature during the retail storage and sale of shell eggs. As used in this section, "eggs" means eggs in the shell which are the product of a domesticated chicken.

**SECTION 10.** Chapter 54-60.3 of the North Dakota Century Code is created and enacted as follows:

### **54-60.3-01. Agricultural products utilization commission - Composition - Appointment.**

The agricultural products utilization commission shall administer the agricultural products utilization fund. The commission shall consist of nine members, five of whom must be appointed by the governor for terms of two years each, arranged so that two terms expire in odd-numbered years and three terms expire in even-numbered years. Three members appointed by the governor must be actively engaged in farming in this state and two members appointed by the governor must be actively engaged in business in this state. The agriculture commissioner shall appoint one member for a term of two years which expires in odd-numbered years. The member appointed by the commissioner must be actively engaged in farming in this state. Commission members may be reappointed. Terms of commissioners commence on the first day of July. The commissioner of commerce, the president of North Dakota state university, and the agriculture commissioner, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

### **54-60.3-02. Agricultural products utilization commission - Authority.**

1. The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or private sources.
2. The commission may administer grant programs including:
  - a. A basic and applied research grant program;
  - b. A utilization and marketing grant program;
  - c. A cooperative marketing grant program;
  - d. A nature-based tourism grant program;
  - e. A technical assistance grant program for value-added businesses;
  - f. A farm diversification grant program;
  - g. An agricultural prototype development grant program;
  - h. An agricultural technologies grant program; and
  - i. A North American marketing grant program.
3. As a condition of any grant administered by the commission, the commission may require the recipient repay some or all of the grant if the recipient does not fulfill the conditions of the grant. Repayment may be monetary or any other type or method determined by the commission.

### **54-60.3-03. Agricultural products utilization commission - Meetings - Personnel - Reports.**

The agricultural products utilization commission, an office of the department of commerce division of economic development and finance, shall meet as necessary and shall report to each session of the legislative assembly. The commission may secure office space, employ required personnel for the performance of its duties, hire

consultants, spend any funds appropriated to the commission, and contract with public entities or private parties for services.

**54-60.3-04. Agricultural products utilization commission - Reimbursement - Compensation.**

Members of the agricultural products utilization commission are entitled to be reimbursed for expenses incurred in the performance of their duties, in the same manner as other state officials are reimbursed, according to sections 44-08-04 and 54-06-09. If not otherwise employed by the state of North Dakota, members of the commission are entitled to receive per diem compensation of one hundred thirty-five dollars for each day of attending meetings and performing other duties relating to official business of the commission. The commission chairman, if not otherwise employed by the state of North Dakota, may receive an additional one hundred dollars for each day of a regular meeting attended as payment for reviewing and evaluating grant proposals.

**54-60.3-05. Agricultural products utilization commission - Administrative expenses.**

Administrative expenses of the agricultural products utilization commission, including expenses of members of the commission, employment of required personnel, hiring of consultants, and contracting with public or private entities for services may not exceed ten percent of the funds appropriated to the commission by the legislative assembly each biennium, excluding federal funds.

**54-60.3-06. Agricultural products utilization fund - Purposes.**

The agricultural products utilization fund in the state treasury must be used to fund programs for agricultural research, development, processing, technology, and marketing. The fund must be used to defray the expenses of the North Dakota agricultural products utilization commission. Interest earned on moneys in the fund must be credited to the fund.

<sup>24</sup> **SECTION 11. AMENDMENT.** Subsection 2 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

2. A county levying a tax for extension work as provided in section ~~4-08-1511-38-01~~ may levy a tax not exceeding two mills and if a majority of the electors of the county have approved additional levy authority under section ~~4-08-1511-38-01~~, the county may levy a voter-approved additional tax not exceeding ~~an additional tax~~ of two mills.

**SECTION 12. LEGISLATIVE COUNCIL TO REDESIGNATE CHAPTERS IN TITLE 4.1 OF THE NORTH DAKOTA CENTURY CODE.** The legislative council shall redesignate chapter 4.1-47 as chapter 4.1-24, chapter 4.1-83 as chapter 4.1-29, chapter 4.1-52 as chapter 4.1-42, chapter 4.1-53 as chapter 4.1-43, chapter 4.1-54 as chapter 4.1-44, chapter 4.1-55 as chapter 4.1-45, chapter 4.1-56 as chapter 4.1-46, chapter 4.1-57 as chapter 4.1-47, chapter 4.1-73 as chapter 4.1-49, chapter 4.1-74 as chapter 4.1-50, chapter 4.1-75 as chapter 4.1-51, chapter 4.1-72 as chapter 4.1-52, and chapter 4.1-88 as chapter 4.1-56.

**SECTION 13. REPEAL.** Chapters 4-01, 4-02, 4-02.1, 4-05.1, 4-08, 4-11.1, 4-13.2, 4-14, 4-14.1, 4-14.2, 4-19, 4-21.1, 4-21.2, 4-22, 4-23, 4-24, 4-30, 4-32, 4-33, 4-35,

<sup>24</sup> Section 57-15-06.7 was also amended by section 11 of Senate Bill No. 2206, chapter 341.

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4-35.1, 4-35.2, 4-36, 4-37, 4-40, 4-41, 4-43, and 19-07 of the North Dakota Century Code are repealed.

**SECTION 14. EFFECTIVE DATE.** Section 11 of this Act is effective for taxable years beginning after December 31, 2016.

Approved April 5, 2017

Filed April 5, 2017

## CHAPTER 62

### SENATE BILL NO. 2236

(Senators Unruh, Armstrong, Oban)  
(Representatives D. Anderson, Kempenich, Schatz)

AN ACT to amend and reenact section 04-01-31 of the North Dakota Century Code, relating to the pipeline restoration and reclamation oversight program and records of program participants.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 04-01-31 of the North Dakota Century Code is amended and reenacted as follows:

#### **4-01-31. Pipeline restoration and reclamation oversight ~~pilot~~ program - Generally.**

1. The agriculture commissioner shall establish a ~~pilot~~ program ~~that shall to~~ provide technical assistance and support to surface owners and surface tenants on pipeline restoration and followup support to surface owners and surface tenants on pipeline reclamation.
2. The agriculture commissioner may contract for ombudsmen for the purposes of being a resource for technical assistance and followup on pipeline issues. The ombudsmen may not investigate or assist with any pipeline installed before January 1, 2006, or regulated by the public service commission under title 49, and may not assist in easement negotiations.
3. The ~~pilot~~ program may provide technical education, support, and outreach on pipeline-related matters in coordination with other entities.
4. The agriculture commissioner may contract with local individuals, deemed trustworthy by the surface owners and surface tenants, to be ombudsmen. The agriculture commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.
5. The names of surface owners and surface tenants who receive assistance under the program are exempt records as defined under section 44-04-17.1.

Approved March 24, 2017

Filed March 24, 2017

## CHAPTER 63

### SENATE BILL NO. 2313

(Senator Unruh)  
(Representative Porter)

AN ACT to create and enact a new section to chapter 4-01 of the North Dakota Century Code, relating to a wind energy restoration and reclamation oversight program; to amend and reenact sections 49-02-34 and 49-22-05.1 of the North Dakota Century Code, relating to annual reports on meeting renewable and recycled energy objectives and exclusion areas for wind energy conversion facilities; to provide a statement of legislative intent; and to provide for application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

##### **Wind energy restoration and reclamation oversight program.**

1. The agriculture commissioner shall establish a program that provides technical assistance, support, and outreach to property owners on wind property restoration and followup support to property owners on wind property reclamation.
2. The agriculture commissioner may contract for ombudsmen for purposes of being a resource for technical assistance and followup on wind property issues. The ombudsmen may not investigate or assist in any easement negotiations.
3. The agriculture commissioner may contract with local individuals, deemed trustworthy by property owners, to be ombudsmen. The agriculture commissioner is not subject to chapter 54-44.4 when contracting for the services of ombudsmen.
4. The agriculture commissioner shall work in cooperation with the public service commission to carry out the duties described in this section.

**SECTION 2. AMENDMENT.** Section 49-02-34 of the North Dakota Century Code is amended and reenacted as follows:

##### **49-02-34. Public reporting on progress toward meeting the renewable energy and recycled energy objective.**

Commencing on June 30, 2009, retail providers shall report annually on the provider's previous calendar year's energy sales. This report must include information regarding qualifying electricity delivered and renewable energy and recycled energy certificates purchased and retired as a percentage of annual retail sales and a brief narrative report that describes steps taken to meet the objective over time and identifies any challenges or barriers encountered in meeting the objective. ~~The last annual report must be made on June 30, 2016.~~ Retail providers shall report to the public service commission, which shall make data and narrative reports publicly

available and accessible electronically on the internet. Distribution cooperatives may aggregate their reporting through generation and transmission cooperatives and municipal utilities may aggregate their reporting through a municipal power agency.

<sup>25</sup> **SECTION 3. AMENDMENT.** Section 49-22-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-05.1. Exclusion and avoidance areas - Criteria.**

1. The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. The criteria also may include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.
2. Except for transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. ~~The criteria may also include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.~~
3. Areas less than one and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and less than three times the height of the turbine or more from an inhabited rural residence of a nonparticipating landowner, must be excluded in the consideration of a site for a wind energy conversion area, unless a variance is granted. The commission may grant a variance if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing the support of all parties for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in chapter 17-04. A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

**SECTION 4. LEGISLATIVE INTENT - WIND ENERGY RESTORATION AND RECLAMATION OVERSIGHT PROGRAM.** It is the intent of the sixty-fifth legislative assembly that the agriculture commissioner establish the wind property restoration and reclamation oversight program, created in section 1 of this Act, using existing operating funds.

**SECTION 5. APPLICATION.** Section 3 of this Act applies only to projects that receive a certificate of site compatibility after August 1, 2017.

Approved April 20, 2017

Filed April 21, 2017

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<sup>25</sup> Section 49-22-05.1 was also amended by section 8 of House Bill No. 1144, chapter 328.

## CHAPTER 64

### HOUSE BILL NO. 1342

(Representatives D. Johnson, Boschee, Monson, Schreiber-Beck)  
(Senators Luick, Oban, Piepkorn)

AN ACT to amend and reenact sections 4.1-16-05, 4.1-16-09, and 4.1-16-11 of the North Dakota Century Code, relating to beekeeping.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4.1-16-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-16-05. License - Grounds for denial.**

1. The agriculture commissioner may suspend, revoke, or refuse to grant a license to any person who:
  1. a. Has repeatedly violated this chapter;
  2. b. Failed to pay an adjudicated civil penalty for violating this chapter, within thirty days after a final determination that the civil penalty is owed; or
  3. c. Provided false or misleading information in connection with any application or notification required by this chapter.
2. Any person denied a license under this section may request a hearing before the commissioner within thirty days after the date of the denial.

**SECTION 2. AMENDMENT.** Section 4.1-16-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-16-09. Identification of apiary.**

1. A beekeeper shall identify each apiary for which the beekeeper is responsible by:
  - a. Affixing a three-digit identification number, assigned by the agriculture commissioner, ~~to the uppermost box of a hive~~ that is prominently displayed and visible upon approach to the apiary's main entrance, provided each digit is at least three inches [7.62 centimeters] high, one-half inch [1.27 centimeters] wide, and weather-resistant; and
  - b. Displaying the beekeeper's name and phone number in a location that is prominently displayed and visible upon approach to the apiary's main entrance, provided the numbers and letters used are at least one and one-half inches [3.81 centimeters] high and weather-resistant.
2. Any apiary that is not identified, as required by this section, may be subject to seizure by the commissioner.

**SECTION 3. AMENDMENT.** Section 4.1-16-11 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-16-11. Confiscation and disposal.**

Except as provided for in section 4.1-16-10, the agriculture commissioner or a law enforcement officer may confiscate bees, hives, or beekeeping equipment, being transported or maintained in violation of this chapter. Any bees, hives, or beekeeping equipment, confiscated under this section, must be disposed of pursuant to a court order or an administrative order issued by the commissioner, unless the beekeeper or other responsible person appears to claim the property and pay any costs incurred by the commissioner due to the confiscation and any civil penalties imposed under this section.

Approved March 14, 2017

Filed March 15, 2017

## CHAPTER 65

### SENATE BILL NO. 2029

(Legislative Management)  
(Agriculture and Natural Resources Committee)

AN ACT to create and enact chapters 4.1-18, 4.1-20, 4.1-21, 4.1-22, and 4.1-48 of the North Dakota Century Code, relating to revisions of agriculture laws regarding industrial hemp, soil conservation districts laws, forestry and tree distribution, nurseries, and potato production contracts; to amend and reenact section 57-38-34.6 of the North Dakota Century Code, relating to optional contributions to the trees for North Dakota program trust; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 4.1-18 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-18-01. Industrial hemp (cannabis sativa L.) - Oilseed.**

Industrial hemp (cannabis sativa L.), having no more than three-tenths of one percent tetrahydrocannabinol, is recognized as an oilseed. Upon meeting the requirements of section 4.1-18-02, any person in this state may plant, grow, harvest, possess, process, sell, and buy industrial hemp (cannabis sativa L.) having no more than three-tenths of one percent tetrahydrocannabinol.

#### **4.1-18-02. Industrial hemp - Licensure - Reporting requirements - Continuing appropriation.**

1. Any person desiring to grow or process viable kernels of industrial hemp for commercial purposes or research shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner.
  - a. The application for a license must include the name and address of the applicant and the legal description of the land area to be used to produce or process industrial hemp.
  - b. Except for employees of the state seed department, the agricultural experiment station, or the North Dakota state university extension service involved in research and extension-related activities, the commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the applicant.
  - c. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure.
  - d. Any person with a prior criminal conviction may be denied licensure.

- e. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year.
  - f. Any person licensed under this section is presumed to be growing or processing industrial hemp for commercial purposes or research.
  - g. A license required by this section is not conditioned on or subject to review or approval by the United States drug enforcement agency.
  - h. This subsection does not apply to any person licensed by the United States drug enforcement agency to conduct research.
  - i. An application for a license under this subsection may be filed with the commissioner at any time.
2. a. Each licensee must file with the commissioner documentation indicating that the seeds planted were of a type and variety certified to have no more than three-tenths of one percent tetrahydrocannabinol and a copy of any contract to grow industrial hemp.
  - b. Each licensee shall notify the commissioner of the sale or distribution of any industrial hemp grown by the licensee, and the names of the persons to whom the hemp was sold or distributed.
3. The commissioner shall adopt rules to provide for oversight of the industrial hemp during growth, harvest, and processing and to allow the industrial hemp to be tested during growth for tetrahydrocannabinol levels.
  4. The commissioner shall assess each applicant a fee of one hundred fifty dollars plus twenty-five dollars per acre.
  5. Fees collected under this chapter must be deposited in the commissioner's operating fund and are appropriated to the department on a continuing basis for the purpose of enforcing this chapter.

#### **4.1-18-03. Industrial hemp seed - Authorized activity - Research.**

The agriculture commissioner, North Dakota state university, and any other person licensed under this chapter may import, resell, and plant industrial hemp seed, cultivate the growing plant, and harvest any resulting crop, for any legally permissible purpose, including an authorized pilot program or other agricultural research involving the planting, cultivating, or marketing of industrial hemp.

**SECTION 2.** Chapter 4.1-20 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-20-01. Policy and scope of chapter.**

It is the policy of this state and within the scope of this chapter to provide for the conservation of the soil and soil resources of this state and for the control and prevention of soil erosion, and to preserve the state's natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

**4.1-20-02. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Committee" means the state soil conservation committee.
2. "Director" means the director of the North Dakota state university extension service.
3. "District" means a political subdivision of this state organized as a soil conservation district under this chapter.
4. "Due notice" means notice published at least twice, with at least seven days between publications, in a newspaper or other publication of general circulation within the appropriate area.
5. "Government" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.
6. "Land occupier" includes any person that holds title to or is in possession of any lands lying within a district.
7. "Qualified elector" means an individual who is at least eighteen years old, is a citizen of the United States, and has resided in the precinct thirty days next preceding the election.
8. "Supervisor" means one of the members of the governing body of a district, elected or appointed, in accordance with this chapter.

**4.1-20-03. State soil conservation committee - Elective and appointive members - Records and seal.**

1. The committee shall perform the functions conferred upon it in this chapter within the limits of legislative appropriations. The committee consists of seven voting members. Five members must be elected and two must be appointed by the governor.
2. For the purpose of electing the five elective members of the committee, the state is divided into five areas.
  - a. (1) Area I includes Benson, Cavalier, Eddy, Foster, Grand Forks, Nelson, Pembina, Ramsey, Towner, Walsh, and Wells Counties.
  - (2) Area II includes Barnes, Cass, Dickey, Griggs, LaMoure, Ransom, Richland, Sargent, Steele, and Traill Counties.
  - (3) Area III includes Bottineau, Burke, Divide, McHenry, Mountrail, Pierce, Renville, Rolette, and Ward Counties.
  - (4) Area IV includes Burleigh, Emmons, Kidder, Logan, McIntosh, McLean, Morton, Oliver, Sheridan, Sioux, and Stutsman Counties.
  - (5) Area V includes Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer, Stark, Slope, and Williams Counties.



**4.1-20-05. Duties and powers generally.**

The committee has the following duties and powers:

1. To offer such assistance as may be appropriate to the supervisors of districts in the carrying out of any of their powers and programs.
2. To keep the supervisors of each of the several districts informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience among such districts and cooperation among them.
3. To secure the cooperation and assistance of state, federal, regional, interstate, and local, public, and private agencies with districts and to facilitate arrangements under which districts may assist or serve county governing bodies and other agencies in the administration of any activity concerned with the conservation of natural resources.
4. To review agreements, or forms of agreements, proposed to be entered into by districts with other districts or with state, federal, interstate, or other public or private organizations, and advise the districts concerning such agreements or forms of agreement.
5. To recommend to the director biennial budgets necessary to finance the activities of the committee and districts and to distribute moneys appropriated by the legislative assembly for grants to soil conservation districts.
6. To represent the state in matters affecting soil conservation.
7. To require annual reports from districts.
8. To establish uniform accounting methods that must be used by districts, and to establish a uniform auditing reporting system.
9. To receive from other state and local agencies for review and comment suitable descriptions of their plans, programs, and activities affecting the conservation of natural resources for purposes of coordination with district conservation programs; arrange for and participate in conferences necessary to avoid conflict among such plans and programs; call attention to omissions; and avoid duplication of effort.

**4.1-20-06. Extension service assistance to state soil conservation committee - Duties.**

The North Dakota state university extension service shall assist the committee in performing the committee's duties, within the limits of legislative appropriation. The director shall instruct extension agents to cooperate in the delivery of information and services to the districts.

**4.1-20-07. Districts - Petition - Contents - More than one petition filed.**

1. Any twenty-five qualified electors living within the limits of the area proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil conservation district be organized in the area described in the petition. The petition must set forth:
  - a. The proposed name of the district.

- b. The need for a soil conservation district to function in the area described in the petition.
  - c. A description of the area proposed to be organized as a district.
  - d. A request that the state soil conservation committee duly define the boundaries for the district, that an election be held within the defined area on the question of the creation of a soil conservation district in that area, and that the committee determine that such a district be created.
2. When more than one petition is filed covering parts of the same area, the state soil conservation committee may consolidate all or any of such petitions.

#### **4.1-20-08. Hearings on petitions - When held - Notice - Determinations.**

1. Within thirty days after a petition under section 4.1-20-07 has been filed, the state soil conservation committee shall cause publication of due notice of a hearing on the desirability of creation of a soil conservation district, the appropriate boundaries to be assigned to the district, the propriety of the petition and the other proceedings taken under this chapter, and upon all other relevant questions. All qualified electors living within the area described in the petition, and of lands within any area considered for addition to the area described in the petition, and all other interested parties have the right to attend and be heard at the hearing. If it appears at the hearing that it may be desirable to include within the proposed district additional area outside of the area within which due notice of hearing has been given, the hearing must be adjourned and due notice of further hearing must be given throughout the entire area considered for inclusion in the district, and further hearing must be held.
2. If the committee determines, upon the facts presented at the hearing and upon other available relevant facts and information, there is need, in the public interest, for a soil conservation district to function in the area considered at the hearing, the committee shall record that determination and define the district boundaries by metes and bounds or legal subdivisions. In making the determination and defining the boundaries, the committee shall give due weight and consideration to:
  - a. The topography of the area considered and of the state;
  - b. The composition of soils, distribution of erosion, prevailing land use practices, and desirability and necessity of including within the boundaries the area under consideration;
  - c. The benefits the area may receive from being included within such boundaries;
  - d. The relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under this chapter; and
  - e. Any other relevant physical, geographic, and economic factors, having due regard to the legislative policy set forth in section 4.1-20-01.
3. If the committee determines, after the hearing and due consideration of the relevant facts, there is no need for a soil conservation district to function in the

area considered at the hearing, the committee shall record that determination and deny the petition. After six months has expired from the date of the denial of that petition, a subsequent petition covering the same or substantially the same area may be filed and a new hearing held and new determinations made.

#### **4.1-20-09. Election - When held - Contents of ballot - Who may vote.**

After the committee has determined the necessity for the organization of a district and has defined the boundaries of the proposed district, the committee shall hold an election within the proposed district upon the creation of the proposed district and shall cause due notice of the election to be given. The question must be submitted by ballot in substantially the following form:

Shall a soil conservation district be created embracing lands situated in the counties of \_\_\_\_\_ and \_\_\_\_\_ and described as follows: (Here inserting description).

Yes

No

All qualified electors residing within the boundaries of the proposed district are entitled to vote in the election.

#### **4.1-20-10. Publication of election results - Determination of feasibility of operation of district.**

The committee shall publish the results of any election. If a majority of the votes cast are in favor of the creation of a district, the committee shall determine whether the operation of a district within the boundaries specified on the election is administratively feasible. In making that determination, the committee shall consider such factors, objects, and other determinations as to accomplish the policy and scope of this chapter as set forth in section 4.1-20-01.

#### **4.1-20-11. District determined feasible - Statement filed with secretary of state.**

If the committee determines the operation of a proposed district is administratively feasible, the committee shall file with the secretary of state a certified statement identifying the boundaries and name of that district. The statement must include the reasons for the formation of the district and the result of the election.

#### **4.1-20-12. District to be a political subdivision - Boundaries of district.**

Upon the certification by the committee to the secretary of state under section 4.1-20-11, the district becomes a political subdivision of the state and a body corporate and politic. The secretary of state shall issue to the committee a certificate of the due organization of the district under the seal of the state and record the certificate with the application and statement. The boundaries of the district include the area as determined by the committee, but may not include any area included within the boundaries of another soil conservation district.

#### **4.1-20-13. Petition to include additional area within existing district.**

Petitions to include additional area within an existing district may be filed with the committee at any time, and the proceedings provided in connection with a petition to organize a district must be observed in the case of a petition for such inclusion. A

portion of a district may upon petition of a majority of the qualified electors in that portion, and without an election, be annexed to an adjoining district, and become a part of that adjoining district upon filing the petition with the state soil conservation committee.

**4.1-20-14. Districts presumed to be organized legally - Copy of certificates as evidence.**

In any suit, action, or proceeding involving or relating to the validity or enforcement of any contract, proceeding, or action of a district, the district is deemed to have been established in accordance with the provisions of this chapter, upon proof of the issuance of the certificate of organization by the secretary of state. A copy of the certificate, when duly certified by the secretary of state, is admissible in evidence in any suit, action, or proceeding and is proof of the filing and its contents.

**4.1-20-15. Notice to file nominating petitions and of election of district supervisors.**

As soon as practicable after the issuance by the secretary of state of the certificate of organization of a soil conservation district, and before the next general election, the committee shall give notice that nominating petitions may be filed with the county auditor, and that at the next general election held in the district three supervisors must be elected, who must be land occupiers of the district and who constitute the governing body of the district.

**4.1-20-16. Nominating petitions - Petitions required - Final filing date.**

Any individual running for the office of supervisor shall present to the county auditor of the county in which the district lies a petition giving that individual's name and mailing address and the title and term of the office, and containing the signatures of not less than twenty-five nor more than three hundred qualified electors of the district. When a district lies in more than one county, the petition must be filed with the county auditor of the county where the candidate resides, and that county auditor shall certify to the county auditors of the other counties in which the district lies the name and mailing address of the candidate filing such petition. At the same time, the county auditor, or auditors in the case of multicounty districts, also shall certify to the secretary of state the name and mailing address of each individual filing a nominating petition according to this section. An individual may not participate directly or indirectly in the nomination for more than one individual for each office to be filled. The final filing date for nominating petitions is no later than four p.m. sixty-four days before the day of the election.

Upon receipt of the petition or the certification as provided in this section, the county auditor shall place, without fee, the name of the candidate so nominated on the no-party ballot at the ensuing general election.

**4-1-20-17. Regular election of district - When held - Regulations governing.**

The regular election of soil conservation districts must be held at the same time, and at the same place, as the general election is held. All qualified electors in the district may vote in any regular election of the district. Any land occupier living in the district desiring to be a candidate for the office of supervisor at a district election and who has failed to file a nominating petition may campaign and be elected as a write-in candidate for the office.

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**4.1-20-18. Supervisors - Terms of office - Vacancies - Removal - Compensation - Expenses.**

1. At each general election, one district supervisor must be elected for a term of six years, or until the successor is duly elected and qualified, to each expiring or vacant term. The county auditor of the county or counties in which the district lies shall return to the secretary of state before four p.m. on the tenth day following any general election a certified abstract of the votes cast in the county at the election for each candidate for district supervisor. The secretary of state shall canvass the returns and issue certificates of election under chapter 16.1-15.
2. To be eligible for election to the office of district supervisor, candidates must be land occupiers and physically living in the district. Candidates must be elected on a nonpartisan ballot. If the office of any supervisor becomes vacant, the remaining members of the board of supervisors, with the advice and consent of the committee, shall fill the vacancy by appointment. If vacancies occur in the office of two supervisors, the remaining supervisor and the committee shall fill the vacancy. If the offices of all supervisors of a district become vacant, the committee shall fill the vacancies by appointment. A supervisor appointed to fill a vacancy holds office until the next general election. A supervisor elected to fill a vacancy serves the balance of the unexpired term in which the vacancy occurred.
3. Upon resolution of the three elected supervisors, a soil conservation district, may appoint two additional supervisors who shall serve for a term of one year from the date of appointment. Those supervisors must be appointed by a majority of the three elected supervisors and have all the powers, voting privileges, duties, and responsibilities of elected supervisors, except that the expense allowances of the appointed supervisors must be paid by the local soil conservation district concerned. As far as possible, the appointed supervisors shall represent interests within the district which are not represented by the elected supervisors.
4. After notice given and hearing held in accordance with chapter 28-32, a supervisor of a soil conservation district may be removed from office by the committee.
5. Upon a majority vote of the supervisors, the supervisors of a soil conservation district are entitled to receive compensation of up to sixty-two dollars and fifty cents for attending each regular or special meeting or for attending other meetings or events in the performance of their official duties. Supervisors of soil conservation districts are entitled to receive travel and subsistence expenses necessarily incurred in attending district, state, or other meetings. The compensation and all other expenses including travel incurred by district supervisors while transacting district business must be paid from district funds.

**4.1-20-19. Soil conservation district supervisors - Training.**

As soon as practicable after an individual is elected or appointed to the position of a soil conservation district supervisor, the individual shall attend a training session delivered by the state soil conservation committee. An individual who has attended a training session as an elected or as an appointed soil conservation district supervisor may not be required to attend any additional or subsequent session.

#### **4.1-20-20. Supervisors may employ assistants - Attorney general and state's attorneys to advise - Reports to committee.**

The supervisors may employ necessary permanent and temporary officers, agents, or employees, and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general or the state's attorney of any county in which the district is situated for those legal services as the supervisors may require. The supervisors may delegate to their chairman or to any of their number such duties as they may deem proper and shall furnish to the committee, upon request, copies of any ordinances, rules, regulations, orders, contracts, or other documents the supervisors adopt or employ, and any other information concerning their activities as the committee may require.

#### **4.1-20-21. Assistance for district supervisors.**

Upon request of the supervisors of a soil conservation district, a board of county commissioners may assign an employee or employees of the county to assist the supervisors in the performance of the supervisors' duties authorized by this chapter. The board of county commissioners of each county within a soil conservation district may provide assistance for the supervisors. The duties of the employee or employees are under the direct supervision of the supervisors of the soil conservation district.

#### **4.1-20-22. Supervisors to provide for surety bonds, keeping records, and annual audit.**

The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property of the district, for the keeping of a full and accurate record of all the supervisors' proceedings and of all resolutions, regulations, and orders issued or adopted by the supervisors, and for an annual audit of the accounts of receipts and disbursements of the district. The surety bonds provided for in this section may be issued by the state bonding fund.

#### **4.1-20-23. Supervisors may consult city or county representatives.**

The supervisors may invite the governing body of any city or county located within or near the district to designate a representative to advise and consult with the supervisors on issues that may affect the property, water supply, or other interests of the city or county.

#### **4.1-20-24. Powers and duties of districts and supervisors.**

1. A soil conservation district may exercise the public powers ordinarily exercised by a political subdivision of the state, and the district and the supervisors of the district have the following powers in addition to those granted in other sections of this chapter:
  - a. To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed; to publish the results of those surveys, investigations, or research; and to disseminate information concerning the preventive and control measures. To avoid duplication of research activities, a district may not initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies.
  - b. To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the land, and on any other

- lands within the district after obtaining the consent of the occupier of those lands or the necessary rights or interests in those lands, to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled.
- c. To carry out preventive and control measures within the district, including engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the land, and on any other lands within the district upon obtaining the consent of the occupier of those lands or the necessary rights or interest in those lands.
  - d. To cooperate or enter agreements with, and, within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion control and prevention operations within the district, subject to the conditions as the supervisors may deem necessary to advance the purposes of this chapter.
  - e. To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property, real or personal, or any property rights or interest; to maintain, administer, and improve any properties acquired; to receive income from those properties and to expend that income in carrying out the purposes and provisions of this chapter; and to sell, lease, or dispose of otherwise any of its property or interest therein in furtherance of the purposes and the provisions of this chapter.
  - f. To make available, on terms the soil conservation district prescribes, to land occupiers, government units or qualified electors within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and any other material or equipment as will assist those land occupiers, government units or qualified electors to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion.
  - g. To construct, improve, and maintain structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.
  - h. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans must specify in such detail as may be possible the acts, procedures, performances, and avoidances that are necessary or desirable for the effectuation of those plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land, and to publish such plans and information and bring them to the attention of occupiers of lands within the district.
  - i. To take over, by purchase, lease, or otherwise, and to administer any soil conservation, erosion control, or erosion prevention project located within its boundaries undertaken by the United States or any of its agencies, or

by this state or any of its agencies; to manage, as agent of the United States, or any of its agencies or of this state or any of its agencies, any soil conservation, erosion control, or erosion prevention project within its boundaries; to act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion control, or erosion prevention project within its boundaries; and to accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States or any of its agencies or from this state or any of its agencies, and to use or expend those moneys, services, materials, or other contributions in carrying on its operations.

- j. To sue and be sued in the name of the district.
- k. To have a seal, which seal must be noticed judicially.
- l. To have perpetual succession unless terminated as provided in this chapter.
- m. To make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and to borrow funds and pledge all or any part of any income from the district's facilities, equipment, and operations for repayment.
- n. To make, amend, or repeal regulations consistent with this chapter.
- o. To require contributions in money, services, materials, or otherwise to any operations conferring benefits under this chapter and to require land occupiers to enter and perform agreements or covenants to use the lands in a manner that will prevent or control erosion.
- p. To expend moneys for education, promotion, and recognition activities consistent with the purposes of this chapter.
- q. To levy taxes as follows:
  - (1) The supervisors may make a general fund tax levy, not exceeding two and one-half mills, for the payment of the expenses of the district, including mileage and other expenses of the supervisors, and technical, administrative, clerical, and other operating expenses.
  - (2) Immediately after the completion of the district budget and the adoption of the annual tax levy by the district supervisors, but not later than July first, the supervisors shall send one certified copy of the levy as adopted to the county auditor of each county in the district.
  - (3) The county auditor of each county in the district shall extend the levy upon the tax list of the county for the current year against each description of real property lying both within the county and the district in the same manner and with the same effect as other taxes are extended.
  - (4) The treasurer of each county in the district shall collect all district taxes together with interest and penalty thereon in the same manner as the general taxes are collected, and shall pay over to the soil conservation

district by the tenth working day of each month, all taxes so collected during the preceding month, with interest and penalties collected thereon and shall immediately send notification of such payment to the treasurer of the soil conservation district.

(5) Voter-approved levy authority authorized by electors of a district under the provisions of this section before January 1, 2015, remains in effect through taxable year 2024 or for the time period authorized by the electors, whichever expires first.

2. Any provisions with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to a district unless the same specifically are made applicable by law.

**4.1-20-25. Supervisors may formulate land use regulations for submission to qualified electors.**

The supervisors of any district may formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion, and may conduct public meetings and hearings upon tentative regulations as may be necessary to assist the supervisors in this work. The proposed regulations must be embodied in a proposed ordinance for submission to the qualified electors in the district, and copies of the proposed ordinance must be available for inspection by the qualified electors in the district during the period of time between the publication of the notice of election upon the ordinance and the date of the election.

**4.1-20-26. Notice of election - Form of ballot - Conduct of election - Who may vote.**

The notice of election on a proposed ordinance submitted to the qualified electors in the district under section 4.1-20-24 must be provided in the manner required by section 4.1-20-14 relating to notice of election of supervisors, and must recite the contents of the proposed ordinance or must state where copies of the proposed ordinance may be examined. The question of adoption or rejection of the proposed ordinance must be submitted by ballot at an election to be held in the district. The ballot must be in substantially the following form:

Shall proposed ordinance number \_\_\_\_\_, prescribing land use regulations for conservation of soil and prevention of erosion be adopted?

Yes  \_\_\_\_\_

No  \_\_\_\_\_

The supervisors shall supervise the election, prepare appropriate regulations governing the conduct of the election, and publish the result of the election. The right to vote in the election is limited to qualified electors residing within the district. No informalities in the conduct of the election or in any matters relating to the election may invalidate the election or its result if the notice of election has been given substantially as required by this section and the election has been fairly conducted.

**4.1-20-27. Two-thirds voter approval required to adopt ordinance - Effect of ordinance after adoption.**

An ordinance under this chapter does not become effective unless it is approved by at least two-thirds of the qualified electors voting on the question. If a proposed

ordinance is approved, the supervisors shall enact it into law. Land use regulations prescribed in any ordinance adopted by the supervisors pursuant to this section have the force and effect of law in the district and are binding and obligatory upon all qualified electors living within the district.

#### **4.1-20-28. What may be contained in land use regulations.**

The land use regulations that may be adopted by the supervisors under this chapter may include:

1. Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures.
2. Provisions requiring observance of particular methods of cultivation, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, stripcropping, and seeding and planting of lands to water conserving and erosion-preventing plants, trees, and grasses, forestation, and reforestation.
3. Specifications of cropping programs and tillage practices to be observed.
4. Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be controlled adequately if cultivation is carried on.
5. Provisions for any other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control soil erosion in the district, having due regard to the declaration of policy set forth in this chapter.

#### **4.1-20-29. Regulations to be uniform - Copies furnished in district.**

Land use regulations must be uniform throughout the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type. Copies of land use regulations adopted under this chapter must be printed and made available to all qualified electors living within the district.

#### **4.1-20-30. Amending, supplementing, or repealing land use regulations.**

Any qualified elector living within a district at any time may file a petition with the supervisors asking that any or all of the land use regulations in any ordinance adopted by the supervisors under this chapter be amended, supplemented, or repealed. Land use regulations in that ordinance may not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this chapter for the adoption of land use regulations. Elections on adoption, amendment, supplementation, or repeal of land use regulations may not be held more than once in any six-month period.

#### **4.1-20-31. Supervisors to enforce land use regulations.**

The supervisors may enter upon any land within the district to determine whether land use regulations adopted under this chapter are being observed.

#### **4.1-20-32. Failure to perform land use regulations - Hearing on - Supervisors to perform - Costs and expenses.**

1. If the supervisors of any district find any land use regulations prescribed in any ordinance are not being observed on particular lands, tending to increase erosion on those lands and interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the district court a duly verified petition setting forth:
  - a. The adoption of the ordinance prescribing land use regulations;
  - b. The alleged failure of the defendant land occupier to observe the regulations and perform particular work, operations, or avoidances required by the regulations and that the failure tends to increase erosion on those lands and interfere with the prevention or control of erosion on other lands within the district; and
  - c. Requesting that the court order the defendant to perform the work, operations, or avoidances within a reasonable time and that if the defendant fails to do so, the supervisors may:
    - (1) Enter upon the land;
    - (2) Perform the necessary work to bring the condition of the land into conformity with the regulations; and
    - (3) Assess the costs and expenses of the work, with interest, to the defendant.
2. Upon presentation of a petition under subsection 1, the court shall cause process to be issued against the defendant, and shall hear the case.
  - a. If it appears to the court testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law.
  - b. If a referee is appointed, the report of the referee constitutes a part of the proceedings upon which the determination of the court must be made.
  - c. The court may dismiss the petition or it may order the defendant to perform the work, operations, or avoidances. The court may provide upon the failure of the defendant to initiate performance as ordered by the court within the time specified in the order of the court and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the necessary work to bring the condition of the land into conformity with the regulations and assess the costs and expenses of the work, with interest at the rate of five percent per annum, to the defendant.
  - d. If the person in possession of lands subject to a petition under subsection 1 is other than the owner, the owner of those lands must be joined as a party defendant. In all cases, notice must be given to all other interested parties in person, or by publication in the manner provided in this chapter for publication of due notice.

- e. In any case under this section, the court shall retain jurisdiction until any work ordered by the court has been completed.
3. Upon completion of any work ordered by the court under subsection 2, the supervisors may file a petition with the court and serve a copy upon the defendants, stating the costs and expenses sustained by the supervisors in the performance of the work and asking for judgment in that amount, with interest. The court may enter judgment for the amount of costs and expenses approved by the court plus interest at the rate of five percent per annum until paid. The supervisors may certify to the county auditor of the county in which the district is located the amount of the judgment, which is a lien upon the lands and must be collected as taxes or assessments are collected. As the judgment is paid or collected, the proceeds must be paid over to the district that certified the judgment to the auditor.

#### **4.1-20-33. Board of adjustment - Members - Appointment - Vacancies - Compensation.**

When the supervisors of any district adopt an ordinance prescribing land use regulations, the supervisors shall provide by ordinance for the establishment of a board of adjustment to consist of three members, each to be appointed for a term of three years, except the members first appointed who are appointed for terms of one, two, and three years respectively. The members of each board of adjustment must be appointed by the committee with the advice and approval of the supervisors of the district for which the board has been established, and are removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason. A hearing on the removal of a member of a board of adjustment must be conducted jointly by the committee and the supervisors. A vacancy on a board of adjustment must be filled in the same manner as the original appointment except the appointment is for the unexpired vacant term. Members of the committee and the supervisors of the district may not serve as members of the board of adjustment. The members of the board shall receive five dollars a day for the time spent on the work of the board in addition to their expenses, including traveling expenses necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the chairman of the board.

#### **4.1-20-34. Board of adjustment - Rules - Chairman - Meetings - Quorum - Records.**

The board of adjustment shall adopt rules to govern its procedure, in accordance with this chapter and any ordinance adopted under this chapter. The board shall designate, and may replace at any time, a chairman from among its members. Meetings of the board must be held at the call of the chairman and at any other time as the board may determine. Any two members of the board constitute a quorum. The chairman, or another member of the board designated by the chairman to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board are open to the public. The board shall keep a full and accurate record of its proceedings, all documents filed with it, and all orders entered by the board. The record must be filed in the office of the board and is a public record.

#### **4.1-20-35. Petition to board of adjustment to vary land use regulations - Service - Hearing - Board's powers.**

Any qualified elector residing in the district may file a petition with the board of adjustment seeking a variance from strictly complying with the land use regulations.

Copies of a petition must be served upon the chairman of the supervisors of the district where the lands are located and upon the chairman of the committee. The board shall fix a time for the hearing of the petition and cause due notice of the hearing to be given. The petitioner may appear in person, by agent, or by attorney at the hearing and the supervisors and the committee may appear and be heard. If the board determines on the facts presented at the hearing that there are great practical difficulties or unnecessary hardships in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, the board shall make and record the determination and findings of fact as to the specific conditions that establish the great practical difficulties or unnecessary hardships. Upon the findings and determination, the board may enter an order authorizing a variance from the terms of the land use regulations in its application to the lands of the petitioner consistent with the spirit of the land use regulations, and with substantial justice and the public health, safety, and welfare.

#### **4.1-20-36. Taking of testimony at hearing.**

At the request of the board of supervisors, the testimony at a hearing conducted under section 4.1-20-35 must be taken by a court reporter, by a stenographer, or by use of an electronic recording device. The board of supervisors is responsible for the cost of taking testimony.

#### **4.1-20-37. Aggrieved petitioner and supervisors may appeal to district court from order of board - Procedure.**

Any petitioner or the supervisors of any district may appeal an order of a board of adjustment to the district court as provided in section 28-34-01.

#### **4.1-20-38. Cooperation among district supervisors.**

The supervisors of any two or more districts organized under this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

#### **4.1-20-39. State agencies to cooperate with district supervisors.**

Agencies of this state having jurisdiction over any state-owned lands, and agencies of any county or other political subdivision of this state having jurisdiction over any county-owned or other publicly owned lands lying within the boundaries of any district shall cooperate to the fullest extent with the supervisors of the district in the effectuation of programs and operations undertaken by the supervisors under this chapter. The supervisors have free access to enter and perform work upon such publicly owned lands. The provisions of land use regulations adopted under this chapter have the force and effect of law over all such publicly owned lands and must be in all respects observed by the agencies administering such lands.

#### **4.1-20-40. Discontinuance of districts - Petition - Referendum - Eligible qualified electors.**

Five years after the date a district was organized, twenty-five percent of the qualified electors living within the boundaries of the district may file a petition with the state soil conservation committee to terminate the operations of the district. The committee then shall conduct public hearings upon the petition to determine whether there is sufficient basis for an election to be held. If the committee determines there is sufficient basis for an election, the committee shall give due notice of the holding of an election and shall issue appropriate regulations governing the conduct of the election within sixty days after the committee has made its determination. The

question to be voted on at the election must be submitted by ballot in substantially the following form:

Should the (insert name of district) be terminated? Yes  \_\_\_\_\_

No  \_\_\_\_\_

All qualified electors residing within the boundaries of the district are eligible to vote in the election. The committee shall supervise the election. Informalities in the conduct of the election or in any matters relating to the election do not invalidate the election or its result if notice of the election has been given substantially as required by this chapter and the election has been fairly conducted.

#### **4.1-20-41. Duties of committee after election on discontinuance of the district has been held.**

The committee shall publish the result of any election on the question of discontinuance of a district immediately after the vote has been had. If a majority of the votes cast in the election favored the discontinuance of the district, the committee shall make its certificate that it has determined that the continued operation of the district is not administratively feasible. If a majority of the votes cast in the referendum favored the continuance of the district, the committee shall consider and determine whether the continued operation of the district within the defined boundaries is administratively feasible. If the committee determines the continued operation of the district is administratively feasible, the committee shall record that determination and deny the petition for discontinuance, and if the committee determines the continued operation thereof is not administratively feasible, the committee shall record the determination and certify its determination to the supervisors of the district. In making its determination, the committee shall give due weight and regard to the number and attitudes of the qualified electors residing within the district, the number voting in the referendum, the proportion that the votes cast in favor of the discontinuance of the district are of the total number of votes cast, the probable expense of carrying on erosion control operations within the district, and any other economic and social factors as may be relevant to the determination having regard to the legislative policy as set forth in this chapter.

#### **4.1-20-42. Termination of affairs of district - Disposal of property - Certificate of dissolution.**

Upon receipt from the committee of its certification that the committee has determined the continued operation of the district is not administratively feasible, the supervisors shall proceed to terminate the affairs of the district. The supervisors of the district may dispose of all or part of any property belonging to the district at public auction and shall use the proceeds of the sale to pay any liabilities. The balance of any funds and undisposed property becomes the property of the county or counties the district is a part of as directed by the supervisors. The supervisors thereupon shall file an application, duly verified, with the secretary of state for the discontinuance of the district, and shall transmit with such application the certificate of the committee setting forth its determination that the continued operation of the district is not administratively feasible. The application must recite what property, if any, of the district has been disposed of, the liabilities paid, and the property or proceeds paid over as provided herein and must set forth a full accounting of such properties and their sale proceeds. The secretary of state shall issue to the supervisors a certificate of dissolution and record the certificate in an appropriate record in the secretary of state's office.

#### **4.1-20-43. Ordinances, regulations, and contracts of districts after dissolution.**

After a certificate of dissolution has been issued as provided in section 4.1-20-42, all ordinances and regulations that have been adopted and in force within the dissolved district are of no further force and effect. All contracts that have been made, to which the district supervisors are parties, remain in force and effect for the period provided in the contracts, and the committee is substituted for the district or supervisors as party to the contracts. The committee is entitled to all the benefits and subject to all the liabilities under the contracts and has the same right as the supervisors of the district would have had.

#### **4.1-20-44. Petitions for discontinuance of district - Limitation on filing.**

The state soil conservation committee may not entertain petitions for the discontinuance of any district, conduct elections upon those petitions, or make determinations pursuant to the petitions in accordance with the provisions of this chapter more than once in any five-year period.

#### **4.1-20-45. Consolidation of districts - Petition - Election - Conduct of election.**

Two or more districts may be consolidated into one district by compliance with this chapter. A petition for consolidation of soil conservation districts must be filed with the state soil conservation committee and must be signed by at least twenty-five qualified electors living in each district. Upon the filing of a petition, the committee by resolution shall fix a date for an election to be held in each district and shall direct the supervisors to cause notice of the election to be posted in at least five conspicuous places within the district and to be published once each week for two consecutive weeks before the election in a newspaper of general circulation in the districts involved. Only qualified electors living within the district are eligible to vote at the election. The notice must state the date of the election, identify each polling place for holding the election, the time when the polls will open and close, and the question to be submitted to the qualified electors. The notice must be substantially in the following form:

On \_\_\_\_\_, an election will be held at

\_\_\_\_\_ for the purpose of submitting

(Designate polling place or places)

to the qualified electors within \_\_\_\_\_ soil conservation

(Name of district)

district the question as to whether \_\_\_\_\_ soil conservation

(Names of districts)

districts embracing the following townships \_\_\_\_\_

(Designate townships, by number and range)

shall be consolidated into one soil conservation district.

The ballot must be in the following form:

Shall \_\_\_\_\_ soil conservation districts embracing the  
(Names of districts)

following townships \_\_\_\_\_ be

(Designate townships, by number and range)

consolidated into one soil conservation district?

Yes \_\_\_\_\_

No \_\_\_\_\_

The board of supervisors of the district shall appoint the board of election for each polling place. The board of election must consist of one inspector, one judge, and one clerk. Members of the election board are entitled to receive five dollars for their services.

#### **4.1-20-46. Conduct of election - Canvass of votes.**

An election upon the question of consolidating two or more soil conservation districts must be conducted in accordance with the laws of the state prescribing the conduct of general elections. After the polls are closed, the board of election shall canvass the votes and the clerk of the board shall certify to the board of supervisors of the clerk's district and to the committee the result of the election.

The committee shall publish the result of the election. If a majority of the ballots cast on the question in each district are for consolidation, the committee shall file with the secretary of state a statement certifying that the consolidated district has been duly and regularly established.

#### **4.1-20-47. Supervisors of consolidated district - Terms of office - Powers and duties.**

The members of the board of supervisors of a newly consolidated district are the supervisors from each of the districts that have been consolidated whose existing terms of office would last expire if the new consolidated district were not established. Those members shall determine by lot the order in which their terms of office in the consolidated district will expire. If more than three districts are consolidated, the members of the board of supervisors of the consolidated district must be determined by lot among the supervisors from the districts whose existing terms would expire last. If only two districts are consolidated, the third member of the board of supervisors of the consolidated district must be determined by lot among the remaining supervisors from both such districts. The supervisors thus selected shall hold office until the next general election of the district and until their successors are elected and qualified. Supervisors of a consolidated district have all the powers and duties of supervisors of a soil conservation district as enumerated in this chapter. The name of a consolidated district must be determined by the new supervisors of the consolidated district.

#### **4.1-20-48. Costs and expenses of consolidation - Disposition of property - Contracts of districts after consolidation.**

All costs and expenses incidental to the consolidation of two or more districts must be borne equally by each of the consolidated districts. All property and money of the districts that have been consolidated become the property of the newly established district. All contracts to which the supervisors of each of the districts

consolidated are parties remain in force and effect for the period provided in the contracts and the supervisors of the consolidated district are substituted as parties in the contracts. Supervisors of a consolidated district are entitled to all the benefits and subject to all the liabilities under the contracts and have the same rights as the supervisors of the district that entered the contract would have had if a consolidated district had not been established.

#### **4.1-20-49. Soil conservation trust lands.**

The state of North Dakota holds in trust for use by the soil conservation districts of the state for the soil conservation program the property in Burleigh County described as follows:

Township one hundred thirty-eight north, range eighty west, fifth principal meridian: west one-half of section fifteen and that portion of the southeast quarter of section sixteen described as follows: beginning at the southeast corner of said section sixteen, thence running north on the east line of said section six hundred sixty feet [201.17 meters]; thence west parallel with the south line of said section two thousand three hundred ten feet [704.09 meters]; thence south six hundred sixty feet [201.17 meters] to a point on the south line of said section two thousand three hundred ten feet [704.09 meters] west of the southeast corner of said section; thence east along the south line of said section two thousand three hundred ten feet [704.09 meters] to the place of beginning; containing thirty-five acres [14.16 hectares], more or less.

Subject, however, to the following rights, easements, exceptions, and reservations:

1. Easements for existing or established roads, highways, and public utilities, if any.
2. Right reserved by the Department of the Army "to enter thereon and remove gravel and use the established rubbish disposal area as long as any part of Fort Lincoln Military Reservation is used by the Department of the Army".
3. Reservation to the United States of America and its assigns of an undivided three-fourths interest in all coal, oil, gas, and other minerals, including three-fourths of all sand, gravel, stone, clay and similar materials, in or under the property, together with the usual mining rights, powers, and privileges, including the right at any and all times, to enter upon the land and use those parts of the surface as may be necessary in prospecting for, mining, saving and removing the minerals or materials, provided the quantities of sand, gravel, stone, clay and similar materials, as may be required, may be utilized in the operation or improvement of the lands.

The lands, having been conveyed to the state of North Dakota by the United States of America for use in carrying out the soil conservation program of the soil conservation districts of the state, are further subject to the condition the land must be used for public purposes and if at any time cease to be so used must revert to and become revested in the United States. Upon approval by the United States of America in accordance with the original grant of the trust lands, the trust lands may be leased, sold, conveyed, traded for, or replaced by other land suitable for the benefit of the soil conservation program in this state. No lease, sale, conveyance, trade, or replacement of the trust lands may be made under conditions that will cause or may cause the reversion of the lands back to the United States of America.

The control, custody, possession, supervision, management, operation, and transfer of the trust lands and any replacement lands is hereby vested in the North Dakota association of soil conservation districts for use in carrying out the soil conservation program of the soil conservation districts of the state and the association in such control, custody, possession, supervision, management, operation, and transfer shall hold all accumulations of personal property or surplus funds derived from said lands in trust for the soil conservation districts of the state for use in carrying out the soil conservation program. Any transfer, sale, trade, or replacement of trust lands is excepted from section 38-09-01, and the North Dakota association of soil conservation districts may transfer all or a portion of the minerals held by the state or the association which are located under the trust lands. Any funds generated through bonuses, leases, royalties, or otherwise generated by minerals reserved by the association or funds generated from the sale of minerals must be held in trust as provided in this section.

**SECTION 3.** Chapter 4.1-21 of the North Dakota Century Code is created and enacted as follows:

**4.1-21-01. State forester - Appointment - Qualifications - Duties.**

The board of higher education shall appoint the state forester.

1. The state forester must be a graduate of an accredited school of forestry with a minimum education of a bachelor of science degree in forestry. The office of the state forester must be located in Bottineau. The state forester shall serve as the director of the state forest service and, subject to the approval of the board of higher education and the president of North Dakota state university, may employ assistants and secure office facilities and equipment necessary for the administration of this chapter and the performance of the powers and duties of the office.
2. The state forester shall:
  - a. Supervise the raising and distribution of seeds and forest tree planting stock as provided in this chapter.
  - b. Promote practical forestry and compile and disseminate information relative to practical forestry to landowners, community groups, schools, and other organizations interested in forestry.
  - c. Encourage the development, use, and wise stewardship of forest resources.
  - d. Provide assistance to landowners, producers, and public bodies relating to forestry, reforestation, protection of forest resources, prevention and suppression of fires, planting of trees and shrubs, and the growing, harvesting, marketing, and management of forest resources.

**4.1-21-02. State nursery - Maintenance - Purpose.**

A state nursery, under the direction of the state forester, must be maintained at Towner. The nursery shall propagate seeds and forest tree planting stock adapted to the climatic conditions of this state.

**4.1-21-03. Powers - Cooperative state agreements.**

Under the general supervision of the board of higher education, the state forester may:

1. Establish procedures for the administration of this chapter.
2. Provide grants to, and enter cooperative agreements with, public and private entities for purposes consistent with this chapter.
3. Establish councils to advise the state forester on the administration of this chapter.

**4.1-21-04. State forester reserve account.**

The state forester reserve account is established as a special account in the state treasury. All moneys received for charges in excess of the cost of production of seedlings from the state nursery must be deposited in the reserve account. The state forester may use the reserve account within limits of legislative appropriations for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding as determined necessary by the state forester. If the balance of the state forester reserve account exceeds one million dollars, charges for state nursery seedlings must not exceed estimated production costs until the account balance is less than seven hundred thousand dollars, at which time the state forester may charge one hundred ten percent of production costs.

**4.1-21-05. Distribution of seeds and planting stock.**

Seeds and planting stock from the state nursery may be distributed by the state forester to citizens and landowners of this state upon payment by them of a price not greater than one hundred ten percent of the cost to the state of production in the case of planting stock or collection in the case of seeds, and the cost of transportation from the nursery. The seeds and planting stock may be used to establish or reestablish forests, windbreaks, shelterbelts, living snow fences, farm woodlots, Christmas tree plantings, wildlife habitats, and other conservation tree plantings and for erosion control and water quality management.

**4.1-21-06. State forester may accept land for forestry purposes.**

The state forester may accept gifts, donations, or contributions of land suitable for forestry purposes and may enter agreements for acquiring, by lease, purchase, or otherwise, such lands as in the state forester's judgment are desirable for state forestry purposes.

**4.1-21-07. Obligations incurred in acquiring land - Payment.**

Obligations incurred by the state forester in the acquisition of land under this chapter must be paid solely and exclusively from revenues derived from that land, and may not impose any liability upon the general credit and taxing power of the state.

**4.1-21-08. Powers of state forester when lands acquired or leased.**

When lands are acquired or leased under section 4.1-21-06, the state forester may make expenditures from any funds not otherwise obligated for the management, development, and utilization of those areas. The state forester may provide recreational services within those areas and may charge a user fee in an amount

sufficient to cover the cost of providing those services. The state forester may sell or otherwise may dispose of products from those lands and may make necessary rules to carry out the purposes of this chapter.

#### **4.1-21-09. Revenue received from lands acquired or leased - Regulations governing - Payments in lieu of taxes.**

All revenues derived from lands acquired or leased under this chapter must be segregated by the state treasurer for the use of the state forester in the acquisition, management, development, and use of such lands. However, from those revenues derived from agricultural leases there must be paid over to the governing body of the county in which those lands are located, an amount sufficient to cover the loss of tax revenues, if any, resulting from such acquisition or lease.

#### **4.1-21-10. State forester may sell, exchange, or lease lands.**

The state forester may sell, exchange, or lease lands under the state forester's jurisdiction when in the state forester's judgment it is advantageous to the best orderly development and management of state forests and state parks, except any sale, lease, or exchange may not be contrary to the terms of any contract that the state has entered.

#### **4.1-21-11. Agreements for shelterbelt lands by state.**

Any board or officer having the control or management of any real estate belonging to or controlled by this state or any of its political subdivisions may enter agreements with the officers and agents of the United States for the improvement by the United States of any of those lands by the establishment and maintenance on those lands of shelterbelts composed of trees, other plants, and necessary protective structures and works. Every agreement must describe particularly the land to be covered by the shelterbelt, must be recorded at the expense of the United States in the county where the land is situated, and thereafter all leases, sales, and other disposition of such land are subject to the agreement.

#### **4.1-21-12. Trees for North Dakota program and trust fund.**

The trees for North Dakota program is created for the public purpose of strengthening the tradition of tree planting and management in this state.

A special fund known as the trees for North Dakota program trust fund is established in the state treasury. Income earned on moneys in the fund must be credited to the fund. The state forester shall deposit all program funds received from governmental and private sources in the trust fund. Program funds may be expended for direct costs or distributed for grants and contracts by the state forester within the limits of legislative appropriations for defraying the costs associated with execution of the trees for North Dakota program.

Any political subdivision of the state may provide financial aid or supportive services to the trees for North Dakota program.

**SECTION 4.** Chapter 4.1-22 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-22-01. Definitions.**

In this chapter, except as otherwise provided:

1. "Certificate of inspection" means a document issued or authorized by the commissioner stating nursery stock is practically free from damaging pests.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Grower" means any person that takes a reproductive part of nursery stock and increases the size and development of the stock for at least one full growing season. A grower includes a person producing nursery stock from tissue culture.
4. "Infested" means infected with a quantity of pests or so exposed to a quantity of pests that it would be reasonable to believe potential for harm or threat to the health of the host nursery stock exists.
5. "Nonhardy" means plant species, varieties, and cultivars that will not survive climatic conditions in North Dakota.
6. "Nursery" means any place where nursery stock is propagated, grown, or offered for sale.
7. "Nursery stock" means all trees, shrubs, woody vines and their parts that are capable of propagation or growth, except seed. Only plants intended for outdoor planting are considered nursery stock.
8. "Pest" means any invertebrate animal, pathogen, parasitic plant, or other similar organism that can cause damage to nursery stock.
9. "Place of business" means each separate location from which nursery stock is being offered for sale.
10. "Viable nursery stock" means nursery stock that is capable of living and accomplishing the purpose for which it is grown, whether for foliage, flowers, fruit, or special use.

#### **4.1-22-02. Administration - Rulemaking authority.**

The commissioner shall administer this chapter. The commissioner may adopt rules under chapter 28-32 to implement this chapter.

#### **4.1-22-03. Authority for inspection.**

The commissioner shall inspect all nursery stock being grown in North Dakota at least once each year and may enter and inspect any nursery or place of business during normal business hours.

#### **4.1-22-04. Authority for abatement - Removal from sale.**

After giving notice to the owner or the owner's agent, the commissioner may destroy, treat, or remove from sale, at the owner's expense, any nursery stock offered for sale found to be not viable, not accompanied by a certificate of inspection, not labeled correctly, or infested with a pest.

#### **4.1-22-05. Certification of nursery stock.**

The commissioner shall issue a certificate of inspection annually for nursery stock grown in licensed nurseries within the state found to be practically free from

damaging pests. Certificates expire on December thirty-first each year unless canceled at an earlier date. Certification may be withheld by the commissioner when nursery stock is infested with a pest or if weeds or other objects prevent an adequate inspection of the nursery stock. All nursery stock being offered for sale within the state must be from officially inspected sources. A copy of a certificate of inspection from the state of origin must accompany each commercial lot or shipment of nursery stock that is transported into or offered for sale within North Dakota. All copies of the North Dakota certificate of inspection required for shipping purposes must be approved by the commissioner.

#### **4.1-22-06. Nursery license - Fee.**

A person may not sell nursery stock without a license issued by the commissioner. Licenses expire on December thirty-first each year unless revoked at an earlier date. An application for renewal of license with any additional information required by the commissioner must be submitted and accompanied by a fee of fifty dollars on or before December thirty-first each year. A separate license is required for each place of business. A fee of ten dollars must be submitted for each additional license, other than the principal place of business. A license may not be issued to a grower unless the grower has first been issued a certificate of inspection.

#### **4.1-22-07. Labeling and standards for nursery stock.**

A person may not sell or offer for sale any nursery stock not labeled in accordance with the international code of nomenclature for cultivated plants with the complete correct botanical or approved recognized common name. All nonhardy trees and shrubs, as determined by the commissioner, must be labeled "nonhardy in North Dakota". All nursery stock offered for sale or distribution must be in a viable condition and must be stored and displayed under conditions that will maintain its viability. Materials used to coat the aerial parts of the plant which change the appearance of the plant surface to prevent adequate inspection are prohibited.

#### **4.1-22-08. Misrepresentation.**

A person may not misrepresent the name, age, origin, grade, variety, quality, or hardiness of any nursery stock being offered for sale.

#### **4.1-22-09. Reciprocal agreements.**

The commissioner may enter reciprocal agreements with officers of other states for the recognition of official licenses and inspection certificates.

#### **4.1-22-10. Exemptions.**

The commissioner may exempt certain nursery stock, nurseries, or persons from all or part of the provisions of this chapter. Exemptions from licenses and fees may include:

1. Persons growing and propagating nursery stock for research or experimental purposes;
2. Soil conservation districts selling nursery stock for the prevention of soil and wind erosion or other conservation plantings; and
3. Persons growing nursery stock for noncommercial purposes or that the commissioner designates as exempt.

**4.1-22-11. Penalties - Criminal - Civil - License revocation or nonrenewal.**

1. It is a class B misdemeanor for any person to violate this chapter, or any rules adopted under this chapter.
2. Any person who violates any provision of this chapter, or rule adopted under this chapter, is subject to a civil penalty not to exceed five hundred dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing under chapter 28-32.
3. The department may maintain, in accordance with the laws of this state, an appropriate civil action in the name of the state against any person violating this chapter or rules adopted under this chapter.
4. The commissioner may refuse to grant a license to any person found guilty of repeated violations of this chapter or rules adopted under this chapter, or to any person who has failed to pay an adjudicated civil penalty for violation of this chapter within thirty days after a final determination that the civil penalty is owed.

**SECTION 5.** Chapter 4.1-48 of the North Dakota Century Code is created and enacted as follows:

**4.1-48-01. Definitions.**

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

1. "Buyer" means an individual, group of individuals, organization, or entity that in the ordinary course of business buys potatoes or byproducts of potatoes grown in this state or that contracts with a potato producer to grow potatoes in this state.
2. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
3. "Potatoes" means potatoes or byproducts of potatoes produced for use in or as food, seed, feed, or other byproducts of the farm for the same or similar use.
4. "Producer" means an individual, group of individuals, organization, or entity that produces or causes to be produced potatoes by contracting with a buyer or processor to provide management, labor, machinery, facilities, or any production input for the production of potatoes.

**4.1-48-02. Unfair acts and practices prohibited.**

The following prohibited acts or practices, when engaged in by a buyer in connection with a potato production contract or purchase involving potatoes constitute unfair acts or practices for purposes of this chapter. A buyer may not:

1. Use coercion, intimidation, the threat of retaliation or the threat of contract termination, cancellation, or nonrenewal to impose, demand, compel, or dictate terms, payment or manner of payment, or the signing of a contract by a potato producer.

2. Use coercion, intimidation, the threat of retaliation, or the threat of contract termination, cancellation, or nonrenewal to require a producer to make capital improvements such as buildings or equipment.
3. Interfere with, restrain, or coerce a producer in the exercise of the right to join, form, or assist a producer bargaining cooperative or association.
4. Refuse to deal with a producer because of the exercise of the right to join and belong to a producer bargaining cooperative or association.
5. Refuse to provide to the producer, upon request, the statistical information and the data used to determine compensation paid to the producer for settlement.
6. Refuse to allow a producer or the producer's designated representative to observe, by actual observation at the time of weighing, the weights and measures used to determine the producer's compensation at settlement.
7. Use the performance of any other producer to determine the settlement of a producer.
8. Refuse to bargain with an established producer bargaining cooperative or association formed for the purpose of negotiating contracts and agreements.

#### **4.1-48-03. Civil liability for damages from an unfair act or practice.**

A person who engages in conduct that constitutes an unfair act or practice under section 4.1-48-02 is liable to a producer for all damages caused to the producer by the unfair act or practice.

#### **4.1-48-04. Good faith - Damages for violation - Penalty.**

There is an implied promise of good faith by all parties to a potato production contract. In an action to recover damages, if the court or a jury finds there has been a breach of the implied promise of good faith, in addition to other damages authorized by law, attorney's fees and court costs may be awarded.

#### **4.1-48-05. Recapture of capital investment required by a potato production contract.**

1. A contractor may not terminate or cancel a contract that requires a producer to make a capital investment in buildings or equipment that cost one hundred thousand dollars or more and have a useful life of five or more years until:
  - a. The producer has been given written notice of the intention to terminate or cancel the contract at least one hundred eighty days before the effective date of the termination or cancellation, or as provided in subsection 3; and
  - b. The producer has been reimbursed for damages incurred by an investment in buildings or equipment that was made for the purpose of meeting minimum requirements of the contract.
2. Except as provided in subsection 3, if a producer fails to comply with the provisions of a contract that requires a capital investment subject to subsection 1, a contractor may not terminate or cancel that contract until:

- a. The contractor has given written notice with all the reasons for the termination or cancellation at least ninety days before termination or cancellation, or as provided in subsection 3; and
  - b. The recipient of the notice fails to correct the reasons stated for termination or cancellation in the notice within sixty days of receipt of the notice.
3. The one hundred eighty-day notice period under subsection 1, and the ninety-day notice period and the sixty-day notice period under subsection 2, are waived and the contract may be canceled or terminated immediately if the alleged grounds for termination or cancellation are:
    - a. Voluntary abandonment of the contract relationship by the producer; or
    - b. Conviction of the producer of an offense directly related to the business conducted under the contract.

**SECTION 6. AMENDMENT.** Section 57-38-34.6 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-34.6. Optional contributions to trees for North Dakota program trust fund.**

An individual may designate on the tax return of that individual a contribution to the trees for North Dakota program trust fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the individual. The tax commissioner shall notify taxpayers of this optional contribution on the individual state income tax returns. The tax commissioner shall transfer the amount of optional contributions under this section to the state treasurer for deposit in the trees for North Dakota program trust fund for use as provided in chapter 4-21-24.1-21.

Approved April 10, 2017

Filed April 10, 2017

## CHAPTER 66

### HOUSE BILL NO. 1240

(Representatives Monson, D. Johnson, Pollert)  
(Senators Campbell, Luick, Myrdal)

AN ACT to amend and reenact section 4-41-02 of the North Dakota Century Code, relating to industrial hemp; to provide a continuing appropriation; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 4-41-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **4-41-02. Industrial hemp - Licensure - Reporting requirements - Continuing appropriation.**

1. Any person desiring to grow or process industrial hemp for commercial purposes or research shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner.
  - a. The application for a license must include the name and address of the applicant and the legal description of the land area to be used to produce or process industrial hemp.
  - b. Except for employees of the state seed department, the agricultural experiment station, or the North Dakota state university extension service involved in research and extension-related activities, the commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the applicant.
  - c. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure.
  - d. Any person with a prior criminal conviction may be denied licensure.
  - e. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year.
  - f. Any person licensed under this section is presumed to be growing or processing industrial hemp for commercial purposes or research.
  - g. A license required by this section is not conditioned on or subject to review or approval by the United States drug enforcement agency.

- h. This subsection does not apply to any person licensed by the United States drug enforcement agency to conduct research.
  - i. An application for a license under this subsection may be filed with the commissioner at any time.
2. a. Each licensee must file with the commissioner documentation indicating that the seeds planted were of a type and variety certified to have no more than three-tenths of one percent tetrahydrocannabinol and a copy of any contract to grow industrial hemp.
  - b. Each licensee shall notify the commissioner of the sale or distribution of any industrial hemp grown by the licensee, and the names of the persons to whom the hemp was sold or distributed.
3. ~~The commissioner shall adopt rules to provide for oversight of the industrial hemp during growth, harvest, and processing and to allow the industrial hemp to be tested during growth for tetrahydrocannabinol levels and to allow for supervision of the industrial hemp during its growing, harvesting, and processing.~~
  4. ~~To provide sufficient funds to pay costs associated with monitoring and testing industrial hemp in the state, the~~ The commissioner shall assess each applicant a fee of ~~five~~ one hundred fifty dollars plus ~~twenty-five~~ twenty-five dollars per acre. ~~The minimum fee assessed must be one hundred fifty dollars per applicant. Collections from this fee must be deposited in the commissioner's operating fund and are appropriated to the commissioner to be used to enforce this chapter.~~
  5. Fees collected under this chapter must be deposited in the commissioner's operating fund and are appropriated to the department on a continuing basis for the purpose of enforcing this chapter.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 14, 2017

Filed March 15, 2017

## CHAPTER 67

### SENATE BILL NO. 2027

(Legislative Management)  
(Agriculture and Natural Resources Committee)

AN ACT to create and enact chapters 4.1-23, 4.1-33, 4.1-34, 4.1-35, 4.1-36, 4.1-37, 4.1-38, 4.1-39, and 4.1-40 of the North Dakota Century Code, relating to revisions of agriculture laws regarding plant pests, pesticides, chemigation regulation, pesticide container disposal, anhydrous ammonia facilities, anhydrous ammonia risk management, crop protection products, and the fertilizer and soil conditioner law; to amend and reenact subsection 19 of section 19-02.1-01 and sections 23-01-01.1 and 23-01-25 of the North Dakota Century Code, relating to the definition of a pesticide chemical and the state department of health; to repeal chapters 19-18, 19-20.1, 19-20.2, and 19-20.3 of the North Dakota Century Code, relating to pesticides, fertilizers and soil conditioners, anhydrous ammonia facilities, and anhydrous ammonia risk management; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 4.1-23 of the North Dakota Century Code is created and enacted as follows:

##### **4.1-23-01. Definitions.**

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

1. "Certificate" means a document issued or authorized by the commissioner indicating a regulated article is not contaminated with a pest.
2. "Commissioner" means the agriculture commissioner or the commissioner's authorized representative.
3. "Host" means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.
4. "Infested" means infected with a quantity of pests or so exposed to a quantity of pests that it would be reasonable to believe that potential for harm or threat to the health of the host exists.
5. "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, or allow to be transported.
6. "Permit" means a document issued or authorized by the commissioner to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.
7. "Person" means any individual, corporation, limited liability company, company, society, or association, or other business entity.

8. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism that can cause damage to a plant or part of a plant or any processed, manufactured, or other product of plants.
9. "Phytosanitary certificate" means an international document issued or authorized by the commissioner stating that a plant or plant product is considered free from quarantine pests and practically free from injurious pests and that the plant or plant product is considered to conform with the current phytosanitary regulations of the importing country.
10. "Plant" means any part of a plant, tree, aquatic plant, plant product, plant material, shrub, vine, fruit, rhizome, vegetable, seed, bulb, stolon, tuber, corn, pip, cutting, scion, bud, graft, fruit pit, or agricultural commodity.
11. "Regulated article" means any article of any character as described in a quarantine carrying or capable of carrying the plant pest against which the quarantine is directed.

#### **4.1-23-02. Administration - Rulemaking authority.**

The commissioner shall administer this chapter. The commissioner shall employ an individual who has a baccalaureate degree in entomology, plant pathology, or biological sciences. The commissioner may adopt rules to carry out this chapter.

#### **4.1-23-03. Authority for control measures.**

The commissioner, either independently or in cooperation with political subdivisions, farmers' associations or similar organizations, individuals, federal agencies, or agencies of other states, is authorized to carry out operations or measures to locate, suppress, control, eradicate, prevent, or retard the spread of pests with the consent of the owners of the property involved.

#### **4.1-23-04. Authority for plant quarantine.**

1. The commissioner is authorized to quarantine this state or any portion of the state if the commissioner determines that quarantine is necessary to prevent or retard the spread of a pest within or from this state, and to quarantine any other state or portion of another state if the commissioner determines a pest exists in another state and a quarantine is necessary to prevent or retard the spread of the pest into this state. Before determining that a quarantine is necessary, the commissioner, after due notice to interested parties, shall hold a public hearing under rules adopted by the commissioner.
2. Any interested party may appear and be heard either in person or by attorney at the public hearing, provided, the commissioner may impose a temporary quarantine for a period not to exceed ninety days during which time a public hearing, as provided for in this section, must be held if it appears the quarantine may require more than the ninety-day period to prevent or retard the spread of the pest. The commissioner shall give notice of the quarantine in those newspapers in the quarantined area selected by the commissioner. The commissioner may limit the application of the quarantine to the infested portion of the quarantined area and appropriate environs, to be known as the regulated area, and, without further hearing, may extend the regulated area to include additional portions of the quarantined area:

- a. Upon publication of a notice in newspapers in the quarantined area selected by the commissioner; or
  - b. By direct written notice to those concerned.
3. Following establishment of the quarantine, a person may not move any regulated article described in the quarantine or move the pest against which the quarantine is established, within, from, into, or through this state contrary to rules adopted by the commissioner. Notice of the rules must be published in newspapers in the quarantined area selected by the commissioner.
  4. The rules may restrict the movement of the pest and any regulated articles from the quarantined or regulated area in this state into or through other parts of this state or other states and from the quarantined or regulated area in other states into or through this state. The rules may impose inspections, disinfections, certifications, permits, and other requirements as the commissioner deems necessary to effectuate the purposes of this chapter.

#### **4.1-23-05. Authority for abatement and emergency measures.**

If the commissioner finds any article that is infested or reasonably believed to be infested or a host or pest exists on any premise or is in transit in this state, the commissioner, upon giving notice to the owner or the owner's agent in possession of the host or pest, may seize, quarantine, treat, or otherwise dispose of such pest, host, or article in the manner as the commissioner deems necessary to suppress, control, eradicate, or to prevent or retard the spread of the pest. The commissioner may order the owner or agent to treat or dispose of the pest, host, or article. If large areas or metropolitan areas, involving many people, are to be treated, notice may be given through newspaper, radio, or other news media. A notice must prominently appear, at least ten days prior to treatment, in at least three issues of a daily paper having local coverage.

#### **4.1-23-06. Authority for inspections - Warrants.**

1. The commissioner, with a warrant or the consent of the owner, may make reasonable inspection of any premises in this state and any property in or on the premises. The commissioner, without a warrant with the assistance of any law enforcement agency may stop and inspect, in a reasonable manner, any means of transportation moving in this state upon probable cause to believe it contains or carries any pest, host, or other article subject to this chapter. The commissioner may make any other reasonable inspection of any premises or means of transportation for which no warrant is required under the Constitution of the United States and the Constitution of North Dakota.
2. District courts in this state may issue warrants for inspections of property or transportation upon a showing by the commissioner of probable cause to believe there exists in or on the property or transportation to be inspected a pest, host, or other article subject to this chapter.

#### **4.1-23-07. Cooperation.**

1. The commissioner is authorized to cooperate with any agency of the federal government in operations and measures the commissioner deems necessary to suppress, control, eradicate, prevent, or retard the spread of any plant pest including the right to expend state funds on federal lands.

2. The commissioner is authorized to cooperate with agencies of adjacent states in such operations and measures the commissioner deems necessary to locate; to suppress, control, eradicate, prevent, or retard the spread of any pest, provided, that the use of funds appropriated to carry out this chapter, for operations in adjacent states, must be approved in advance by the governor or the governor's designee.

#### **4.1-23-08. Penalties.**

1. It is a class A misdemeanor for:
  - a. Any person to violate any provision of this chapter or use without authority any certificate or permit or other document provided for in this chapter or in the rules of the commissioner provided for in this chapter; or
  - b. Any person to knowingly move any regulated article into this state from any quarantined area of any other state, when the article has not been treated or handled under provisions of the quarantine and rules at the point of origin.
2. In addition to criminal sanctions, a person found guilty of violating this chapter or rules is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32. The commissioner may maintain an appropriate civil action in the name of the state against any person violating this chapter.

#### **4.1-23-09. Authority for compensation.**

The commissioner may authorize the payment of reasonable compensation to growers in infested areas for not planting host crops pursuant to instructions issued by the commissioner prior to the planting season, for losses resulting from the destruction of any regulated articles. A payment may not be authorized for the destruction of regulated articles moved in violation of any rule or any host planted contrary to instructions issued by the commissioner. Any compensation payment program authorized by the commissioner must be approved by the legislative assembly.

#### **4.1-23-10. Authority for local pest control and regulations.**

The governing body of any political subdivision, by ordinance or resolution, may adopt and enforce regulations to control and prevent the spread of pests. If state rules are in effect, any similar local regulations must be approved by the commissioner. State rules must be in effect if the commissioner finds that adequate measures are not being taken by the political subdivision. The commissioner shall notify the appropriate officials of the political subdivision before any action is taken by the commissioner. The rules may authorize appropriate officers and employees to enter and inspect any public or private place which might harbor pests.

#### **4.1-23-11. Authority for financing local control programs - County pest coordinator.**

1. The board of county commissioners may appropriate money for the control of pests under this chapter. If state funds are involved, the money must be expended according to control plans approved by the commissioner. The board of county commissioners shall determine the portion, if any, of control

program costs to be paid by the county. Costs of the control program may be paid from revenues derived from general fund levy authority of the county or from the county noxious weed control levy authority under section 4.1-47-14.

2. The board of county commissioners for any county shall designate an individual to serve as county pest coordinator. The county pest coordinator shall administer local and private funds in cooperation with state and federal pest control programs. When state funds are involved, the county pest coordinator shall submit county and township control plans to the agriculture commissioner for approval.

#### **4.1-23-12. Authority for domestic and export certification.**

The commissioner may inspect and certify any plant and plant product, when offered for export or shipment from within the state and to certify, to shippers and interested parties as to the freedom of the products from injurious pests according to the phytosanitary requirements of other states and foreign countries. Authority for inspection and certification under this section is not limited to plants defined in section 4.1-23-01. The commissioner may make reasonable charges and use any means necessary to accomplish this objective. A portion of the fees collected may be deposited in the commissioner's operating fund equivalent to the amount that the United States department of agriculture assesses the department for federal plant export certificates issued by the commissioner. A certificate may be withheld or not issued if the product does not meet phytosanitary or import requirements and if all state licensing and bonding requirements have not been met. Consignee names and addresses on phytosanitary certificates are confidential.

**SECTION 2.** Chapter 4.1-33 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-33-01. Definitions.**

As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Applicator" means any person who applies a pesticide to land.
3. "Certified applicator" means any individual who is certified under this chapter to purchase or use a restricted use pesticide.
4. "Commercial applicator" means a person who, by contract or for hire, engages in the business of applying pesticides for compensation.
5. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
7. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than human and other than bacteria, virus, or other micro-organism on or in living humans or other living animals, but not

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including equipment used for the application of pesticides when sold separately from pesticide.

8. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
9. "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships that exist among them.
10. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, inhabiting, or stored on or in that land. The term does not include any pressurized hand-held household apparatus used to apply any pesticide, or any equipment or contrivance of which the individual who is applying the pesticide is the source of power or energy to make the pesticide application.
11. "Fungus" means any non-chlorophyll-bearing thallophytes, that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
12. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta, comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.
13. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
14. "Labeling" means the label and all other written, printed, or graphic matter:
  - a. Accompanying the pesticide or device; or
  - b. To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board, the United States environmental protection agency, the United States departments of agriculture and interior, the United States department of health and human services, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
15. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant to or situated on land, fixed or mobile, including any used for transportation.
16. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.

17. "Pest" means any insect, rodent, nematode, fungus, or weed; or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals.
18. "Pesticide" means:
  - a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
  - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
19. "Pesticide dealer" means any person, other than a pesticide wholesaler, distributing pesticides.
20. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.
21. "Private applicator" means an individual who is required to be a certified applicator to buy or use a restricted use pesticide on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
22. "Public applicator" means an applicator who applies pesticides, other than ready-to-use pesticides, as an employee of:
  - a. A governmental agency, municipal corporation, or public utility; or
  - b. A hospital, privately owned golf course, nursery, or greenhouse.
23. "Ready-to-use pesticide" means a pesticide other than a restricted use pesticide which is applied directly from its original container consistent with label directions, and includes aerosol spray cans, ready-to-use spray containers, bait packs, and other types of containers that do not require mixing or loading before application.
24. "Restricted use pesticide" means any pesticide formulation that is classified as restricted use by the United States environmental protection agency or the agriculture commissioner under section 4.1-34-06.
25. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing or pressure rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
26. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.

27. "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
28. "Weed" means any plant that grows where not wanted.
29. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including mammals, birds, and aquatic life.

#### **4.1-33-02. Pesticide control board - Enforcement by agriculture commissioner.**

1. The pesticide control board consists of the agriculture commissioner, the director of the cooperative extension division of the North Dakota state university of agriculture and applied science, and the director of the agricultural experiment station at North Dakota state university of agriculture and applied science. The agriculture commissioner is chairman of the board. The board shall meet at the call of the chairman.
2. The agriculture commissioner is responsible for the enforcement of this chapter. Any authority of the commissioner under this chapter may be executed by such employees or agents designated by the commissioner.
3. The members of the board must be compensated for their expenses in performing their duties under this chapter at the same rate as other state officials and the board's expenses must be paid from funds provided to the agriculture commissioner for the administration of this chapter. The board may act through the office of the agriculture commissioner and the commissioner's staff shall provide staff services for the board as directed by the commissioner.

#### **4.1-33-03. Pesticide control board to administer chapter and adopt rules.**

1. a. The pesticide control board shall administer this chapter and may adopt rules under chapter 28-32 to implement this chapter. The rules may prescribe methods to be used in the application of pesticides. The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:
  - (1) Plants, including forage plants, on adjacent or nearby lands.
  - (2) Wildlife in the adjoining or nearby areas.
  - (3) Fish and other aquatic life in waters in proximity to the area to be treated.
  - (4) Persons, animals, or beneficial insects.
- b. In adopting rules, the board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources.

2. In adopting rules under this chapter, the board shall prescribe standards and requirements for the certification of applicators of pesticides. These standards and requirements must relate to the use and handling of pesticides. In determining these standards and requirements, the board shall take into consideration standards and requirements prescribed by the United States environmental protection agency.
3. Rules adopted under this chapter may not permit any pesticide use that is prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.] or regulations or orders issued thereunder.
4. To comply with the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the board may make reports to the United States environmental protection agency in the form and containing the information as that agency requires.
5. Rules to implement this chapter may provide for:
  - a. The collection, examination, and reporting of samples of pesticides.
  - b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and pesticides containers.
  - c. The identification of pests under this chapter when the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

#### **4.1-33-04. Limitation on authority of political subdivisions regarding pesticides.**

A political subdivision, including a home rule city or county, may not adopt or continue in effect any ordinance, resolution, or home rule charter provision regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides. This section does not apply to city zoning ordinances.

#### **4.1-33-05. Application to governmental entities and public utilities.**

All governmental agencies and public utilities are subject to this chapter and rules adopted under this chapter.

#### **4.1-33-06. Classification of commercial certificates.**

The board may classify commercial certificates to be issued under this chapter. The classifications may include pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any applicator to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements. A person may be required to pay an additional fee if the person desires to be certified in one or more of the classifications provided for by the board under this section.

#### **4.1-33-07. Commercial and public applicator's certification.**

1. A commercial or public applicator may not purchase, use, or supervise the use of a pesticide without first complying with the certification standards and

requirements of this chapter, or other restrictions as may be determined by the board.

2. An individual may be certified as a commercial or public applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds, after examination as the board requires, the applicant qualified to apply pesticides in the classifications for which the applicant has applied and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial or a public applicator's certificate limited to the classifications in which the applicant is qualified.
4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification.

#### **4.1-33-08. Expiration of certification - Renewal.**

A certificate issued under section 4.1-33-07 expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board shall require a person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to classifications for which the applicant has applied makes a new examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to safely and properly use pesticides.

#### **4.1-33-09. Nonresident application - Designation of agent for service of process.**

1. A nonresident applying for certification as an applicator or dealer under this chapter shall file a written power of attorney in a form as to render effective the jurisdiction of the courts of this state over the nonresident applicant designating either:
  - a. North Dakota state university extension service or its designee as the nonresident's agent upon whom service of process may be had in the event of any suit against that nonresident person; or
  - b. The duly appointed nonresident person's resident agent upon whom process may be served as provided by law.
2. The extension service is allowed such fees for service as a registered agent as provided by law for designating resident agents. The nonresident must be furnished with a copy of the designation of the extension service or of a resident agent. The copy must be duly certified by the extension service.

#### **4.1-33-10. Proof of financial responsibility - Exceptions.**

1. A commercial applicator certificate may not be issued unless the applicant furnishes proof of financial responsibility. Financial responsibility must be maintained in the amount of one hundred thousand dollars. Financial responsibility may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. When requested by the agriculture commissioner, a commercial applicator immediately shall furnish proof of compliance with this section. If the applicator is unable to furnish the required proof, the commissioner may stop a pesticide application and not allow resumption until the applicator furnishes proof of compliance. The agriculture commissioner shall immediately suspend the certification of a commercial applicator who fails to maintain the financial responsibility standards of this section. If there is any recovery against the commercial applicator, the applicator shall demonstrate continued compliance with the requirements of this section. An application for reinstatement of a certificate suspended under this section must be accompanied by proof that any judgment previously rendered against the applicant has been satisfied.
2. This section does not apply to:
  - a. A rancher who must obtain a commercial applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
  - b. A grazing association and its members if either the association or any member must obtain a commercial applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
  - c. A person who must be certified in the right-of-way category.
  - d. A commercial applicator who controls noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.
  - e. An employee of a commercial applicator if the commercial applicator complies with this section.

#### **4.1-33-11. Pesticide dealer certification - Employees - Requirements for purchase.**

1. A pesticide dealer may not distribute restricted use pesticides or act as a restricted use pesticide dealer, without first having obtained certification from the North Dakota state university extension service, or the service's designee. During hours the business is open, a certified person must be at any location or outlet from which restricted use pesticides are distributed. Any manufacturer or distributor that has no pesticide dealer outlet within this state and which distributes such pesticides directly into this state shall obtain a pesticide dealer certificate for its principal out-of-state location or outlet.

2. Application for a certificate must be on a form prescribed by the board accompanied by an examination fee set by the board. The application must include the address of each outlet, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board.
3. The board shall require each pesticide dealer to demonstrate to the North Dakota state university extension service or the service's designee knowledge of pesticide laws and regulations; pesticide hazards to humans, animals, and the environment; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination or meeting other requirements as prescribed by the board within each classification for which certification is sought.
4. Each pesticide dealer is responsible for the acts of each individual employed by the dealer in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of such pesticides. The dealer's certification is subject to suspension or revocation, after a hearing, for any violation of this chapter committed by the dealer or by the dealer's officer, agent, or employee.
5. A certificate issued under this section expires on the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. The board may condition renewal of a certificate upon completion of a seminar approved by the board or successful completion of an examination required by the board, or both. The board may require any person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to pesticides makes an additional examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to safely and properly distribute pesticides.
6. Restricted use pesticides may be sold only to:
  - a. Persons certified as applicators by this state; and
  - b. Persons certified to use restricted use pesticides by another state, provided the pesticide control board determines the certifying state's requirements are substantially similar to those of this state and that the person does not use the restricted use pesticide in this state.

#### **4.1-33-12. Private applicators - Certification.**

1. a. An individual who would be a private applicator, if certified, may not buy any restricted use pesticide unless the individual first complies with the certification requirements established by the board.
- b. An individual who would be a private applicator, if certified, may not use any restricted use pesticide unless the individual:
  - (1) Complies with the certification requirements established by the board;  
or
  - (2) Is under the direct supervision of a certified applicator.

2. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be certified to use must be determined by the board. In determining these standards, the board shall consider similar standards of the United States environmental protection agency. The North Dakota state university extension service, or its designee, shall issue a certificate to any private applicator who has qualified as prescribed by the board. The North Dakota state university extension service, or its designee, may require any applicant required to be certified under this section to pay a reasonable fee, not greater than the cost to the North Dakota state university extension service, for materials provided to the applicant for training and education.

**4.1-33-13. Unlawful acts - Grounds for denial, suspension, or revocation of a certification.**

It is a violation of this chapter for any person to:

1. Make false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertise a pesticide without reference to its classification.
2. Make a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Apply materials known by that person to be ineffective or improper.
4. Operate faulty or unsafe equipment.
5. Operate in a faulty, careless, or negligent manner.
6. Neglect or, after notice, refuse to comply with this chapter, the rules adopted to implement this chapter, or any lawful order of the commissioner.
7. Refuse or neglect to keep and maintain the records required by this chapter or to make reports when and as required.
8. Make false or fraudulent records, invoices, or reports.
9. Apply pesticide to the property of another, without the permission of the owner or lessee, unless the application is made under the direction of a governmental entity.
10. Use fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refuse or neglect to comply with any limitations or restrictions on or in a duly issued certification.
12. Aid or abet a person to evade this chapter, conspire with a person to evade this chapter, or allow the person's certification to be used by another person.
13. Knowingly make false statements during or after an inspection or an investigation.
14. Impersonate a federal, state, county, or city inspector or official.

15. Distribute any restricted use pesticide to any person who is not properly certified to use or purchase the pesticide.
16. Buy, use, or supervise the use of any pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted.
17. Apply any pesticide that is not registered under chapter 4.1-34.

#### **4.1-33-14. Records - Retention - Submission to commissioner.**

The board shall require pesticide dealers, commercial applicators, and public applicators to maintain records of sales and purchases of restricted use and special exemption pesticides. The board shall require commercial applicators and public applicators to maintain records of all applications of pesticides. The board may require restricted use pesticide application records of private applicators. The records must be kept for a period of three years from the date of the application, sale, or purchase of the pesticide. Upon request, all or any requested part of these records must be submitted to the commissioner.

#### **4.1-33-15. Reciprocal agreement.**

The North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to buy, distribute, or use restricted use pesticides under a plan substantially similar to this chapter and after the applicant has paid a fee, set by the board, not greater than the fee or charge authorized under section 4.1-33-07, 4.1-33-11, or 4.1-33-12 if the applicant would have taken the appropriate examination. Such a certification may be suspended or revoked in the same manner and on the same grounds as certifications under this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

#### **4.1-33-16. Certification exemptions.**

1. The certification requirements of this chapter do not apply to an individual applying nonrestricted use pesticides under the direct supervision of a commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is applied under the direct supervision of a commercial applicator if the pesticide is applied by an individual acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied. Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified. The certification requirements of this chapter do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide label requires that a certified applicator personally apply the particular pesticide. A pesticide is deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the instruction and control of a private applicator who is available if and when needed, even though the private applicator is not physically present at the time and place that the pesticide is applied.
2. The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides or to a doctor of medicine or a doctor of veterinary medicine applying a pesticide as a drug or as medication during the course of normal practice.

#### **4.1-33-17. Discarding and storing of pesticides, pesticide containers, and rinsate.**

A person may not discard, store, display, or permit the disposal of surplus pesticides, empty pesticide containers and devices, or rinsate in such a manner as to endanger the environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. The board shall adopt rules governing the discarding, storage, display, or disposal of any pesticide, rinsate, pesticide containers, or devices.

#### **4.1-33-18. Pesticide application - Alleged property damage - Notification of applicator.**

1. a. Before a person may file a civil action seeking reimbursement for property damage allegedly stemming from the application of a pesticide, the person shall notify by certified mail the pesticide applicator of the alleged damage within the earlier of:
  - (1) Twenty-eight days from the date the person first knew or should have known of the alleged damage; or
  - (2) Before twenty percent of the crop or field allegedly damaged is harvested or destroyed.
- b. Subdivision a does not apply if the person seeking reimbursement for property damage was the applicator of the pesticide.
2. Upon notifying the applicator as required under subsection 1, the person seeking reimbursement for the alleged property damage shall permit the applicator and up to four representatives of the applicator to enter the person's property for the purpose of observing and examining the alleged damage. If the person fails to allow entry, the person is barred from asserting a claim against the applicator.

#### **4.1-33-19. Subpoenas.**

In any hearing to enforce this chapter, the commissioner may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records pertaining to pesticide applications, sales, and purchases in the state.

#### **4.1-33-20. Penalties.**

1. Any person other than a private applicator who knowingly violates this chapter is guilty of a class A misdemeanor.
2. Any private applicator who knowingly violates this chapter is guilty of a class B misdemeanor.
3. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
4. A person who violates this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the

agriculture commissioner through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter.

5. After providing an opportunity for a hearing, the commissioner may deny, suspend, revoke, or modify the provision of any certification issued under this chapter, if the commissioner determines that the applicant for certification or the holder of a certificate has violated this chapter or any rules adopted under this chapter.

#### **4.1-33-21. Enforcement.**

1. The commissioner shall enforce the requirements of this chapter and any rules adopted under this chapter.
2. The commissioner may bring an action to enjoin the violation or threatened violation of this chapter, or any rule adopted under this chapter, in the district court of the county in which the violation occurs or is about to occur.
3. If any person violates this chapter, the commissioner may issue an order requiring the person to cease and desist from the unlawful activity. If the violator fails to obey, the commissioner shall cause the appropriate criminal complaint to be filed.
4. The commissioner may enter upon any public or private premises at reasonable times, to:
  - a. Inspect any equipment subject to this chapter and the premises on which the equipment is stored or used.
  - b. Inspect or sample lands actually or reported to be exposed to pesticides.
  - c. Inspect storage or disposal areas.
  - d. Inspect or investigate complaints of injury to humans or land.
  - e. Draw samples of a reasonable amount of tank mix pesticides and tank mixes without compensation to the owner for values less than three dollars.
  - f. Observe the use and application of a pesticide.
  - g. Inspect any place where pesticides or devices are stored or held for distribution, sale, or use, and obtain samples of any pesticides packaged, labeled, and released for shipment and samples of any containers or labeling for the pesticides.
5. a. At any reasonable time, the commissioner may access records pertaining to the pesticide application, sales, purchases, and repackaging by any person. The commissioner may copy or make copies of the records for the purpose of this chapter. These records are confidential. However, the commissioner may use these records in any way to enforce this chapter. Any record the commissioner uses as an exhibit in an enforcement action is no longer a confidential record.

- b. If an individual alleges exposure to pesticides and if the individual's medical provider requests that the commissioner reveal the name of the pesticide, the commissioner may reveal the name of the pesticide to the individual making the request, together with the registration number assigned by the United States environmental protection agency. The commissioner may require a request under this section be made in writing.
6. If access is refused or if the commissioner determines critical enforcement documentation may be lost, the commissioner may apply to any court for a search warrant authorizing access to land or records. Upon compliance with chapter 29-29.1, the court may issue the search warrant for the purposes requested.
7. The commissioner may suspend or revoke a certification issued under this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed.

#### **4.1-33-22. Stop-sale orders.**

If the commissioner has reason to believe on the basis of inspection or tests that any pesticide or device is in violation of any provision of this chapter, or if the registration of the pesticide has been canceled or suspended by the state or United States environmental protection agency, the commissioner may issue a written or printed "stop-sale, use, or removal" order to any person who owns, controls, or has custody of the pesticide or device. After receipt of the order, a person may not sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

#### **4.1-33-23. Information and instruction.**

In cooperation with private, local, state, or federal agencies, the board may publish information and conduct short courses of instruction in the areas of knowledge required by this chapter.

#### **4.1-33-24. Cooperation by the board with other entities.**

The board may cooperate, receive grants-in-aid, and enter cooperative agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, to:

1. Secure uniformity of regulations.
2. Enter cooperative agreements with and submit plans to the United States environmental protection agency for approval to issue experimental use permits under the authority of this chapter and the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].
3. Cooperate in the enforcement of the federal pesticide control laws and state laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs.
4. Enter contracts with other agencies, including federal agencies, for the purpose of training pesticide applicators, managers, dealers, and pesticide consultants.
5. Gain assistance in implementation of this chapter.

6. Regulate certified applicators.
7. Comply with other purposes prescribed by rules of the commissioner.

#### **4.1-33-25. Disposition of funds - Certification and training fund.**

All moneys received by the pesticide control board under this chapter must be deposited to the credit of the certification and training fund under the control of the board.

**SECTION 3.** Chapter 4.1-34 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-34-01. Definitions.**

For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Active ingredient" means:
  - a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, any ingredient that will prevent, destroy, repel, or mitigate pests.
  - b. In the case of a plant regulator, any ingredient that, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.
  - c. In the case of a defoliant, any ingredient that will cause the leaves or foliage to drop from a plant.
  - d. In the case of a desiccant, any ingredient that will artificially accelerate the drying of plant tissue.
2. "Adulterated" applies to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.
3. "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.
4. "Commissioner" means the agriculture commissioner and includes any employee or agent designated by the commissioner.
5. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.
6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.
7. "Device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating pests but does not include equipment used for the application of pesticides when sold separately therefrom, or rodent traps.

8. "Environment" means air, water, land, and all plants and man and other animals living therein and the interrelationships that exist among these.
9. "Federal Act" means the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].
10. "Fungi" means all non-chlorophyll-bearing thallophytes, that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in humans or other animals, and those on or in processed food, beverages, or pharmaceuticals.
11. "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.
12. "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.
13. "Inert ingredient" means an ingredient that is not an active ingredient.
14. "Ingredient statement" means:
  - a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or
  - b. A statement of the name of all active ingredients in the order of their predominance in the product, together with the name of each and total percentage of any inert ingredients in the pesticide, except subdivision a applies if the preparation is highly toxic to humans, determined as provided in section 4.1-34-06, and in addition to subsections 1 and 2 of section 4.1-34-06. If the pesticide contains arsenic in any form, a statement must contain the percentages of total and water-soluble arsenic, each calculated as elemental arsenic.
15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.
16. "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects that may be present in any environment.
17. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or any of its containers or wrappers.
18. "Labeling" means all labels and other written, printed, or graphic matter:
  - a. Upon the pesticide or device or any of its containers or wrappers;
  - b. Accompanying the pesticide or device at any time; or

- c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of a state or federal agency, state agricultural experiment station, or state agricultural college.

19. "Misbranded" applies:

- a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative to the pesticide or device or to its ingredients which is false or misleading in any particular; and
- b. To any pesticide:
- (1) If the pesticide is an imitation of or is offered for sale under the name of another pesticide;
  - (2) If the pesticide's labeling bears any reference to registration under this chapter;
  - (3) If the labeling accompanying the pesticide does not contain directions for use which are necessary and, if complied with, adequate to protect health and the environment;
  - (4) If the label does not contain a warning or caution statement that may be necessary and, if complied with, adequate to protect health and the environment;
  - (5) If the label does not bear an ingredient statement on that part of the immediate container and, if there is an outside container or wrapper, if the outside container or wrapper does not have affixed a correct copy of the required labeling information from the immediate container or does not contain an opening through which the ingredient statement on the immediate container can be clearly read, of the retail package that is presented or displayed under customary conditions of purchase; except that a pesticide is not misbranded under this subsection if:
    - (a) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part that is presented or displayed under customary conditions of purchase; and
    - (b) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the commissioner;
  - (6) The labeling does not contain a statement of the use classification under which the product is registered if the product is a restricted use pesticide;
  - (7) There is no label information affixed to its container, and, if there is an outside container or wrapper of the retail package, there is no label information affixed to the outside container or wrapper and the outside container or wrapper does not contain an opening through which the label information on the immediate container can be clearly read. The label information must include:

- (a) The name and address of the producer, registrant, or person for whom produced;
    - (b) The name, brand, or trademark under which the pesticide is sold; and
    - (c) The net weight or measure of the content;
  - (8) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by this chapter:
    - (a) The skull and crossbones;
    - (b) The word "poison" prominently in red on a background of distinctly contrasting color; and
    - (c) A statement of a first aid or other practical treatment in case of poisoning by the pesticide;
  - (9) If any word, statement, or other information required under this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
  - (10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to humans or vertebrate animals or vegetation, except weeds to which it is applied, or to the individual applying the pesticide; or
  - (11) If a plant regulator, defoliant, or desiccant when used as directed is injurious to humans or vertebrate animals, or the vegetation to which it is applied. The physical or physiological effect on plants may not be deemed injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with label claims and recommendations.
20. "Nematocide" means any substance intended to prevent, destroy, repel, or mitigate nematodes.
21. "Nematode" means any of the nonsegmented roundworms harmful to agricultural plants.
22. "Person" means any individual, partnership, association, corporation, limited liability company, or organized group of persons whether incorporated or not.
23. "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms except viruses, bacteria, or other micro-organisms on or in living humans or animals.

24. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but does not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments. The term "plant regulator" does not include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.
26. "Protect health and environment" means protection against any unreasonable adverse effects on the environment.
27. "Registrant" means the person registering any pesticide pursuant to this chapter.
28. "Restricted use pesticides" means any pesticide formulation that is classified for restricted use by the United States environmental protection agency. The term also includes a pesticide formulation classified for restricted use by the commissioner under section 4.1-34-06.
29. "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal that the commissioner declares to be a pest.
30. "Snails" or "slugs" includes all harmful agricultural mollusks.
31. "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
32. "Weed" means any plant that grows where not wanted.

#### **4.1-34-02. Prohibited acts.**

1. A person may not distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:
  - a. Any pesticide that has not been registered under section 4.1-34-03, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration. The commissioner may allow a change in the labeling or formula of a pesticide to be made within a registration period without requiring reregistration of the product.
  - b. Any pesticide unless the pesticide is in:

- (1) The registrant's or the manufacturer's unbroken immediate container; or
  - (2) A container repackaged by a facility or person with a United States environmental protection agency issued establishment number, and there is affixed to such container, and to any outside container or wrapper of the retail package, a correct copy of the required labeling information from the immediate container or there is in the outside container or wrapper an opening through which the required labeling information on the immediate container can be clearly read.
- c. The pesticide commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless the pesticide has been distinctly colored or discolored as provided by rules issued in accordance with this chapter, or any other white powder pesticide that the commissioner, after investigation of and after public hearing on the necessity for the action for the protection of the public health and the feasibility of the coloration or discoloration, by rule, requires to be distinctly colored or discolored; unless it has been so colored or discolored. The commissioner may exempt any pesticide to the extent it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the commissioner determines the coloring or discoloring for the use is not necessary for the protection of the public health.
  - d. Any pesticide that is adulterated or misbranded, or any device that is misbranded.
2. A person may not detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or rules adopted under this chapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter.
  3. A person may not use for the person's own advantage or reveal other than in response to a proper subpoena, except to a physician or other qualified person for use in the preparation of an antidote, any information relative to the formula of any product acquired by authority of this chapter.

#### **4.1-34-03. Registration - Fees - Deposit of collections.**

1. Before selling or offering for sale any pesticide for use within this state, a person shall file biennially with the commissioner an application for registration of the pesticide. The application must:
  - a. Give the name and address of each manufacturer or distributor.
  - b. Give the name and brand of each product to be registered.
  - c. Be accompanied by a current label of each product to be registered.
  - d. Be accompanied by a registration fee of three hundred fifty dollars for each product to be registered.
  - e. Be accompanied by a material safety data sheet for each product to be registered.

2. The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product.
3. Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to which it is issued to another ownership. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.
4. This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.
5. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations under this section. The state treasurer shall credit the registration fees to the environment and rangeland protection fund.

#### **4.1-34-04. Reporting requirements.**

Within thirty days after request by the commissioner, a registrant shall report the amount and type of each registered pesticide sold, offered for sale, or otherwise distributed in the state. The information required must include the brand name, amount, and formulation of each pesticide sold, offered for sale, or otherwise distributed in the state. However, specific brand names may not be identified in any report or otherwise made public.

#### **4.1-34-05. Protection of trade secrets.**

1. In submitting data required by this chapter, the applicant may:
  - a. Clearly mark any portions that the applicant requests the commissioner to determine to be trade secrets or commercial or financial information; and
  - b. Submit the marked material separately from other material.
2. After consideration of the applicant's request submitted under subsection 1, the commissioner may not make any information public which in the commissioner's judgment contains or relates to trade secrets or to commercial or financial information obtained from an applicant. When necessary, information relating to formulas of products may be revealed to any state or federal agency consulted with similar protection of trade secret authority and may be revealed at a public hearing or in findings of facts issued by the commissioner.
3. If the commissioner proposes to release information that the applicant or registrant believes to be protected from disclosure under this section, the commissioner shall notify the applicant or registrant by certified mail. The

commissioner may not make the information available for inspection until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under this section.

#### **4.1-34-06. Determinations - Rules - Uniformity.**

1. After providing an opportunity for a hearing, the commissioner may:
  - a. Declare as a pest any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles, or substances.
  - b. Determine whether pesticides are highly toxic to humans and whether their use should be restricted.
  - c. Determine standards of coloring or discoloring for pesticides and to subject pesticides to the requirements of subdivision c of subsection 1 of section 4.1-34-02.
2. The commissioner may adopt appropriate rules for carrying out this chapter, including rules providing for the collection and examination of samples of pesticides or devices. The commissioner also may adopt rules, applicable to and in conformity with the primary standards established by this chapter, prescribed by the United States environmental protection agency with respect to pesticides to provide uniformity among the requirements of the several states and the federal government.

#### **4.1-34-07. Enforcement.**

The commissioner shall examine pesticides or devices for compliance with this chapter. If after examination the commissioner intends to initiate criminal proceedings against any person, the commissioner shall cause appropriate notice to be given to the person. Any person notified must be given an opportunity to present the person's views, either orally or in writing, with regard to the contemplated proceedings and if thereafter in the opinion of the commissioner it appears the chapter has been violated by the person, the commissioner shall refer the facts to the state's attorney for the county in which the violation has occurred with a copy of the results of the analysis or the examination of the article. The commissioner is not required to report for prosecution or for the institution of libel proceedings minor violations of this chapter if the commissioner believes the public interests will be best served by a suitable written notice of warning. A state's attorney to whom any violation is reported under this section, without delay, shall cause appropriate proceedings to be instituted and prosecuted in the proper court of jurisdiction. The commissioner, by publication in the manner the commissioner prescribes, shall give notice of all judgments entered in actions instituted under the authority of this chapter.

#### **4.1-34-08. Stop-sale orders.**

The commissioner may issue and enforce a stop-sale order to the owner or custodian of any pesticide when the commissioner finds that the product is being offered for sale in violation of this chapter. The order must direct the product be held at a designated place until released in writing by the commissioner. The owner or custodian of the product has the right to petition a court of competent jurisdiction in the county where the product is found for an order releasing the product for sale in accordance with the findings of the court.

**4.1-34-09. Exemptions.**

1. The penalties provided for violations of section 4.1-34-02 do not apply to:
  - a. A carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the commissioner to copy all records showing the transactions in and movement of the articles.
  - b. A public official of this state or the federal government engaged in the performance of official duties.
  - c. The manufacturer or shipper of a pesticide for experimental use only:
    - (1) By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or
    - (2) By others if the pesticide is not sold and if the pesticide container is plainly and conspicuously marked "For experimental use only - Not to be sold", together with the manufacturer's name and address.
  - c. A person using, distributing, selling, or offering for sale an unregistered pesticide for which the United States environmental protection agency has granted an emergency exemption for at least one use in North Dakota under section 18 of the federal Act.
2. An article may not be deemed in violation of this chapter when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter apply.

**4.1-34-10. Minimum-risk pesticide exemption.**

1. Section 4.1-34-02 does not apply to any person who distributes, sells, or offers for sale within this state or delivers for transportation or transports in intrastate commerce or between points within this state through any point outside this state a minimum-risk pesticide exempt from registration under the federal Act, provided the person has obtained a certificate of exemption from the commissioner.
2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an application with the commissioner. The application must include:
  - a. The name and address of the product's manufacturer or distributor;
  - b. The name and brand name of the product;
  - c. A current label for the product; and
  - d. A fee equal in amount to the fee set under section 4.1-34-03 for the registration of a pesticide.
3. The commissioner shall remit any fees collected under this section to the state treasurer for deposit in the environment and rangeland protection fund.

4. Each exemption from registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year.

#### **4.1-34-11. Penalties.**

Any person violating this chapter is guilty of an infraction. If a registrant was issued a warning by the commissioner under this chapter, upon violating this chapter, other than subdivision a of subsection 1 of section 4.1-34-02, that registrant is guilty of a class A misdemeanor and the registration of the article with which the violation occurred automatically terminates. A pesticide for which the registration has been terminated may not again be registered unless the pesticide, its labeling, and other material required to be submitted appear to the commissioner to comply with the requirements of this chapter. In addition to any criminal penalty, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed one thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32.

#### **4.1-34-12. Seizures.**

1. Any pesticide or device that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state is liable to be proceeded against in any proper court of jurisdiction in any county of the state where it may be found and seized for confiscation by process of libel for condemnation:
  - a. In the case of a pesticide:
    - (1) If it is adulterated or misbranded;
    - (2) If it has not been registered under section 4.1-34-03;
    - (3) If it fails to bear on its label the information required by this chapter; or
    - (4) If it is a white powder pesticide and is not colored as required under this chapter.
  - b. In the case of a device, if it is misbranded.
2. If the pesticide is condemned, after entry of decree, the pesticide must be disposed of by destruction or sale as the court may direct and any proceeds, less legal costs, must be paid to the state treasurer. The pesticide may not be sold contrary to the provisions of this chapter. Upon payment of cost and execution and delivery of a good and sufficient bond conditioned that the pesticide may not be disposed of unlawfully, the court may direct the pesticide be delivered to its owner for relabeling or reprocessing. When a decree of condemnation is entered against the pesticide, court costs and fees and storage and other proper expenses must be awarded against any person intervening as claimant of the pesticide.

**4.1-34-13. Cooperation.**

The commissioner may cooperate and enter agreements with any other agency of this state or of the federal government or any other state or agency thereof for the purpose of carrying out this chapter and securing uniformity of regulations.

**4.1-34-14. Experimental use permits.**

If the state is authorized by the administrator of the United States environmental protection agency to issue experimental use permits, the commissioner may:

1. Issue an experimental use permit to an applicant if the commissioner determines that the applicant requires the permit to accumulate information necessary to register a pesticide use. An application for an experimental use permit may be filed when an application for registration is filed or before or after filing the application.
2. Prescribe terms, conditions, and the period of time for use under the experimental use permit.
3. Revoke an experimental use permit if the commissioner finds the permit's terms or conditions are being violated or that the permit's terms and conditions are inadequate to avoid unreasonable adverse effects to human health or the environment.

**4.1-34-15. Minimum-risk pesticide - Certificate of exemption.**

1. Section 4.1-34-02 does not apply to any person who distributes, sells, or offers for sale within this state or delivers for transportation or transports in intrastate commerce or between points within this state through any point outside this state a minimum-risk pesticide exempt from registration under the federal Act, provided the person has obtained a certificate of exemption from the commissioner.
2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an application with the commissioner. The application must include:
  - a. The name and address of the product's manufacturer or distributor;
  - b. The name and brand name of the product;
  - c. A current label for the product; and
  - d. A fee equal in amount to the fee set under section 4.1-34-03 for the registration of a pesticide.
3. The commissioner shall remit any fees collected under this section to the state treasurer for deposit in the environment and rangeland protection fund.
4. Each exemption from registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year.

**SECTION 4.** Chapter 4.1-35 of the North Dakota Century Code is created and enacted as follows:

**4.1-35-01. Definitions.**

As used in this chapter:

1. "Chemigation" means any process by which chemicals, including pesticides and fertilizers, are applied to land or crops through an irrigation system.
2. "Commissioner" means the agriculture commissioner and includes any employee or agent designated by the commissioner.
3. "Fertilizer" means any fertilizer as defined by section 4.1-40-01.
4. "Pesticide" means that term defined in section 4.1-33-01.
5. "State engineer" means the state engineer appointed by the state water commission under section 61-03-01.

**4.1-35-02. Compliance with rules.**

Farm irrigation systems used for chemigation which are designed, constructed, and operated in compliance with rules adopted under this chapter are considered to be in compliance with this chapter.

**4.1-35-03. Rules - Standards for chemigation, installation, maintenance, and modifications.**

The commissioner shall adopt rules regulating chemigation through irrigation systems in this state to minimize the possibility of chemical, pesticide, fertilizer, or other contamination of irrigation water supply and other rules as necessary to implement this chapter. The commissioner may establish by rule standards for application of pesticides and fertilizers through irrigation systems; for installation and maintenance of all equipment and devices used for chemigation purposes; modifications or changes in design, technology, or irrigation practices; or other purposes relating to the use or placement of equipment or devices. The commissioner may adopt rules requiring periodic calibration and inspection of equipment and system operation during periods of chemigation.

**4.1-35-04. Inspections - Assistance of state engineer.**

The state engineer shall cooperate with the commissioner in the inspection of any irrigation system using chemigation. The state engineer shall inform the commissioner of any violation of this chapter which is discovered in the course of the state engineer's regular inspections of irrigation systems using chemigation.

**4.1-35-05. Enforcement.**

1. The commissioner shall enforce this chapter and any rules adopted under this chapter.
2. The commissioner may seek an injunction in the district court in the county in which a violation occurs or may issue a cease and desist order to any person for any alleged violation of this chapter or any rules adopted under this chapter.
3. For the purpose of carrying out the provisions of this chapter, the commissioner and the state engineer may enter upon any public or private premises at reasonable times in order to:

- a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which the equipment is stored or used.
- b. Inspect or sample lands actually, or reported to be, exposed to pesticides or fertilizers through chemigation.
- c. Inspect storage or disposal areas.
- d. Inspect or investigate complaints of injury to humans or animals.
- e. Sample pesticides and fertilizers and pesticide or fertilizer mixes being applied or to be applied.
- f. Observe the use and application of a pesticide or fertilizer through chemigation.
- g. Have access for the purpose of inspecting a premise or other place where equipment or devices used for chemigation are held for distribution, sale, or use.

#### **4.1-35-06. Penalties.**

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

**SECTION 5.** Chapter 4.1-36 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-36-01. Pesticide and pesticide container disposal program - Pesticide container management - Compensation.**

1. The definitions contained in section 4.1-33-01 apply to this chapter.
2. In consultation with an advisory board consisting of the state health officer and director of the North Dakota state university extension service, two individuals selected by the agriculture commissioner representing agribusiness organizations, and two individuals selected by the agriculture commissioner representing farm organizations, the commissioner shall continue to implement project safe send. The purpose of the project is to:
  - a. Collect and either recycle or dispose of unusable pesticides and unusable pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the pesticides and pesticide

containers. The commissioner may limit the type and quantity of pesticides and pesticide containers acceptable for collection.

- b. Promote proper pesticide container management. In consultation with the director of the North Dakota state university extension service, the commissioner shall evaluate and promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
3. Any entity collecting pesticide containers or unusable pesticides shall manage and dispose of the containers and pesticides in compliance with applicable federal and state requirements. When called upon, any state agency shall assist the commissioner in implementing the project.
4. For services rendered in connection with the design and implementation of this project, the advisory board members selected by the commissioner are entitled to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

#### **4.1-36-02. Project scope and evaluation.**

The project described in section 4.1-36-01 must occur in areas to be determined by the agriculture commissioner in consultation with the advisory board described in section 4.1-36-01.

#### **4.1-36-03. Project safe send pesticide and pesticide container collection - User fees.**

The agriculture commissioner, in consultation with the advisory board for the project safe send pesticide and pesticide container disposal program, may charge a fee for collection of rinsate. The fees must be established at a level that will generate enough revenue to cover the cost of disposal associated with the rinsate that is collected. Collections from this fee must be deposited in the environment and rangeland protection fund.

#### **4.1-36-04. Report on pesticide container disposal program.**

The agriculture commissioner shall submit a biennial report to a joint meeting of the house of representatives and senate agriculture committees on the status of the pesticide container disposal program.

**SECTION 6.** Chapter 4.1-37 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-37-01. Anhydrous ammonia safety rules.**

The agriculture commissioner shall adopt rules necessary to implement this chapter and adopt the 2014 American national standard safety requirements for the storage and handling of anhydrous ammonia. The commissioner may adopt rules that deviate from the 2014 American national standard safety requirements if certain provisions of the standard impose undue hardship or if literal adherence to the provisions fails to provide adequate safety.

**4.1-37-02. Definition.**

As used in this chapter, "anhydrous ammonia storage facility" means a bulk anhydrous ammonia storage facility with a capacity exceeding six thousand gallons [22712.47 liters] which is owned or operated by a user or vendor of anhydrous ammonia.

**4.1-37-03. License required - Anhydrous ammonia facilities constructed after June 30, 1985.**

The owner or operator of an anhydrous ammonia storage facility shall apply to the agriculture commissioner and to the board of county commissioners for a license to site and operate the facility. An anhydrous ammonia storage facility may not be operated without a license issued by the agriculture commissioner and the board of county commissioners of the county in which the facility is located. Any permanent anhydrous ammonia storage facility constructed before July 1, 1985, is exempt from the siting requirements of this chapter and may receive a license under this chapter regardless of noncompliance with the siting requirements. The commissioner or the board may deny a license for failure to remit the proper fee for failure to comply with the siting requirements of this chapter and rules adopted under this chapter if constructed after June 30, 1985, or for failure to comply with local siting requirements. The agriculture commissioner also may deny a license if the facility does not meet the initial inspection standards required by this chapter and by any rules adopted under this chapter. To obtain a license, an applicant shall submit with the application two sets of drawings or photographs showing, and two signed affidavits stating, the facility has been measured and meets the siting requirements. The drawings or photographs must show the proposed location of the tank and the surroundings in all directions. A set of drawings or photographs must be provided to the agriculture commissioner and a set must be provided to the board of county commissioners.

**4.1-37-04. State license fee.**

The agriculture commissioner shall charge a one-time twenty-five dollar fee for a license for each anhydrous ammonia storage facility and an additional one hundred dollars for each retail and storage site. Expansion of an existing anhydrous ammonia storage facility does not require reapplication for licensing, but all siting requirements must be met. The license is valid indefinitely but may not be transferred. A new license is required when an anhydrous ammonia storage facility changes ownership.

**4.1-37-05. State siting requirements - Anhydrous ammonia storage facilities constructed after June 30, 1985.**

For facilities constructed after June 30, 1985:

1. Any anhydrous ammonia storage facility with a container nominal capacity of less than one hundred thousand gallons [378541.2 liters] must be located at least:
  - a. Fifty feet [15.24 meters] from the line of any adjoining property, which may be built upon, or any highway or railroad mainline.
  - b. Four hundred fifty feet [137.16 meters] from any place of public assembly or residence, other than the company's business office.
  - c. Seven hundred fifty feet [213.36 meters] from any institutional residence.

2. Any anhydrous ammonia storage facility with container nominal capacity of one hundred thousand gallons [378541.2 liters] or more must be located at least:
  - a. Fifty feet [15.24 meters] from the property line of adjoining property, which may be built upon, or any highway or railroad mainline.
  - b. Six hundred feet [182.88 meters] from any place of public assembly or residence, other than the company's business office.
  - c. One thousand feet [300.48 meters] from any institutional residence.
3. Upon relocation of any permanent storage container to an anhydrous ammonia storage facility, the container must be hydrostatically pressure tested at the maximum allowable working pressure of the vessel, wet fluorescent magnetic particle tested, also referred to as black light tested, or any other acceptable testing method as determined by the agriculture commissioner. Before the container may be put into service and before licensing may occur, proof of testing must be supplied to the board of county commissioners and the agriculture commissioner.
4. All valves and other appurtenances to any anhydrous ammonia storage facility must be protected against physical damage. All shutoff valves must be kept closed and locked when not in use and when the facility is unattended.
5. Any anhydrous ammonia storage facility relocated or constructed after August 1, 1995, may not be located within city limits, unless approved by the city.

#### **4.1-37-06. Transfer hose requirements.**

1. Any transfer hose utilized at an anhydrous ammonia storage facility:
  - a. Which is a liquid transfer hose and is not drained of liquid upon completion of transfer operations must be equipped with an approved shutoff valve at the discharge end.
  - b. Must have a hydrostatic relief valve or equivalent must be installed in each section of hose or pipe in which liquid ammonia can be isolated between shutoff valves to relieve the pressure that could develop from the trapped liquid. If an equivalent pressure relief device is used, the maximum accumulated pressure possible within the system may not exceed the limits of the system. A hydrostatic relief valve must be installed between each pair of valves in which liquid is trapped. The start-to-discharge pressure setting of the relief valve must not be less than three hundred fifty pounds per square inch [2413.18 kilopascals] gauge nor more than four hundred pounds per square inch [2757.92 kilopascals] gauge.
  - c. Must have etched, cast, or impressed on the outer coating all of the following:
    - (1) The words "ANHYDROUS AMMONIA".
    - (2) The maximum working pressure of the transfer hose.
    - (3) The name of the manufacturer of the hose.

- (4) The date of manufacture or the expiration date of the hose.
- d. Which is cut, scraped, cracked, or weathered so that the inner white cord is visible must be replaced. A transfer hose with an expiration date printed on the hose must be replaced prior to that date. Transfer hoses without an expiration date must be replaced as follows:
- (1) Rayon hoses must be replaced within two years of the date of manufacture.
  - (2) Nylon hoses must be replaced within four years of the date of manufacture.
  - (3) Steel-reinforced hoses must be replaced within six years of the date of manufacture.
2. Notwithstanding the replacement dates determined under subdivision d of subsection 1 for transfer hoses with or without an expiration date, an additional year must be allowed for replacement of transfer hoses in order to take into account delays in the original installation of transfer hoses.

#### **4.1-37-07. Pressure relief devices.**

Bulk storage containers constructed according to the American society of mechanical engineers code, and all nurse tanks, must be equipped with pressure relief valves constructed according to the American society of mechanical engineers code and capacity certified by the national board of boiler and pressure vessel inspectors. A pressure relief valve using nonmetallic seats must be replaced every five years with a new valve meeting the standards specified in this section. A pressure relief valve using metallic seats must be tested, and repaired if deemed necessary, every five years in lieu of replacement. Repairs deemed necessary must be made by the valve manufacturer or by a safety valve repair organization having a valid "VR" certificate of authorization for the repairs from the national board of boiler and pressure vessel inspectors.

#### **4.1-37-08. Inspection.**

1. The agriculture commissioner shall develop and implement an initial and periodic inspection program for anhydrous ammonia storage facilities.
2. The agriculture commissioner shall inspect each anhydrous ammonia storage facility at least once every five years and may inspect any implement of husbandry designed to apply anhydrous ammonia which is in the vicinity of an anhydrous ammonia storage facility.
3. The agriculture commissioner may inspect any anhydrous ammonia storage facility if the commissioner has reason to believe violations of safety standards exist.
4. The agriculture commissioner may revoke or suspend the license of any anhydrous ammonia storage facility for a violation of this chapter or the rules adopted under this chapter. The commissioner may order the discontinuance of use of any implement of husbandry designed to apply anhydrous ammonia which is found unsafe or hazardous.

**4.1-37-09. Reinstalled and secondhand anhydrous ammonia storage containers - Requirement.**

1. A person intending to store anhydrous ammonia in a reinstalled or secondhand container, including a nurse tank, shall furnish the agriculture commissioner with:
  - a. Evidence that the container is registered with the national board of boiler and pressure vessel inspectors; or
  - b. The manufacturer's data report for the container.
2. Subsection 1 is only applicable to the owner of an anhydrous ammonia storage container installed in this state before November 1, 1987, if the storage container is reinstalled at another location.

**4.1-37-10. Use of fees - Safety promotion - Administration - Inspections.**

All fees collected under this chapter must be used by the agriculture commissioner to promote safety in anhydrous ammonia use and storage, administer the program, and inspect facilities.

**4.1-37-11. Prohibitions.**

The following actions are prohibited:

1. Filling a nurse tank directly from a railcar;
2. Filling or using a nurse tank that has an outdated hose;
3. Filling or using a nurse tank that has outdated relief valves;
4. Towing more than two nurse tanks on a public road;
5. Filling department of transportation transport containers not meeting the requirements of the department of transportation;
6. Filling anhydrous ammonia storage containers not meeting the requirements of this chapter;
7. Filling a storage container or nurse tank while unattended;
8. Making repairs or additions of appurtenances directly to pressurized storage containers or nurse tanks by any individual not authorized under rules adopted by the commissioner;
9. Painting or obscuring the American society of mechanical engineers data plates on storage containers or nurse tanks;
10. Painting hydrostatic safety and safety relief valves on storage containers or nurse tanks;
11. Filling nonrefrigerated storage containers or nurse tanks beyond the filling densities permitted by the American national standards institute K61.1, section 5.9.1; and

12. Using the American society for testing and materials A-53 type f piping for anhydrous ammonia piping systems.

#### **4.1-37-12. Anhydrous ammonia - Bulk delivery.**

Upon obtaining a commercial driver's license with an endorsement for hazardous materials, an individual may transport anhydrous ammonia in a bulk delivery vehicle and fill nurse tanks with anhydrous ammonia from the bulk delivery vehicle.

#### **4.1-37-13. Hydrostatic test procedures.**

Any hydrostatic test conducted under section 4.1-37-05 must comply with the requirements of the national board inspection code (ANSI-NB 23) and be conducted in a manner approved by the agriculture commissioner.

#### **4.1-37-14. Wet fluorescent magnetic particle test procedures.**

Any wet fluorescent magnetic particle test of a pressure vessel weld conducted under section 4.1-37-05 must comply with the requirements of the society for nondestructive testing SNT-TC-1A standard and must be conducted by a person certified as a level II technician by the society.

#### **4.1-37-15. Enforcement.**

1. The agriculture commissioner shall enforce the requirements of this chapter and any rules issued under it.
2. The commissioner may bring an action to enjoin the violation or threatened violation of this chapter, or any rule issued pursuant to this chapter, in the district court of the county in which the violation occurs or may occur.
3. The agriculture commissioner may issue a cease and desist order to any person allegedly violating this chapter. If any person violates the cease and desist order, the commissioner shall file the appropriate criminal complaint.
4. The agriculture commissioner may enter upon any public or private premises at reasonable times to:
  - a. Inspect any equipment subject to this chapter and the premises on which the equipment is stored or used;
  - b. Inspect or investigate complaints; or
  - c. Inspect any premises or other place where anhydrous ammonia or related devices are held for distribution, sale, or use.
5. If a civil penalty is imposed under section 4.1-37-16 by the agriculture commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may initiate a civil action in any appropriate court. Additionally, the commissioner may suspend or revoke a license issued under this chapter for failure to pay a civil penalty within thirty days after a final determination is made.

#### **4.1-37-16. Penalty.**

1. Any person violating this chapter is guilty of a class A misdemeanor.

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

**SECTION 7.** Chapter 4.1-38 of the North Dakota Century Code is created and enacted as follows:

**4.1-38-01. Risk management program - Anhydrous ammonia.**

To determine compliance with the risk management program requirements set forth in section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30, 2011, the agriculture commissioner may:

1. Request information from any person that:
  - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
  - b. Is required to comply with the risk management program requirements;
2. Conduct inspections of any person that:
  - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
  - b. Is required to comply with the risk management program requirements; and
3. Obtain and review risk management plans required under 40 Code of Federal Regulations, part 68, as amended through June 30, 2011, and other records applicable to any person that:
  - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
  - b. Is required to comply with the risk management program requirements.

**4.1-38-02. Risk management program - Enforcement authority.**

If the agriculture commissioner determines there is noncompliance on the part of any person that sells, stores, or handles anhydrous ammonia for agricultural purposes and that is required to comply with the risk management program requirements referenced in section 4.1-38-01, the agriculture commissioner may:

1. Bring an action to enjoin a violation or a threatened violation;
2. Issue a cease and desist order; and

3. Impose a civil penalty through an administrative hearing in an amount not exceeding ten thousand dollars per day for each violation.

**SECTION 8.** Chapter 4.1-39 of the North Dakota Century Code is created and enacted as follows:

**4.1-39-01. Crop protection product harmonization and registration board - Recovery of funds.**

The crop protection product harmonization and registration board may accept funds for expenses paid relating to the registration of pesticides or donations offered to or for the benefit of the board. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. Whenever possible, the board shall attempt to recover funds expended relating to the registration of pesticide. The board shall adopt rules to administer this section.

**4.1-39-02. Crop protection product harmonization and registration board - Membership - Duties - Grants.**

1. The crop protection product harmonization and registration board consists of:
  - a. The governor or the governor's designee;
  - b. The agriculture commissioner or the commissioner's designee;
  - c. The chairman of the house agriculture committee or the chairman's designee;
  - d. The chairman of the senate agriculture committee or the chairman's designee;
  - e. A member of the house or senate agriculture committee who is not a member of the faction in which the committee chairman is a member, appointed by the legislative management chairman;
  - f. A crop protection product dealer in the state appointed by the governor from a list of three nominees submitted by the North Dakota agricultural association;
  - g. A consumer of crop protection products appointed by the governor from a list of three nominees submitted by the North Dakota grain growers association;
  - h. A consumer of crop protection products appointed by the governor from a list of three nominees submitted by the North Dakota oilseed council;
  - i. A representative of the crop protection product manufacturing industry appointed by the chairman of the legislative management; and
  - j. The director of the North Dakota state university agricultural experiment station.
2. The representative of the crop protection product manufacturing industry and the director of the agricultural experiment station shall serve as nonvoting

members. The governor or the governor's designee shall serve as chairman of the board.

3. The board shall:

- a. Identify and prioritize crop protection product labeling needs;
- b. Explore the extent of authority given to this state under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a];
- c. Identify the data necessary to enable registration of a use to occur in a timely manner;
- d. Determine necessary research to fulfill the data requirements for activities listed in this section;
- e. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
- f. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and
- g. Pursue opportunities to make more crop protection product options available to state agricultural producers through any means the board determines advisable.

4. The board may contract with a consultant to provide studies, research, or information regarding crop protection product registration and labeling needs.

5. The board may administer a grant program through which agriculture commodity groups may apply for funds to be used to address issues related to the registration of crop protection products. To be eligible for a grant, an applicant must submit an application to the board requesting a specific amount of funds, specifying the exact purposes for which the grant would be used, and providing a detailed timetable for the use of the grant funds. The board may impose any additional conditions it determines appropriate for grant recipients, including requiring periodic reports and furnishing of matching funds. The board may terminate funding of a previously approved grant at any time if the board is dissatisfied with the performance of the grant recipient.

6. The board may use not more than fifteen percent of the funds under its supervision for administrative purposes, including the cost of contracting for administrative services and reimbursement of board member expenses. The members of the board who are members of the legislative assembly are entitled to compensation and expense reimbursement from the legislative council for attendance at board meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings.

7. The board may adopt rules to implement this section.

**4.1-39-03. Crop protection products - Canadian labels.**

The agriculture commissioner, with the advice and consent of the appropriate agricultural commodity group, may authorize the sale and use in this state of a crop protection product that has a Canadian label, if the commissioner determines that a crop protection product having an American label contains substantially similar active

ingredients and that the importation and use of the product with a Canadian label does not violate federal law. The commissioner shall require an applicator to possess the American label and apply the product in accordance with the American label provisions.

**4.1-39-04. Special local needs exemption - Tolerances.**

The agriculture commissioner, in cooperation with the environmental protection agency, shall use tolerance data established or obtained in North America in pursuing special local needs exemptions for crop protection products under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

**4.1-39-05. Crop protection products - Registration process - Joint labeling.**

The governor and the agriculture commissioner shall work with all appropriate public and private entities to foster the development of a single, uniform process for the joint North American labeling of crop protection products not available for sale and use in this state as of April 19, 1999.

**4.1-39-06. Crop protection products - Request to petition for registration.**

On the written request of any agricultural commodity group, the agriculture commissioner shall petition the environmental protection agency for the American registration of a crop protection product approved for use in Canada.

**4.1-39-07. Environment and rangeland protection fund.**

The environment and rangeland protection fund is a special fund in the state treasury. The moneys in this fund may be used for rangeland improvement projects and to address issues relating to harmonization of crop protection product standards. The rangeland improvement projects may include noxious weed control; ground water testing, analysis, protection, and improvement; analysis of food products for residues of pesticides and other materials; and analysis and disposal of unusable pesticides and pesticide containers.

**4.1-39-08. Minor use pesticide fund - Continuing appropriation.**

The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the crop protection product harmonization and registration board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and other uses as determined by the board.

**SECTION 9.** Chapter 4.1-40 of the North Dakota Century Code is created and enacted as follows:

**4.1-40-01. Definitions.**

As used in this chapter:

1. "Brand" means a term, design, or trademark, used in connection with one or several grades of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, or plant amendments.
2. "Bulk" means in a nonpackaged form.

3. "Compost" means a material derived primarily or entirely from biological decomposition of vegetative organic matter or animal manure that may have inorganic fertilizer added to promote decomposition.
4. "Deficiency" means an amount of plant nutrient or active ingredient found by analysis to be less than the amount guaranteed, resulting from a lack of plant nutrient, active ingredients, or uniformity.
5. "Distributor" means a person who imports, consigns, manufactures, produces, compounds, mixes, or blends or who sells or offers for sale fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments in this state.
6. "End user" means a person who uses a fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendment, or plant amendment in a manner for which the product was intended.
7. "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products excluded by rule of the commissioner.
8. "Fertilizer material" means a fertilizer which:
  - a. Contains no more than one of the primary plant nutrients;
  - b. Has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound; or
  - c. Is derived from a plant or animal residue or byproduct or a natural material deposit and has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration.
9. "Grade" means the percentages of total nitrogen, available phosphate, and soluble potassium or soluble potash stated in the same terms, order, and percentages as in the "guaranteed analysis".
10. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed.
11. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer, soil amendment, or plant amendment.
12. "Label" means all written, printed, or graphic materials upon or accompanying any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment and any printed material or media announcements used in promoting their sale.
13. "Licensee" means a person licensed by the commissioner to distribute fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment.

14. "Manipulated" means to have manufactured, blended, or mixed fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments, or to have treated in any manner any animal or vegetable manures, including mechanical drying, grinding, pelleting, and other means, or by adding other chemicals or substances.
15. "Micronutrient" means a fertilizer that contains only essential chemical elements that are required at low levels for normal plant growth.
16. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments.
17. "Official sample" means any sample of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment, taken and designated as "official" by the commissioner.
18. "Organic" in reference to fertilizer nutrients, means only naturally occurring substances, generally recognized as the hydrogen compounds of carbon and their derivatives or synthetic products of similar composition with a water insoluble nitrogen content of at least sixty percent of the guaranteed total nitrogen.
19. "Percent" or "percentage" means the percentage by weight.
20. "Plant amendment" means a substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants except fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient, or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
21. "Plant nutrient" means a substance generally recognized as beneficial for plant growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.
22. "Primary plant nutrients" means nitrogen, phosphate, and potash.
23. "Registrant" means the person who registers fertilizers, soil amendments, or plant amendments under this chapter.
24. "Sell" when applied to fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments means:
  - a. Transferring or offering to transfer ownership through a sale, exchange, gift, or distribution; or
  - b. Receiving, accepting, holding, or possessing for sale, exchange, gift, or distribution.
25. "Soil amendment" means any substance intended to improve the characteristics of the soil except unmanipulated animal or vegetable manures, pesticides, and fertilizers, unless the fertilizer is represented to contain, as an

active ingredient, a substance other than a primary plant nutrient or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.

26. "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use.
27. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

#### **4.1-40-02. Product registration - Fees.**

1. Each brand and grade of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, and plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state.
2. The application for registration must be submitted to the commissioner on a form furnished by the commissioner and must be accompanied by:
  - a. A current product label; and
  - b. A fee of fifty dollars per product.
3. Each brand and grade registration is effective for a two-year period beginning July first and ending June thirtieth of each even-numbered year.
4. Any request for a registration renewal received after July thirty-first must be assessed a penalty of one hundred dollars per product.
5.
  - a. A distributor is not required to register any product listed in subsection 1 if that product is already registered by another person, providing the label complies with the issued registration.
  - b. A distributor is not required to register a custom-blended fertilizer combination, blended to the customer's specification, if the fertilizer combination provided contains only products registered under subsection 1.
  - c. Compost that is transferred between parties without compensation does not require registration.
6. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

#### **4.1-40-03. Distributor's license - Fees.**

1. A person may not distribute any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the commissioner.
2. A license is required for each location or mobile mechanical unit used by a distributor in the state.
3. The application for a license must be submitted on a form furnished by the commissioner and must be accompanied by a fee of one hundred dollars.

4. A license is effective for a two-year period beginning July first and ending June thirtieth of each even-numbered year.
5. Any license renewal application received after July thirty-first must be assessed a penalty of one hundred dollars per location.
6. Any license issued under this section:
  - a. Is not transferable;
  - b. Must be conspicuously posted at each location used by the distributor; and
  - c. Must be carried in each mobile mechanical unit operated by the distributor in the state.
7. The requirements of this section do not apply to persons that distribute only:
  - a. Specialty fertilizers; or
  - b. Seed inoculants.
8. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

#### **4.1-40-04. Proof of effectiveness.**

The commissioner may require proof of claims made for any product covered by this chapter and may require proof of value when used as directed or recommended. The commissioner must rely on data from scientifically designed and reported studies conducted under conditions similar to those in this state under which the product is intended to be used. The commissioner may accept or reject other sources of proof as supplemental evidence.

#### **4.1-40-05. Guaranteed analysis.**

1. Guaranteed analysis must be claimed as follows:
  - a. Total Nitrogen (N) \_\_\_\_\_ percent;
  - b. Available Phosphate ( $P_2O_5$ ) \_\_\_\_\_ percent; and
  - c. Soluble Potash ( $K_2O$ ) \_\_\_\_\_ percent.
2. The total phosphate or degree of fineness, or both, may also be guaranteed, in the case of unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphatic materials.
3. Rules implemented under this chapter may allow or require guarantees for plant nutrients other than nitrogen, phosphorus, and potassium.
  - a. Guarantees under this subsection must be expressed in the form of the element.



- b. This subsection does not apply to:
- (1) Exchanges of product between manufacturers and distributors; or
  - (2) Individual fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less.
2. a. On or before January thirty-first, each licensed person who distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment to an end user in this state shall:
- (1) File with the commissioner a form stating the number of net tons [kilograms] of each listed product distributed in this state during the preceding calendar year; and
  - (2) Submit to the commissioner the inspection fee required by this section.
- b. If a person fails to submit an inspection fee, at the time and in the manner required by this section, the commissioner may impose a penalty of ten dollars or ten percent of the amount due, whichever is greater.
3. a. On or before January thirty-first, each licensed person that distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment to a licensed entity in this state shall file with the commissioner a form stating the number of net tons [kilograms] of each listed product distributed in this state during the preceding calendar year.
- b. If a person fails to file the form, at the time and in the manner required by this subsection, the commissioner may impose a late fee of thirty-five dollars.
4. Each distributor shall keep all records regarding purchases and sales for a period of three years. The records may be examined by the commissioner upon request.
5. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

#### **4.1-40-08. Inspection, sampling, analysis.**

1. To determine compliance with this chapter and rules implemented under this chapter, the commissioner may enter real property during regular business hours and access any structure or personal property to sample, inspect, analyze, and test fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed in this state.
2. The commissioner shall adopt methods of analysis and sampling from reputable sources such as the Journal of the AOAC International.
3. A single package may constitute an official sample. In determining whether any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is deficient, the commissioner shall only consider the analysis of the official sample.

4. If the results of the commissioner's official analysis indicate that a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment may be the subject of a penalty or other legal action, the commissioner shall forward the analysis to the registrant at least ten days before the report is submitted to the purchaser. If during the ten-day period no adequate evidence to the contrary is made available to the commissioner by the registrant, the report becomes official.
5. The commissioner shall retain any official samples found to be deficient for thirty days following the issuance of the analytical report.
6. Upon request, the commissioner shall furnish to the registrant a portion of any sample found to be the subject of a penalty or other legal action.

#### **4.1-40-09. Misbranding.**

1. A person may not distribute a misbranded fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment.
2. A fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is misbranded if:
  - a. False or misleading statements concerning the product are disseminated in any manner or by any means;
  - b. The product label carries a false or misleading statement;
  - c. The product is distributed under the name of another product;
  - d. The product is not labeled as required by this chapter or rules implemented under this chapter; or
  - e. The product is inaccurately represented as a fertilizer, or is inaccurately represented as containing a plant nutrient or fertilizer unless the plant nutrient or fertilizer conforms to the definition, if any, prescribed in rule by the commissioner.
3. In adopting rules, the commissioner shall consider commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials.

#### **4.1-40-10. Publications.**

The commissioner may publish:

1. Information concerning the distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments; and
2. Results of analyses based on official samples of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed within the state as compared with the analyses guaranteed under sections 4.1-40-05 and 4.1-40-06.

**4.1-40-11. Rules.**

The commissioner may adopt and enforce rules relating to investigational allowances, definitions, records, licensing, inspection, analysis, labeling, storage, and distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments.

**4.1-40-12. Deficiencies.**

1. A product is deficient if:
  - a. One or more of its guaranteed primary plant nutrients falls below the investigational allowances and compensations established by rule;
  - b. One or more other guaranteed active ingredients falls below the investigational allowances and compensations established by rule; or
  - c. The overall index value of the fertilizer is shown below the level established by rule.
2. A nonuniformity deficiency in an official sample of mixed fertilizer is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.
3. To determine the commercial index value to be applied, the commissioner shall determine at least annually the values per unit of nitrogen, available phosphate, and soluble potash in fertilizers in this state.
4. Any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment in the possession of a consumer found by the commissioner to be short in weight, a penalty must be assessed to the registrant of the product. Within thirty days after official notice from the commissioner, the registrant of the product shall pay a penalty equal to four times the value of the actual shortage to the consumer.

**4.1-40-13. Cancellation of registrations.**

1. The commissioner, upon compelling evidence that a registrant, licensee, or distributor used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any implemented rule, may:
  - a. Cancel the registration of any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment;
  - b. Cancel the license of any distributor;
  - c. Refuse to register any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment; or
  - d. Refuse to license any distributor.
2. The commissioner shall provide an opportunity for a hearing prior to refusing a registration or revoking a license.

**4.1-40-14. Stop-sale orders.**

The commissioner may issue a "stop-sale, use, or removal" order to the owner or custodian of any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, if the commissioner finds that the product is being offered for sale in violation of this chapter or any implemented rule. The order must remain in effect until the commissioner:

1. Determines that the violation has been corrected;
2. Gives written authorization for the disposal of the product; or
3. Gives written authorization for the product to be offered for sale.

**4.1-40-15. Seizure, condemnation, and sale.**

1. Any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, not in compliance with this chapter or implemented rules, is subject to seizure upon the filing of a complaint by the commissioner with the district court of the county in which the product is located.
2. If the court finds the product to be in violation of this chapter or any implemented rule and orders its condemnation, the product must be disposed of in any manner consistent with the quality of the product and the laws of the state.
3. Before ordering the disposition of a product, a court shall give the claimant an opportunity to apply for the release of the product or for permission to process or relabel the product to bring it into compliance with this chapter and implemented rules.

**4.1-40-16. Violations - Criminal penalty.**

1. If evidence from the examination of any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment indicates this chapter or the implemented rules have been violated, the commissioner shall notify the registrant, licensee, manufacturer, distributor, or possessor from whom the sample was taken of the violation. Any person notified must be given an opportunity to be heard. After the hearing, either in the presence or absence of the person so notified, the commissioner may certify the facts to the proper prosecuting attorney if evidence exists this chapter or the implemented rules have been violated.
2. Any person violating this chapter or the implemented rules or that impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the commissioner in the performance of the commissioner's duty under this chapter is guilty of a class A misdemeanor.
3. All prosecutions involving the composition of a lot of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments, require a certified copy of the official analysis signed by the person performing the analysis or that person's assigned agent. The certified and signed copy of the official analysis is prima facie evidence of the composition.

4. The commissioner is not required to initiate prosecution or seizure proceedings for minor violations of the chapter if the commissioner believes the public interest will be best served by a suitable written warning.
5. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any implemented rule, notwithstanding the existence of other remedies at law. An injunction under this section must be issued without bond.

#### **4.1-40-17. Violations - Civil penalty.**

Any person that violates this chapter or an implemented rule is subject to a civil penalty in an amount up to two thousand five hundred dollars per violation. The civil penalty may be imposed by a court or by the agriculture commissioner in an administrative hearing.

#### **4.1-40-18. Exchanges between manufacturers.**

This chapter may not be construed to restrict or avoid sales or exchanges of fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to each other by importers, manufacturers, or manipulators that mix fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments for sale or as preventing the free and unrestricted shipments of fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to manufacturers or manipulators that have registered their brands as required by this chapter.

**SECTION 10. AMENDMENT.** Subsection 19 of section 19-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

19. "Pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a pesticide within the meaning of chapter ~~19-184.1-34~~, and which is used in the production, storage, or transportation of raw agricultural commodities.

**SECTION 11. AMENDMENT.** Section 23-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-01-01.1. State department of health to replace state department of health and consolidated laboratories.**

Wherever the terms "North Dakota state department of health", "department of health", "health department", "state department of health and consolidated laboratories", "North Dakota state laboratories department", "state laboratories department", "state laboratories department director", or "state laboratories director" appear in this code, the term "state department of health" must be substituted therefor.

—Wherever the terms "~~state food commissioner and chemist~~" and "~~commissioner~~" when referring to the state food commissioner and chemist appear in chapters 19-17 and 19-18, the term "state department of health" must be substituted therefor.

<sup>26</sup> **SECTION 12. AMENDMENT.** Section 23-01-25 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-25. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function.**

Notwithstanding any other provision of law, any laboratory test or analysis required under chapter 4.1-34, 4.1-40, or 19-13.1, ~~19-18,~~ ~~or 19-20.1~~ must be performed by the state department of health for the agriculture commissioner at no charge.

**SECTION 13. REPEAL.** Chapters 19-18, 19-20.1, 19-20.2, and 19-20.3 of the North Dakota Century Code are repealed.

Approved April 5, 2017

Filed April 5, 2017

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<sup>26</sup> Section 23-01-25 was also amended by section 9 of Senate Bill No. 2028, chapter 68.

## CHAPTER 68

### SENATE BILL NO. 2028

(Legislative Management)  
(Agriculture and Natural Resources Committee)

AN ACT to create and enact chapters 4.1-25, 4.1-27, 4.1-28, 4.1-30, 4.1-31, 4.1-32, 4.1-41, and 4.1-53 of the North Dakota Century Code, relating to revisions of agriculture laws regarding dairy products regulation, livestock auction markets, satellite video livestock auction markets, the purchase of livestock by packing plants, meat inspection, rendering plants, commercial feed laws, and livestock medicine; to amend and reenact sections 23-01-25, 36-21-01, 36-21-10, 36-21-11, 36-21-12, 36-21-13, 36-21-15, 36-21-18, and 36-21-19 of the North Dakota Century Code, relating to general livestock provisions; to repeal chapters 19-13.1, 19-14, 36-05, 36-05.1, 36-06, 36-07, section 36-21-05, and chapter 36-24 of the North Dakota Century Code, relating to commercial feed laws, livestock medicine, livestock auction markets, satellite video livestock auction markets, the purchase of livestock by packing plants, rendering plants, general livestock provisions, and meat inspection; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 4.1-25 of the North Dakota Century Code is created and enacted as follows:

##### **4.1-25-01. Definitions.**

1. "Cheese factory" means a facility that makes cheese for commercial purposes.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Condensery" means a facility where condensed or evaporated milk is produced.
4. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.
5. "Dairy farm" means a place where one or more dairy animals are kept.
6. "Dairy product" includes milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.
7. "Department" means the department of agriculture.
8. "Distributor" means a person that provides storage, transportation, delivery, or distribution of dairy products to any person who sells dairy products.

9. "Drying plant" means a facility that manufactures dry milk products by removing water from milk or milk products.
10. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination of them, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from those products, to which has been added, blended, or compounded with, any fat or oil, other than milk fat, to imitate a dairy product. "Filled dairy products" may not be construed to mean or include:
  - a. Any distinctive proprietary food compound not readily mistaken for a dairy product, if the compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;
  - b. Any dairy product flavored with chocolate or cocoa or the vitamin content of which has been increased, or both, if the fats or oils other than milk fat contained in the product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredth per centum of the weight of the finished product, used as a carrier of such vitamins; or
  - c. Margarine.
11. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a rating of the quality of the product.
12. "Ice cream plant" means a facility that makes ice cream for commercial purposes.
13. "Ice milk plant" means a facility that makes ice milk for commercial purposes.
14. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:
  - a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.
  - b. The packaging used resembles the packaging used for milk or for a milk product.
  - c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.
  - d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.

- e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.
15. "Milk hauler" means a person that owns vehicles used to transport raw milk from a dairy farm to a dairy facility.
16. "Milk plant or bottling plant" means a facility where milk or milk products are collected, handled, processed, stored, and prepared for distribution.
17. "Milk solids or total solids" means the total amount of solids in milk.
18. a. "Pasteurization" as applied to milk or skim milk means either:
- (1) The process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at that temperature continuously for at least thirty minutes; or
- (2) Heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it at that temperature continuously for at least fifteen seconds in approved and properly operated equipment.
- b. When applied to cream for butter making, "pasteurization" means the cream must be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds.
- c. This subsection may not be construed as barring any other process that has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the commissioner.
19. "Pasteurized Milk Ordinance" means the 2015 revision of the Grade "A" Pasteurized Ordinance issued by the United States food and drug administration and by the United States department of agriculture's public health service.
20. "Peddler" means a person that purchases milk or milk products and sells the milk or milk products directly to consumers at any place other than from a store, stand, or other fixed place of business.
21. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.
22. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating,

- packaging, coagulating, or treating in any manner that changes the natural, physical, or chemical properties of the original product.
23. "Producer dairy" means a dairy farm that sells milk or cream to a dairy plant for processing or manufacturing.
  24. "Producer-processor" or "producer-distributor" means a producer that is also a processor or distributor.
  25. "Raw milk or raw milk products" means products that have not been treated by the process of pasteurization.
  26. "Retail" means the sale of milk or milk products directly to the consumer.
  27. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use of raw milk or milk products from a dairy farm to a dairy facility.
  28. "Sampling" means a procedure taking a portion of milk or milk products for grading or testing.
  29. "Shared animal ownership agreement" means any contractual arrangement under which an individual:
    - a. Acquires an ownership interest in a milk-producing animal;
    - b. Agrees to pay another for, reimburse another for, or otherwise accept financial responsibility for the care and boarding of the milk-producing animal at the dairy farm; and
    - c. Is entitled to receive a proportionate share of the animal's raw milk production as a condition of the contractual arrangement.
  30. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.
  31. "Standard Methods" means the seventeenth edition of the Standard Methods for the Examination of Dairy Products published by the American public health association.
  32. "Testing" means an examination of milk or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition of the product.
  33. "Wholesale" means the sale of milk or milk products to a retail dealer for resale.

#### **4.1-25-02. Licenses required - Fees - Term.**

1. The license required by this section must be obtained for each place of business in this state owned or operated by:
  - a. A producer-processor, peddler, or distributor;
  - b. A person purchasing milk or milk products for processing or manufacturing;

- c. A person owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant, or milk plant;
  - d. A person owning, operating, or leasing any other business engaged in the processing or manufacturing of milk or milk products; and
  - e. An organization acquiring milk or milk products on its own behalf or as an agent of others.
2. Application for a license must be made to the commissioner upon forms prescribed by the commissioner. An application for a license constitutes the implied consent of the applicant for department inspections. If the commissioner finds the applicant conforms to the North Dakota laws and the rules of the commissioner, the commissioner shall issue a license to conduct the operations listed on the license.
  3. If a licensee wishes to conduct operations other than those listed on an existing license, the licensee may make an application to the commissioner for a license to conduct additional operations. If the commissioner finds the additional operations are in conformance with North Dakota laws and the rules of the commissioner, the commissioner shall approve them.
  4. The license must be posted conspicuously in each licensed business.
  5. All licenses issued under this section expire on the thirtieth day of June of each year and are not transferable.
  6. The license fee is twenty-five dollars.
  7. Every organization acquiring milk or milk products as an agent of others is deemed to be a purchaser of milk from a dairy producer.

#### **4.1-25-03. Financial records release authorization with application for licensure.**

A purchaser of milk in North Dakota shall file with the license application a release authorizing the commissioner to access the applicant's financial records held by financial institutions, accountants, and others. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing the applicant, conducting an investigation of a complaint against the applicant due to a complaint, or when evidence is obtained establishing probable cause of a violation of this chapter. Information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to any state agency and to any prosecutorial official requiring the information for use in performing official duties.

#### **4.1-25-04. Financial condition - Assurance of prompt payment.**

Each applicant for a license under section 4.1-25-02 who intends to purchase milk from dairy producers shall satisfy the department that the financial condition of the applicant is adequate to assure prompt payment to the dairy producers for purchased milk.

#### **4.1-25-05. Statement of business operations or financial condition - Filing - Review by Bank of North Dakota - Confidential - Audited.**

Each applicant for a license under section 4.1-25-02 who purchases milk from a dairy producer annually shall file with the department an audited financial statement prepared by an independent certified public accountant or licensed public accountant in accordance with generally accepted accounting practices and principles, verified by the accountant as accurately representing business operations and financial conditions of the applicant for which the statement is rendered, prepared as of the close of the most recent fiscal year of the applicant. In lieu of filing an audited financial statement, an applicant may file other forms of security as provided in section 4.1-25-06. All audited financial statements must be reviewed by the Bank of North Dakota. All statements under this section are confidential and not open for public inspection. The department may require additional statements to be audited by a certified public accountant or a licensed public accountant.

#### **4.1-25-06. Surety bond, trustee agreement, or other security or assurances.**

If it appears the financial condition of any applicant or licensee who purchases milk from a dairy producer is not adequate to reasonably assure payment to dairy producers when due for the milk to be purchased, or in lieu of annually filing with the department an audited financial statement as required in section 4.1-25-05, the department shall require from an applicant or licensee security or other assurances in one of the following forms:

1. The filing of a surety bond acceptable to the department. The amount of the surety bond must be determined on the basis of average purchases of milk from dairy producers during the previous year. If payment for milk purchased from dairy producers is made on a weekly basis, the amount of the surety bond must be at least in an amount equal to the average weekly purchases of milk. If payment for milk purchased from dairy producers is made on a semimonthly basis, the amount of the surety bond must be at least in an amount equal to the average semimonthly purchases of milk. If the period of payment for milk purchased from dairy producers is made on a basis involving periods of time greater than semimonthly, the amount of the surety bond must be at least in an amount equal to the average purchases of milk for that greater period of time. The amount of the bond for each period of payment must also include an amount equal to at least the average purchases for three days following the close of the period of payment. The amount of the surety bond of any licensee who pays assignments to creditors of a producer of milk at a lesser frequency than the licensee pays the producer must also include an amount equal to the value of assignments from the prior payment period. The commissioner must be named as obligee, but the bond or draft must be held for the purpose of protecting, and for the benefit of, any dairy producer, and the full and complete payment to that dairy producer for all milk purchased by the licensee. The aggregate liability of the bonding company or the department to all dairy producers may not exceed the amount of the bond.
2. Providing an amount of protection for dairy producers equal to the amount of protection provided in subsection 1. The security must be held by the department solely for the protection of dairy producers, in one or more of the following forms:
  - a. Cash deposited with a bank or trust company and held under an escrow agreement with the department;

- b. Bonds of the United States deposited with the department;
  - c. Stocks, bonds, or other marketable securities at current market values, which have regularly reported quotations, deposited with the department;  
or
  - d. A certified bank draft, certified check, irrevocable letter of credit, or certificate of deposit held in favor of the department.
3. The filing of an agreement providing complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the dairy producers. The trustee shall file a trustee's bond and contracts signed by the owner or operator and the purchaser of the dairy products requiring that payment for all dairy products sold be made to the trustee. The trustee shall maintain a separate bank account for that purpose and at least annually shall render a true and correct account of trustee dealings to the department and to the dairy producers.

#### **4.1-25-07. Financial basis for license - Statement to producer - Notification to department.**

All milk purchasers licensed under section 4.1-25-02 shall inform producers of the financial basis on which the license was issued, including the type and amount of security, if any, filed under section 4.1-25-06, by an annual written statement to each producer. A person may not receive milk that will increase the amount due and accrued beyond the amount represented as a basis for the issuance of a license without first notifying the department.

#### **4.1-25-08. Additional security.**

When the department determines the value of milk purchased or received from producers has increased or an increase reasonably may be anticipated, so the total amount of security does not comply with the amount required by subsection 1 or 2 of section 4.1-25-06, the department shall require additional security to afford producers the protection intended by section 4.1-25-06. The department may suspend or revoke any license if the licensee fails to provide the additional security required by the department under this section.

#### **4.1-25-09. Filing of security before license year.**

An applicant or licensee shall file bonds or other security for the license year with the department by the first day of June immediately preceding the beginning of each license year. If an applicant or licensee fails to file a surety bond or other security by July first of the license year and has not been relieved from filing a surety bond or other security, the department shall notify producers that the applicant or licensee has not filed any security or made other provisions for assuring payments for milk purchases for the license year.

#### **4.1-25-10. Failure to file security - Notice to producers.**

1. If an applicant or licensee fails to file a surety bond or other security within the time fixed by section 4.1-25-09 or fails to comply with a demand for additional security, the department shall publish in newspapers having circulation in the areas where the producers whose milk is sold or delivered to the applicant or licensee reside, a notice stating:

- a. The department made a demand for additional security from the applicant or licensee;
  - b. The applicant or licensee has failed to comply;
  - c. The department does not have on file a surety bond or other security as demanded; and
  - d. Adequate security to protect producers may not be available to them.
2. In addition to a published notice to producers, the department shall send, by registered mail, a copy of the notice to each producer delivering milk to the applicant or licensee as determined from available records. The notice must be addressed to the producer's last-known address.

#### **4.1-25-11. Out-of-state dealers, processors, or producers not exempt.**

Sections 4.1-25-04 through 4.1-25-13 apply to all milk purchasers licensed under section 4.1-25-02 doing business in this state. The protection to producers afforded by sections 4.1-25-04 through 4.1-25-13 is available to the producers of any state selling milk to any licensee licensed under section 4.1-25-02, but the surety bond or other security required by sections 4.1-25-06 and 4.1-25-08 is payable only for the benefit of producers who are located within this state.

#### **4.1-25-12. Entry, inspection, and investigation.**

Authorized representatives of the department may enter, at reasonable hours, places of business where a licensee or license applicant maintains books, papers, accounts, records, or other documents related to the production, storage, processing, manufacturing, or sale of dairy products. The commissioner may subpoena, and the commissioner's authorized representative may inspect, audit, and make copies of relevant books, papers, records, accounts, or other documents of persons doing business with licensees. Any information gained by the department or by the commissioner under this section is confidential and may be used only for the administration of this chapter. The department or the commissioner may divulge the information when testifying in any departmental administrative hearing, in a duly noticed proceeding before the milk marketing board, or in any court proceeding in which the department or the commissioner is a party. This chapter does not prevent the department or the commissioner from using the information to compile or disseminate general statistical data so long as the data does not reveal individual information for any licensee or license applicant.

The commissioner may subpoena and take the testimony under oath of persons believed by the commissioner to have information needed in administering and enforcing this chapter.

#### **4.1-25-13. Records and reports.**

Licensees shall maintain the records the commissioner deems necessary to assure the financial condition of the licensee is adequate to assure prompt payment to producers.

#### **4.1-25-14. Department to become trustee upon default in required security.**

If a licensee defaults on any of the required security provisions, the licensee is deemed to be insolvent for purposes of this chapter. The claim for relief for damages and the amount recovered in any action for the conversion of milk or milk products,

purchased by the licensee while the license is in effect, and the assets of the licensee not subjected to any claim in federal bankruptcy court by a secured or general creditor within four months of the appointment of the department as trustee under this chapter, constitute a trust fund in the hands of the department for all persons having a claim for relief against the licensee on the required security.

#### **4.1-25-15. Application by department for appointment of trustee - Hearing - Appointment.**

Upon the insolvency of a licensee as defined in section 4.1-25-14, the department shall apply to the district court of the county in which the licensee maintains its principal place of business for the appointment of the department as trustee. Upon notice to the licensee as the court prescribes, but not exceeding ten days, or upon waiver of such notice in writing by the licensee, the court shall proceed to hear and determine the application. If it appears to the court the licensee is insolvent within the meaning of this chapter and it is in the best interest of persons holding claims against the licensee that the department execute the trust, the court shall issue an order appointing the department as a trustee, without bond, and the department shall proceed in the manner set out in this chapter without further direction from the court.

#### **4.1-25-16. Notice to file claims - When claims barred.**

The department, as trustee, shall notify all persons having claims against the licensee personally by certified mail to file the claims with the department. Any person who fails to file a claim with the department and to surrender any receipts obtained from the licensee within thirty days after receiving notice is barred from pursuing the claim in any fund marshalled by the department as prescribed in this chapter. The department may proceed as prescribed by law when all producers have responded to the notification.

#### **4.1-25-17. Remedy of claimants - Separate action by claimant permissible.**

A claimant has no separate claim for relief against the required security of a licensee unless the department fails or refuses to apply for appointment as trustee under this chapter. Any claimant, either independently or in conjunction with other claimants, may pursue concurrently with the department any other remedy the claimant or claimants may have against the licensee, or against the property of the licensee, for the whole of their claim or claims or for any deficiency that occurs after payments have been made from the trust fund.

#### **4.1-25-18. Appeal or compromising of action by department.**

The department may prosecute an action for any claims arising under this chapter in any court, may appeal from any adverse judgment to the courts of last resort, and may settle and compromise the action whenever it is in the best interests of the claimants. Upon payment to the department of the amount of any compromise, or of the full amount of any required security, the department may exonerate the person compromising or paying from further liability growing out of the action.

#### **4.1-25-19. Claims collections to be deposited in Bank of North Dakota.**

All money collected and received by the department as trustee must be deposited in the Bank of North Dakota.

#### **4.1-25-20. Trust fund report - Notice to claimants - Approving or modifying report.**

Upon recovery of the trust fund, or so much as is possible to recover, or as is necessary to pay all outstanding claims, the department shall file a report in court showing the amount payable upon each claim, after recognizing any proper liens, pledges, assignments, or deductions with legal interest. If the fund proves insufficient to redeem all claims in full, the fund must be prorated among the claimants in a manner the department deems fair and equitable. Once the report is received from the department, the court shall notify all claimants by mail to appear on a day fixed in the notice and show cause why the report should not be approved and the funds distributed as outlined in the report. Upon such hearing the court shall approve or modify the report as justice may require and shall issue an order directing the distribution of the fund and discharging the department as trustee.

#### **4.1-25-21. Attorney general to represent department and may employ assistants - Department need not pay court costs.**

The attorney general shall represent the department in any action or proceeding brought under section 4.1-25-14, and may employ outside legal assistance when necessary. The attorney general may deduct the expense of retaining outside legal assistance from the trust fund. The department is not required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought under section 4.1-25-14 when the fee, cost, or disbursement accrues to the state or to a county of the state.

#### **4.1-25-22. License needed to sample, haul, or test - Training - Examination - Term - Fee.**

A person may not sample, haul, or test milk or milk products for the purpose of determining the value or grade without obtaining a license from the department. In case of illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six days in one calendar year, unless specific approval for a longer period is obtained from the commissioner. The licensee is responsible for the acts of the substitute. An applicant shall file an application with the department stating the type of sampling, hauling, or testing for which the applicant wishes to be licensed. Before a license is issued, the applicant shall receive training in the sampling of milk or milk products as may be required by the department, and shall pass a written examination prepared and administered by the department. The applicant must show knowledge of the requirements of this chapter and must prove by actual demonstration that the applicant is competent and qualified to perform each type of sampling and testing listed on the application. The commissioner shall issue a license which states the types of sampling, hauling, or testing for which the applicant is qualified. Additions may be added to the application form and license, without charge, after the license has been issued, upon the request of the licensee, after receiving additional training and passing the required examinations. Examinations must be given by the department at times and places as the department shall determine. A licensee is not required to take additional examinations when renewing a license unless required by the commissioner. All testers and samplers shall attend a training session sponsored by the department every two years. Retraining or retesting or both may be required when the commissioner reasonably determines it to be necessary. Licenses issued under this section expire on December thirtieth of each year. Testers' licenses must be posted conspicuously in the licensee's place of operation, and are not transferable. Samplers' licenses must be carried by the sampler at all times during sampling activities and are not transferable. The annual license fee is ten dollars. A five dollar penalty fee is applied if renewals are not paid by January thirty-first.

#### **4.1-25-23. Commissioner to investigate complaint.**

The commissioner shall investigate any complaint claiming any provision of this chapter or the rules of the commissioner have been violated. If the commissioner finds a provision of this chapter or the rules of the commissioner have been violated, the commissioner may take any action deemed appropriate.

#### **4.1-25-24. Inspections.**

Upon notification, the commissioner shall have free access to all places of business, buildings, vehicles, and equipment used in the production, storage, handling, processing, manufacturing, transporting, and marketing of milk and milk products, and their substitutes. The commissioner may open and inspect any container suspected of containing a substance produced, stored, handled, processed, manufactured, transported, sold, or offered for sale under the provisions of this chapter. It is a violation of this chapter to refuse to allow inspections of any dairy facilities licensed under this chapter. The commissioner may suspend a license for failure to comply with this section.

#### **4.1-25-25. Suspension or revocation of license - Judicial review - Emergency order.**

Any proceedings under this chapter for the suspension or revocation of a license, or to determine compliance with this chapter or the rules and orders of the commissioner, must be conducted in accordance with the provisions of chapter 28-32 and appeals may be made as provided. When an emergency exists requiring immediate action to protect the public health and safety, without notice or hearing, the commissioner may issue an order reciting the existence of the emergency and requiring action be taken to protect the public health and safety. Notwithstanding any provision of this chapter, the order is effective immediately, but on application to the department an interested person must be afforded a hearing before the department within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing.

#### **4.1-25-26. Sampling and testing procedures - Equipment - Supplies.**

The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, hauling, or testing of milk or milk products must conform to those described in the Standard Methods, a copy of which must be kept on file in the department. Any equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or milk products not conforming to the requirements of this chapter may not be sold or offered for sale. The commissioner, through the adoption of rules, may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, hauling, or testing procedures or equipment. The commissioner, when appropriate, may check calibration of farm bulk milk tanks and equipment.

#### **4.1-25-27. Sampling of milk.**

Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the Standard Methods. Records must be kept, which readily identify the sample, with those items used to determine payment for the milk. Those items must include weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk.

#### **4.1-25-28. Standards for the production of manufacturing grade milk - Minimum standards of rules.**

At a minimum, rules governing the production and processing of milk for manufactured dairy products must comply with United States department of agriculture minimum standards for manufacturing grade dairy products.

#### **4.1-25-29. Standards for dairy manufacturing or processing - Minimum standards of rules.**

At a minimum, rules governing the approval of dairy processing and manufacturing plants and standards for grades of dairy products must comply with United States department of agriculture general specifications for approved dairy plants and standards for grades of dairy products. A plant may not be operated or any dairy products sold in violation of these rules.

#### **4.1-25-30. Standards for grade A milk and milk products - Adoption of rules.**

Only grade A milk may be sold as a fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the Pasteurized Milk Ordinance which includes provisions from the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the Grade A PMO". The commissioner may adopt rules imposing other standards in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, saleability, and promotion of grade A milk and milk products.

#### **4.1-25-31. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines.**

The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - 2015 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines in the Standard Methods.

#### **4.1-25-32. Milk laboratory evaluations officer - Duties - Guidelines.**

The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the Standard Methods and the procedures outlined in the public health service food and drug administration publication entitled "Evaluation of Milk Laboratories - 2015 Edition".

#### **4.1-25-33. Grade A Pasteurized Milk Ordinance.**

Dairy producers, processors, and manufacturers shall comply with the Pasteurized Milk Ordinance and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2015 Revision".

#### **4.1-25-34. Quality records to be kept - Term.**

Adequate records for testing and grading in conformance with this chapter and the rules of the commissioner must be kept by each business sampling or testing milk for at least twelve months in a manner approved by the commissioner.

**4.1-25-35. Milk haulers - License required - Commissioner to adopt rules.**

A person may not own or operate any tank truck, bulk milk truck, or other vehicle used or designed to carry bulk raw milk without a license issued by the department. The commissioner shall adopt rules governing the operation, inspection, design, and licensure of such persons. The license of any person operating a vehicle in violation of this section or the rules of the commissioner is subject to revocation or suspension in accordance with procedure established by law. A license to haul milk issued under this section may be issued in conjunction with or as part of any license to sample or test milk or milk products issued pursuant to section 4.1-25-22.

**4.1-25-36. Adulterated, impure, or unwholesome milk or milk products not to be transported, stored, sold, or offered for sale.**

Any milk or milk products produced or kept under unclean or unsanitary conditions or; produced from animals that are diseased or fed unwholesome, impure, or toxic feed; or milk that tastes from colostrum, must be deemed impure and unwholesome. Milk or milk product that is deemed to be adulterated, impure, or unwholesome may not be transported, stored, sold, or offered for sale in this state.

**4.1-25-37. Sale of milk or milk products in violation of this chapter prohibited.**

A person may not sell, or offer for sale, any milk or milk product, their imitations or substitutes, that is produced, processed, manufactured, transported, or stored, in violation of the laws of this state or the rules of the commissioner, or which do not subscribe to the definition as stated in this chapter or defined by the commissioner.

**4.1-25-38. Exception for uses as directed by physicians.**

This chapter does not prohibit the manufacture or sale of filled dairy products or imitation milk and imitation milk products when those products are prominently labeled to show their composition and the fact the products are sold customarily for use as directed by order of a physician and are prepared and designed for medicinal or special dietary use.

**4.1-25-39. Sale of foods not imitation milk, imitation milk products, or filled dairy products.**

This chapter does not prohibit the manufacture or sale of proprietary foods that are clearly not imitation milk, imitation milk products, or filled dairy products; which do not contain imitation milk, imitation milk product, or filled dairy product; and which are not conducive to substitution, confusion, deception, and fraud upon the purchasers of milk, milk products, or filled dairy products by their manufacture or sale.

**4.1-25-40. Shared animal ownership agreement - Raw milk.**

It is not a violation of this chapter to transfer or obtain raw milk under a shared animal ownership agreement. A person may not resell raw milk or raw milk products obtained under a shared animal ownership agreement.

**4.1-25-41. Labeling and identity standards.**

A person who sells milk or milk products at retail in the state shall comply with the labeling standards and standards of identity set forth in 21 U.S.C. 343(q)(r) and in rules adopted by the commissioner.

#### **4.1-25-42. Reports - Blanks - When made - Contents.**

The commissioner shall furnish blanks to all licensed creameries, cheese factories, condenseries, drying plants, ice cream plants, ice milk plants, milk plants, and producer-distributors for the purpose of making a report of the amount of milk and milk products handled. Each proprietor or manager of those businesses shall report to the commissioner on the last days of June and of December of each year, or immediately upon cessation of operation, the pounds [kilograms] of butterfat in cream, the pounds [kilograms] of manufacturing grade milk, and the pounds [kilograms] of bottling milk purchased during the period covered by the report, the aggregate amount paid for each, the number of pounds [kilograms] of butter and cheese, and the number of gallons [liters] of ice cream and ice milk manufactured during such period.

#### **4.1-25-43. Test results disputes.**

If a disagreement between a seller and a buyer or the legal representatives of both or either arises over the percentage of butterfat contained in any quantity of milk sold or offered for sale at the request of the owner and in the owner's presence, a sample of the milk obtained as provided in section 4.1-25-27 and mutually agreed upon by the interested parties as being a representative sample must be sealed and mailed by the buyer to the office of the commissioner. Each sample mailed to the commissioner must include a statement giving the name and address of the seller and the buyer of the milk in question, the net weight, the percentage and amount of butterfat contained, the price per pound [.45 kilogram] for butterfat, and the amount of money paid or offered in payment for the same and bearing the signature of the seller and the buyer. The commissioner shall determine the percentage of butterfat contained in the sample and shall report of the result in triplicate, the original to be filed in the commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk. The percentage of butterfat determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the official butterfat test and any other tests required must be in an amount as set by rule of the commissioner, considering the actual costs of the test, and the fee must be mailed to the commissioner at the time of forwarding the sample for the official butterfat or other test.

#### **4.1-25-44. Test sample disputes.**

If the buyer and seller do not agree upon a sample of milk as provided in section 4.1-25-43, the party selling or offering for sale that milk may require that the buyer or prospective buyer to forward the sample taken to the department in compliance with section 4.1-25-27. Each sample so forwarded must include an affidavit from the buyer or prospective buyer, stating that the sample was taken in compliance with the provisions of section 4.1-25-27, and the statement must contain all information required in section 4.1-25-43, except that the signature of the seller is not required. Each sample must be tested and reported on as prescribed in section 4.1-25-43, and the percentage of butterfat determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made.

#### **4.1-25-45. Standards considered minimum - Municipality may provide more stringent standards.**

The standards in this chapter constitute only minimum standards. This chapter may not be construed to prevent any municipality from providing, by ordinance, more stringent or comprehensive standards than are contained within this chapter. Neither this chapter nor in the rules of the commissioner may be construed to prevent any

person concerned with the dairy business from using standards, inspections, or other practices or procedures that are more stringent or comprehensive.

#### **4.1-25-46. Fees and penalties collected to be placed in general fund.**

All fees and penalties collected under this chapter must be deposited with the state treasurer and credited to the general fund.

#### **4.1-25-47. Disposal of illegal milk or milk products - Seizure.**

Any milk or cream offered for sale in violation of any provision of this chapter or the rules of the commissioner must be colored with a harmless food coloring and returned to the seller. In addition, any milk or milk product that is in violation of any provision of this chapter or the rules of the commissioner may be seized or ordered held by the commissioner and must be disposed of as any other illegal food or drug as provided in chapter 19-02.1.

#### **4.1-25-48. Penalty for violation of chapter - Additional civil penalty - Failure to pay civil penalty.**

A person violating any provision of this chapter or any rule or order of the commissioner, for which another criminal penalty is not specifically provided is guilty of a class B misdemeanor. In addition, a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation may be imposed. The civil penalty may be imposed by the courts in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32. If a civil penalty is imposed by the commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil proceeding in any appropriate court. The commissioner may suspend or revoke a license issued under this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed. The commissioner may refuse to renew or issue a license if the licensee or license applicant has repeatedly violated the provisions of this chapter or rules or orders of the commissioner.

#### **4.1-25-49. State's attorney's endorsement to complaint unnecessary upon violation of chapter.**

A complaint made for a violation of this chapter does not require the endorsement of the state's attorney, but when the court hearing a complaint made is satisfied of the truthfulness of the complaint, the court shall issue a warrant.

#### **4.1-25-50. Rules.**

The commissioner may adopt rules under chapter 28-32 to implement this chapter.

#### **4.1-25-51. Shared animal ownership agreement rules limitation.**

Notwithstanding chapter 28-32, the commissioner may not adopt any rule that restricts, limits, or imposes additional requirements on any person transferring or obtaining raw milk in accordance with the terms of a shared animal ownership agreement.

#### **4.1-25-52. Enforcement.**

The commissioner shall administer and supervise the enforcement of this chapter, provide for periodic inspections and investigations deemed necessary to ensure compliance with this chapter or the rules under this chapter, receive and provide for

the investigation of complaints; and provide for the institution and prosecution of civil or criminal actions or both. This chapter and the rules under this chapter may be enforced by injunction in any court having jurisdiction to grant injunctive relief. Filled dairy products, imitation milk, or imitation milk products, illegally held or otherwise in violation of this chapter may be seized and disposed under an appropriate court order.

**SECTION 2.** Chapter 4.1-27 of the North Dakota Century Code is created and enacted as follows:

**4.1-27-01. Definitions.**

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

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

**4.1-27-02. Premises excluded from application of chapter.**

The provisions of this chapter do not apply to:

1. Any place used solely for the dispersal sale of the livestock of a farmer, dairy producer, livestock breeder, or feeder who is discontinuing the person's business.
2. The premises of any butcher, packer, or processor who receives animals exclusively for immediate slaughter.
3. Any place where any individual or duly constituted association of breeders of livestock of any class assembles and offers for sale and sells under the individual's or association's management registered livestock or breeding sires owned by the individual or members of the association if the individual or association:
  - a. Assumes all responsibility of the sale;
  - b. Guarantees title of the livestock; and
  - c. Makes proper provision for the inspection of all animals sold.
4. Any place where a duly constituted association of breeders of livestock of any class assembles and offers for sale and sells under its management, at an annual production sale not exceeding twenty-one calendar days, livestock raised or held for at least one year by producers affiliated with the association, if the association:
  - a. Assumes all responsibility of the sale;

- b. Guarantees title of the livestock; and
- c. Makes proper provision for the inspection of all animals sold.

**4.1-27-03. License requirements - Application - Fee - Commission schedule - Facilities.**

A person may not establish or operate a livestock auction market within this state without procuring a license to do so from the commissioner. The commissioner may not approve any application without written permission from the state veterinarian. An applicant for a license shall:

1. Make a written application in the form prescribed by the commissioner;
2. File evidence required by the state board of animal health or the commissioner to show the person is financially responsible to operate an auction market and the person will own or control adequate facilities for the care, sorting, feeding, loading and unloading, and shipment of livestock;
3. Pay to the commissioner a license fee of two hundred dollars;
4. File with the commissioner a schedule of fees and commissions that will be charged to owners, sellers, or their agents. The schedule must be posted conspicuously at the auction market. The schedule may not be altered except upon notification to the commissioner. The altered schedule must be reposted upon notification to the commissioner;
5. State the location where the applicant proposes to operate a livestock auction market;
6. Make a complete and detailed description of the property and facilities proposed to be used in connection with the livestock auction market; and
7. Make a showing of public convenience and necessity to the satisfaction of the commissioner.

**4.1-27-04. Bond to accompany application for license - Amount - Approval - Conditions - Exemptions.**

1. An applicant for a license to operate a livestock auction market shall file a surety bond of at least ten thousand dollars with the application for license or renewal of a license. The bond must be approved by the commissioner as to the amount, form, and surety. The commissioner must be named the obligee in the bond. The bond must be for the benefit of, and for the purpose of protecting, any person selling to or through the licensed livestock auction market, or buying livestock through or from the licensed livestock auction market or the licensee's agent. The commissioner may require an additional bond of the licensee when the commissioner deems the volume of the business of the licensee warrants the additional bond. The bond must be conditioned for:
  - a. The payment of all money received by the licensee and the operator of the livestock auction market, less reasonable expenses and agreed commissions;

- b. The faithful performance by the licensee of the duties of a livestock auction market operator; and
      - c. The faithful performance by the licensee of all duties imposed by law relating to the purchase, sale, or holding of livestock.
  2. The bond must cover the entire license period. If the commissioner is the trustee or obligee of a surety bond in which the auction market operator is the principal and is operating and is bonded under the Packers and Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.], the commissioner may accept that bond in lieu of the one required under this section, except that the minimum bond requirements of ten thousand dollars will be continued.

#### **4.1-27-05. Records release required with application for licensure.**

A livestock auction market shall file with the license application a release in a form approved by the commissioner authorizing the commissioner to access financial records of the livestock auction market held by financial institutions, accountants, and other sources. The commissioner may use the release in the course of licensing or relicensing a livestock auction market or in the course of an investigation of a livestock auction market. Any information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to the attorney general, other state agencies, and any prosecuting officials requiring the information for use in pursuit of official duties.

#### **4.1-27-06. Expiration and renewal of license - Fee returned upon failure to issue or renew license.**

Each license issued under this chapter expires on the thirty-first day of March following the date of issuance. Each license must be renewed annually on or before March thirty-first. The fee for a renewal license is the same as for an original license. If the commissioner does not issue a requested original license or renewal license, the fee paid must be refunded to the applicant.

#### **4.1-27-07. Investigation of auction market - Hearing to determine whether license should be issued or revoked.**

1. The commissioner, upon the commissioner's own motion or upon a complaint by any person, may enter an investigation of the sales and transactions of any livestock auction market and of the conditions under which the business of the livestock auction market is conducted. The commissioner may conduct a hearing to determine whether the license of any auction market should be revoked or whether the application of the owner or operator of a livestock auction market for an original or renewal license should be denied.
2. The commissioner shall conduct an investigation of an alleged violation of this chapter when:
  - a. A complaint, allegation, or order to show cause, alleging an act which would constitute a violation of this chapter, is filed by the packers and stockyards administration of the United States;
  - b. The commissioner has information sufficient to form a reasonable belief that a violation of this chapter has occurred; or

- c. The commissioner has received a sworn statement, affidavit, or other evidence from any person alleging a violation of this chapter.
3. The commissioner shall conduct a hearing to determine whether a violation has occurred when, pursuant to an investigation, probable cause exists that a violation of this chapter has occurred.
4. The commissioner shall conduct an audit, or cause an audit to be conducted, when probable cause exists that any livestock auction market has violated any of the financial provisions of this chapter, when it reasonably appears that the liabilities of the livestock auction market exceed its assets, or when the auction market has refused to pay a proper claim without reasonable cause.

#### **4.1-27-08. Cease and desist authority.**

The commissioner may issue an order to cease and desist when, in the opinion of the commissioner, any auction market within the state is taking or planning any action which is or may be in violation of this chapter. If an order is granted, the commissioner shall conduct a hearing within thirty days of the issuance of the order to determine whether the actions of the person named in the order violated or would have violated this chapter. After the hearing, but not later than forty-five days after the issuance of the order, the commissioner shall revoke the order or make it permanent, as determined by the evidence.

#### **4.1-27-09. Injunctive authority.**

The commissioner may seek an order from the district court of Burleigh County to enjoin a prohibited act when the commissioner believes any auction market or person is violating this chapter or is pursuing a course of action which may lead to a violation of this chapter.

#### **4.1-27-10. Sanitary regulations of livestock auction market.**

Each livestock auction market must be maintained in a sanitary condition in accordance with this chapter. Any portion of a livestock auction market used for the handling of hogs, including all hogpens, alleys, and auction markets, must be equipped with concrete floors at least three inches [7.62 centimeters] thick. The concrete floors must be cleaned and disinfected after each sale, or in case of a continuous sale, not less than once each week or as may be prescribed by the state board of animal health.

#### **4.1-27-11. Scales maintained by auction market to be inspected.**

All scales used in the operation of a livestock auction market must be tested and inspected by the department of weights and measures as provided by law. All livestock sold by weight must be weighed on such scales, and the purchaser and seller of the livestock must be furnished with a true and correct statement of the weight.

#### **4.1-27-12. Records to be kept by operator of auction market - Contents - Examination - Report.**

1. The operator of each livestock auction market shall keep on file an accurate record of the following:
  - a. The date on which each consignment of animals was received and sold:

- b. The name and address of the buyer and seller of the consigned animals;
  - c. The number and species of the animals received and sold; and
  - d. The marks and brands on each such animal.
2. The records, together with the gross selling price, commission, and other proper care, handling, and sales charges on each consignment of livestock must be available for inspection by the commissioner, or authorized inspectors. A copy of the information required in this section must be supplied to the owner of the livestock. All records of sales during the preceding twelve months must be kept readily accessible for immediate examination by the commissioner.

#### **4.1-27-13. Notice - Nonsufficient funds checks.**

A livestock auction market that receives a check for the sale of livestock which is returned unpaid with a notation that the payment has been refused because of nonsufficient funds shall notify the commissioner within two business days after receipt of the returned check.

#### **4.1-27-14. Inspection of livestock - Fees and rules governing.**

Before it is offered for sale, each animal that enters a livestock auction market must be inspected for health by a veterinarian licensed in this state and approved by the state board of animal health. Cattle also must be inspected for brands by a trained brand inspector, acting under rules adopted by the North Dakota stockmen's association and the state board of animal health. Veterinary inspection must include all livestock, whether it is to be moved interstate or intrastate. The veterinary inspector must be recommended by the livestock auction market and approved by the state board of animal health. The veterinarian must be a local veterinarian or a veterinarian of the vicinity, unless there is no such veterinarian available. If the livestock auction agency fails to recommend a veterinarian within a reasonable time, the board may approve a veterinarian, if qualified and willing to accept the position at the market, and provide notice to the market agency of the appointment. The services and duties of the veterinary inspector are under the supervision of the state board of animal health and the inspector must be relieved of office when the inspector fails to perform the required services and duties. Fees for the inspection must be paid to the veterinarian by the livestock auction market company and must be in an amount agreed upon by the auction market company and the veterinarian.

#### **4.1-27-15. Livestock unfit for sale.**

1. Livestock may not be offered for sale or sold at any licensed public livestock auction market if the livestock has a condition including the following:
  - a. Is infected with a disease that permanently renders the livestock unfit for human consumption;
  - b. Has severe neoplasia;
  - c. Has severe actinomycosis;
  - d. Is unable to rise to its feet by itself; or

- e. Has a fractured long bone or other fractures or dislocation of a joint that renders the livestock unable to bear weight on the affected limb without the limb collapsing.
2. If, in the judgment of a veterinarian licensed in this state and approved by the state board of animal health, the livestock consigned and delivered to the premises of a livestock auction market is affected by any of the conditions described above, the veterinarian shall humanely euthanize the livestock or direct the consignor to immediately remove the livestock from the premises of the livestock auction market. All expenses incurred for euthanasia and disposal of the livestock under this section are the responsibility of the consignor. Collection of expenses is not the responsibility of the consignee.

**4.1-27-16. Treatment administered to livestock before removal from auction market - Fees for inspection and treatment.**

An operator of a livestock auction market may not permit the removal of any livestock from the establishment until the livestock has been treated in accordance with the rules adopted by the state board of animal health. If livestock is destined to be shipped interstate, the authorized veterinarian of the board shall furnish to each purchaser a certificate showing that inspection has been made and treatment administered in accordance with the requirements of the state of destination. All fees for veterinary inspection, treatment, and services, including brand inspection, must be collected by the operator of the livestock auction market and paid to the inspector.

**4.1-27-17. Grievance committee.**

1. Any livestock auction market who has a complaint against the veterinarian assigned to the livestock auction market, or any veterinarian that has a complaint against the auction market to which the veterinarian is assigned, may submit a written complaint to the grievance committee. The grievance committee consists of:
  - a. The president of the North Dakota stockmen's association or the president's designee;
  - b. The president of the livestock auction market association or the president's designee; and
  - c. The president of the North Dakota veterinary medical association or the president's designee.
2. The members of the committee shall choose one member to serve as chairman. The committee shall meet at the call of the chairman. The committee shall take all complaints under consideration and report a recommendation of the committee to the state board of animal health within thirty days after receipt of the complaint.

**4.1-27-18. Operator to warrant title to purchaser - Dispute in title of animal sold.**

The operator of each livestock auction market shall warrant to the purchaser the title of all livestock bought by the purchaser through the auction market and the operator is liable to the rightful owner of any livestock sold through the auction market for the net proceeds in cash received for the livestock. If the operator of an auction market is notified by an authorized brand inspector that there is a question as to

whether any designated livestock sold through the auction market is lawfully owned by the consignor of the livestock, the operator shall hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed sixty days, to permit the consignor to establish ownership. At the expiration of the allotted time, if the consignor fails to establish lawful ownership of the livestock to the satisfaction of the brand inspector, the proceeds must be remitted to the state treasurer for deposit in the North Dakota stockmen's association fund.

#### **4.1-27-19. Use of fees - Grounds for refusal or revocation of license - Procedure on default of licensee.**

All fees collected by the commissioner under this chapter must be credited to the general fund of the state treasury. A license to operate a livestock auction market may be refused or revoked for any of the reasons specified in sections 4.1-83-10, 4.1-83-19, 4.1-88-09, or 4.1-88-18. When the holder of a license issued under this chapter defaults in any of the conditions of any bond filed with the commissioner by the licensee, the commissioner will become trustee of the bond and sections 4.1-83-21 through 4.1-83-28 and 4.1-88-20 through 4.1-88-27 govern the procedure to be followed.

#### **4.1-27-20. Review by the court.**

The action of the commissioner in denying an application for a license or in revoking or suspending a license may be appealed to the district court of Burleigh County by the procedure applicable to appeals taken in the manner provided in chapter 28-32, except the commissioner's order revoking or suspending the license may be stayed by the court appealed to upon filing with the clerk of the court a bond approved by and in the amount set by the judge of the district court for the faithful observance of the laws of the state relative to the operation of the business licensed during the pendency of the appeal.

#### **4.1-27-21. Unlawful acts.**

It is a violation of this chapter for any livestock auction market or person to:

1. Make or cause any false entry or statement of fact to be made in any application, financial statement, or report filed with the department under this chapter;
2. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse to allow any authorized agent of the department to have access, during reasonable hours, to inspect and to copy any or all of the records relating to the dealer's business;
3. Fail or refuse to furnish the information required under this chapter as prescribed by the department;
4. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 4.1-27-13;
5. Fail to pay brand inspection fees or veterinarian fees as required by law;
6. Fail to collect beef promotion assessments pursuant to chapter 4.1-03; or
7. Fail to pay for livestock purchased, including the issuance of a check or payment for livestock purchased, when the check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

**4.1-27-22. Penalties - Criminal - Civil.**

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

**4.1-27-23. Public livestock markets or commission firms - Duplicate scale tickets.**

All public livestock markets or commission firms doing business in this state shall deliver to each person consigning livestock to the market or purchasing livestock from the market a duplicate scale ticket showing the weight of such livestock.

**SECTION 3.** Chapter 4.1-28 of the North Dakota Century Code is created and enacted as follows:

**4.1-28-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Internet livestock auction" means a place or establishment conducted or operated for compensation or profit as a public market where livestock located in this state is sold or offered for sale at a facility or website within or outside the state through the use of the internet.
3. "Livestock" means horses, mules, cattle, swine, sheep, farmed elk, and goats.
4. "Representative" means a dealer licensed under chapter 4.1-83 or a livestock auction market licensed under chapter 4.1-27.
5. "Video livestock auction market" means a place or establishment conducted or operated for compensation or profit as a public market where livestock located in this state is sold or offered for sale at a facility within or outside the state through the use of video at a public auction.

**4.1-28-02. Video livestock auction market and internet auction - Authority to transact business.**

A video livestock auction market or internet livestock auction market may not transact business in this state unless the market transacts business through a representative licensed under this chapter.

**4.1-28-03. Application for license - Contents.**

1. Before entering business with a video livestock auction market or internet livestock auction market, each representative must obtain a license to transact business with a video livestock auction market or internet livestock auction market by filing an application with the commissioner on a form prescribed by the commissioner. A license issued under this section expires June thirtieth after issuance and must be renewed by filing of a renewal application at the

time and on a form prescribed by the commissioner. The application must show:

- a. The nature of the business applying for a license:
  - b. The name of the representative applying for the license on behalf of the business:
  - c. The name and address of the video livestock auction market or internet livestock auction market through which the applicant proposes to transact business; and
  - d. Any other information the commissioner may require.
2. The application for a license or for a renewal of a license must include:
- a. A license fee of one hundred dollars:
  - b. Evidence the commissioner may require showing the video livestock auction market or internet livestock auction market the representative proposes to do business through is financially responsible and bonded to transact such business:
  - c. A schedule of the fees and commissions that will be charged to owners, sellers, or their agents; and
  - d. A copy of the contract between the representative and the video livestock auction market or internet livestock auction market through which the representative proposes to transact business. The contract must:
    - (1) Contain a provision authorizing the commissioner to have access to the books; papers; accounts; financial records held by financial institutions, accountants, or other sources;
    - (2) Contain other documents, as determined by the commissioner, relating to the activities of the video livestock auction market or internet livestock auction market; and
    - (3) Provide that the video livestock auction market or internet livestock auction market and its representative are jointly and severally liable, with the right of contribution, for all business transacted within this state by the representative on behalf of the video livestock auction market or internet livestock auction market.
3. If the contract between the representative and the video livestock auction market or internet livestock auction market is terminated, rescinded, breached, or otherwise materially altered, the representative and the video livestock auction market or internet livestock auction market shall immediately notify the commissioner. Failure to notify the commissioner of termination, rescission, breach, or material alteration of the contract between the representative and the video livestock auction market or internet livestock auction market is deemed to be a failure to keep and maintain suitable records with the department and is deemed to be a false entry or statement of fact in an application filed with the department.

#### **4.1-28-04. Use of fees - Grounds for refusal or revocation of license - Review by court.**

All fees collected by the commissioner under this chapter must be deposited in the general fund of the state treasury. A license may be refused or revoked for any reason specified in subdivision c or d of subsection 2 of section 4.1-83-10 or section 4.1-83-15, or if the contract required by this chapter between the representative and the video livestock auction market or internet livestock auction market is extinguished, rescinded, or canceled, or is breached by either party. The action of the commissioner in denying an application for a license or revoking or suspending a license may be appealed as provided in section 4.1-27-20.

#### **4.1-28-05. Inspection of livestock.**

Before any livestock sold pursuant to this chapter is delivered, whether interstate or intrastate, the livestock must be inspected for health by a veterinarian licensed in this state and approved by the state board of animal health and, in the case of cattle, for brands by a trained brand inspector, acting under rules adopted by the North Dakota stockmen's association and the state board of animal health. The inspection must take place at the time of the initial delivery of the livestock. If livestock is destined to be shipped interstate, the authorized veterinarian shall furnish to each purchaser a certificate showing that the inspection has been made and treatment administered in accordance with the requirements of the state of destination. The services and duties of the veterinary inspector are under the supervision of the state board of animal health. Fees for the veterinary inspection must be an amount agreed upon by the representative and the veterinarian. All fees for veterinary inspection, treatment, and services must be collected by the representative and paid to the inspector.

#### **4.1-28-06. Method of payment.**

Payment to the seller for livestock sold through a video livestock auction market or internet livestock auction market must be made in United States currency, with an instrument payable on demand drawn on a financial institution chartered and regulated by a state or the federal government, or by wire transfer or other electronic form of payment from a financial institution chartered and regulated by a state or the federal government.

#### **4.1-28-07. Sale of livestock by weight - Scales to be inspected.**

Notwithstanding section 36-21-15, all livestock sold by weight through a video livestock auction market or internet livestock auction market must be sold based on the weight of the livestock on the day of delivery. All livestock sold by weight must be weighed on scales that have been tested and inspected by the department of weights and measures in the manner provided by law.

**SECTION 4.** Chapter 4.1-30 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-30-01. Packing plant defined.**

The term "packing plant" as used in this chapter means a place where livestock, exclusive of poultry, is purchased for the purpose of slaughtering, dressing, curing, or processing the same for storage and distribution at wholesale for human consumption.

**4.1-30-02. Livestock purchased by weight to be graded - Penalty.**

An officer or employee of a packing plant within this state may not purchase any livestock by weight unless such livestock has been graded and sorted in the yard and the price per pound [.45 kilogram] for each grade fixed and determined before the livestock is weighed. Any officer or employee of a packing plant who violates this section is guilty of an infraction.

**4.1-30-03. Penalty for purchase of livestock by weight without grading.**

Each purchase of livestock in violation of section 4.1-30-02 is a separate offense and constitutes an infraction upon the part of every owner of a packing plant in which such violation occurs.

**SECTION 5.** Chapter 4.1-31 of the North Dakota Century Code is created and enacted as follows:

**4.1-31-01. Definitions.**

1. "Adulterated" means a carcass or meat food product:
  - a. That includes a poisonous or harmful substance that may render it injurious to health;
  - b. That includes a chemical pesticide that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
  - c. That includes a food or color additive that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
  - d. That includes a filthy, putrid, or decomposed substance or is for any other reason unfit for human food;
  - e. That has been prepared, packed, or held under unsanitary conditions;
  - f. That includes the product of an animal that has died in a manner other than slaughter or includes the product of an animal condemned by reason of disease that existed at the time of slaughter;
  - g. The container of which includes a poisonous or harmful substance that may make the contents harmful to health;
  - h. That has been intentionally subjected to radiation, unless the use of the radiation conformed with a regulation or exemption in effect under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
  - i. That is damaged or inferior and that damage or inferiority has been concealed; or
  - j. That has had a substance added to it or mixed or packed with it so as to increase its bulk or weight, or make it appear better or of greater value than it is.
2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, horses, equines, bison, other large domesticated animals, and poultry.

3. "Carcass" includes all or any part of an animal carcass.
4. "Container" means a receptacle of a meat food product.
5. "Custom processing" means slaughtering, eviscerating, dressing, or processing an animal carcass or meat food products for the owner of the animal carcass or the meat food products, if all meat food products derived from the custom processing are returned to that owner.
6. "Inspector" means an inspector appointed by the commissioner to perform duties under this chapter.
7. "Intrastate commerce" means commerce within this state.
8. "Meat food product" means a product usable as human food which contains any part of an animal carcass. The term does not include any product that contains any part of an animal carcass in a relatively small proportion or which historically has not been considered by consumers as a product of the meat food industry, and which is not represented as a meat food product.
9. "Poultry" includes domesticated fowl bred for the primary purpose of producing eggs or meat, or both, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, but excluding doves and pigeons.
10. "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

#### **4.1-31-02. Inspectors - Appointments - Duties.**

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

**4.1-31-03. Access by inspectors - Penalty.**

1. For purposes of enforcement of this chapter, the commissioner may enter and inspect:
  - a. Any place where food or any other product, the manufacture, sale, use, or transportation of which is restricted, regulated, or prohibited by a law of this state, is or may be manufactured, prepared, stored, sold, used, transported, offered for sale or transportation, or possessed with intent to use, sell, or transport;
  - b. Any place where an animal is pastured or stabled;
  - c. Any vehicle used to transport a meat food product or an animal;
  - d. Any place where food is or may be cooked, prepared, sold, or kept for sale to or for the public or distributed as a part of the compensation of an employee or agent; and
  - e. Any place where a meat food product may be manufactured, sold, used, offered for sale or transportation, or possessed with intent to use, sell, or transport.
2. The commissioner may inspect any container believed to hold food, a food ingredient, or some other product, the manufacture, use, sale, or transportation of which is restricted, regulated, or forbidden by state law, and may take samples from it for analysis.
3. It is a class A misdemeanor for any person to obstruct entry or inspection under this chapter or to fail, upon request, to assist in an inspection authorized by this chapter.

**4.1-31-04. Marks and labels.**

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

**4.1-31-05. False or misleading marks, labels, and containers.**

A person may not sell in intrastate commerce any meat food product subject to inspection under this chapter under a name, mark, or label that is false or misleading, or in a container of a misleading form or size. If the commissioner has reason to

believe that a mark, label, or container is false or misleading, the commissioner may direct that its use be withheld unless the mark, label, or container is modified in a manner approved by the commissioner. If the person using or proposing to use the mark, label, or container does not accept the determination of the commissioner, the person may request a hearing. The commissioner may direct that the mark, label, or container not be used pending a hearing and final determination by the commissioner. A determination by the commissioner is conclusive unless the person adversely affected appeals to the district court within thirty days after receiving the notice of final determination.

#### **4.1-31-06. Prohibitions.**

A person may not:

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

#### **4.1-31-07. Official marks and certificates - Required authorization.**

A person may not:

1. Cast, print, or otherwise make a device containing an official mark, simulation of an official mark, label bearing a mark or simulation, or form of official certificate or simulation, without authorization from the commissioner;
2. Forge an official device, mark, or certificate;
3. Use a real or simulated official device, mark, or certificate, or alter, detach, deface, or destroy an official device, mark, or certificate, without authorization from the commissioner;
4. Fail to use an official device, mark, or certificate if appropriate;
5. Knowingly possess, without promptly notifying the commissioner, a counterfeit, simulated, forged, or improperly altered official certificate, device, or label, or a carcass bearing a counterfeit, simulated, forged, or improperly altered official mark;
6. Knowingly make a false statement in a certificate; or
7. Knowingly represent falsely that an article has been inspected and passed, or exempted, under this chapter.

#### **4.1-31-08. Horse meat - Requirements.**

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

#### **4.1-31-09. Bribery.**

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

#### **4.1-31-10. Individual and custom processing - Exemption from inspection requirements.**

1. This chapter does not apply to an individual processing the individual's own animals and the individual's preparation and transportation in intrastate commerce of the carcasses and meat food products provided the animals are for the exclusive use of the individual, members of the individual's household, the individual's nonpaying guests, and employees.
2. The provisions of this chapter requiring inspection of the slaughter of animals, the preparation of the carcasses and meat and meat food products at establishments conducting those operations do not apply to the custom processing by a person of animals delivered by the owner for processing, and the preparation or transportation in intrastate commerce of the carcasses and meat food products of the animals, provided the products are to be used exclusively in the household of the animal's owner by the owner and members of the owner's household, nonpaying guests, and employees.
3. A custom processor may not engage in the business of buying or selling carcasses or meat food products of animals, other than poultry, usable as human food unless the carcasses or meat food products have been inspected and passed and are identified as inspected and passed by the commissioner or the United States department of agriculture.
4. The provisions of this chapter requiring inspection of the preparation of poultry carcasses and poultry food products at establishments conducting those operations do not apply to any retailer with respect to poultry products sold in commerce directly to consumers in an individual retail store, provided the retailer does not engage in the business of custom slaughter, and provided the poultry products sold in commerce are derived from poultry inspected and passed by the commissioner or the United States department of agriculture.

#### **4.1-31-11. Storing and handling conditions.**

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

**4.1-31-12. Articles not intended as human food.**

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

**4.1-31-13. Records.**

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

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

**4.1-31-14. Records - Examination.**

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

**4.1-31-15. Records - Retention.**

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

**4.1-31-16. Registration of business.**

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

**4.1-31-17. Dead, dying, disabled, or diseased animals - Rules.**

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

**4.1-31-18. Cooperation with federal government.**

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

**4.1-31-19. Refusal or withdrawal of inspection.**

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

**4.1-31-20. Detention of animals or products.**

1. An inspector may detain an article or animal for up to twenty days pending a hearing or notification of authorities having jurisdiction over the article or animal if the inspector finds the article or animal on premises where it is held for purposes of, during, or after distribution in intrastate commerce and the inspector reasonably believes:
  - a. The article or animal is adulterated or misbranded and would otherwise be usable as human food;
  - b. The article or animal has not been inspected, in violation of this chapter or federal law; or

- c. The article or animal has been or is intended to be distributed in violation of this chapter or federal law.
2. Until it is released by the commissioner, a detained article or animal may not be moved by any person from the place at which it was located when detained. The commissioner may require all official marks to be removed from the detained article or animal before it is released unless the commissioner is satisfied the article or animal is eligible to retain the official marks.

#### **4.1-31-21. Seizure and condemnation.**

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

1. The article is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter;
2. The article is adulterated or misbranded and not suitable for use as human food; or
3. The article is in any other way violative of this chapter.

#### **4.1-31-22. Destruction or sale of condemned items.**

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

#### **4.1-31-23. Types of proceedings - Award of costs.**

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

#### **4.1-31-24. Powers of commissioner.**

For the purposes of this chapter, the commissioner may:

1. Gather and compile information concerning and investigate the organization, business, conduct, practices, and management of a person in intrastate commerce and the person's relation to other persons.
2. Require a person engaged in intrastate commerce file with the commissioner, in the form and manner prescribed by the commissioner, annual and special reports or written answers to specific questions, giving the commissioner the information the commissioner requires about the organization, business,

conduct, practices, management, and relation to other persons, of the person filing the reports or answers.

3. Examine and copy documentary evidence of a person being investigated or being proceeded against. A person may not refuse to submit to the commissioner, for inspection and copying, any documentary evidence of a person subject to this chapter in the person's possession or control.
4. Fix the time of filing for a person required by this chapter to file an annual or special report. A person required by this chapter to file an annual or special report may not continue the failure for thirty days after notice of failure to file.
5. Adopt rules to implement this chapter, including establishing inspection fees for providing inspection services under this chapter.

#### **4.1-31-25. Interstate shipment.**

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

#### **4.1-31-26. Penalties.**

1. A person who willfully violates a provision of this chapter is guilty of a class A misdemeanor.
2. A person willfully violating this chapter or a rule adopted under this chapter is subject to a civil penalty not to exceed two hundred fifty dollars for each violation. The civil penalty may be imposed by a court or by the agriculture commissioner in an administrative proceeding.
3. Imposing a penalty allowed in subsection 1 or 2 does not preclude the commissioner from seeking to impose other sanctions or from seeking other remedies for violation of this chapter or rules adopted under this chapter.

**SECTION 6.** Chapter 4.1-32 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-32-01. License required to operate rendering plant.**

A person may not operate a rendering plant or other establishment using the carcasses of domestic or wild animals, not intended for human consumption, for processing without first obtaining a license from the agriculture commissioner. A license to operate a rendering plant may be issued only upon a written application filed with the commissioner in accordance with this chapter and rules adopted by the board.

#### **4.1-32-02. Inspection of rendering plant of applicant by state veterinarian.**

The state veterinarian shall inspect an establishment for which a license is requested to operate a rendering plant, including its equipment and vehicles and the manner in which its business is conducted, with reference and due regard to the danger of animal disease transmission and dissemination, upon the receipt of an application for a license to operate a rendering plant or other establishment for processing the carcasses of domestic or wild animals, not intended for human consumption.

**4.1-32-03. Granting of license - Fee - Term.**

The agriculture commissioner shall issue a license to operate a rendering plant, if the inspection does not reveal any danger of animal disease transmission, upon payment of a fee of fifty dollars. The license is valid for a period of one year from the date of issuance unless it is revoked for cause by the commissioner before expiration.

**4.1-32-04. Unloading chutes and vehicles used by rendering plant - Regulations governing.**

1. Any unloading places or chutes used by a rendering plant or establishment must be on cement floors that can be cleaned and disinfected. Every vehicle used for transporting carcasses of dead animals to a rendering plant or establishment must:
  - a. Have a bed or tank not less than fifty inches [127 centimeters] in width which is all metal, metal lined, or watertight for at least six inches [15.24 centimeters] above the floor of the box or bed of the vehicle.
  - b. Have a metal-lined endgate that is hinged at the bottom of the bed or box of the vehicle and is fastened firmly to the top of the bed or box of the vehicle when closed.
  - c. Have sides, a top, and an endgate that will prevent flies and other insects from entering the vehicle.
  - d. Carry a tank filled with a solution approved by the state veterinarian for use as a disinfectant.
  - e. Be disinfected with the solution described in subdivision d after it has been used for collecting a dead animal and before it enters upon any public highway of this state. Special attention must be given to all those parts of the vehicle which came in contact with the ground while upon the premises.
  - f. Be thoroughly washed and disinfected with the solution described in subdivision d or with live steam, or both, after the dead animal has been unloaded at the rendering plant.
2. The operator of any vehicle used for transporting the carcasses of dead animals to a rendering plant shall wash with disinfectant, paying special attention to disinfecting the operator's hands and footwear, with the solution described in subdivision d of subsection 1 immediately after leaving any farm at which the operator has collected the carcass of a dead animal.

**4.1-32-05. Removal of carcasses from vehicle - Prohibition.**

A carcass collected at any farm in this state may not be removed from the vehicle except at a rendering plant or other establishment using the carcasses of domestic or wild animals, not intended for human consumption, for processing and final disposal.

**4.1-32-06. Operator of vehicle for rendering plant to have certificate.**

Any person operating a vehicle for an establishment licensed under this chapter must have an authorized certificate from the establishment which has been approved by the agriculture commissioner.

**4.1-32-07. Inspection of plant authorized.**

The operator of any establishment licensed under this chapter shall permit an official authorized by the state veterinarian or any health officer to inspect the licensed establishment at any time.

**4.1-32-08. Rendering done by packing plants operating under federal inspection - Exception.**

All rendering done by a packing plant operating under federal inspection in a building adjacent to or on the same premises as the packing plant is exempt from the provisions of this chapter, except that the transportation by the packing plant or any establishment licensed under this chapter of carcasses and other animal substances on any public highway or street is subject to the sanitary requirements of this chapter and the rules adopted by the state board of animal health.

**4.1-32-09. Money collected - Where credited.**

Money collected under this chapter must be deposited in the general fund by the state treasurer.

**4.1-32-10. Restrictions on locating rendering plants.**

An establishment licensed under this chapter may not be constructed within three miles [4.83 kilometers] of the limits of any municipality or within one mile [1.61 kilometers] of any farmstead unless the owner of the farmstead gives written consent.

**4.1-32-11. Penalty.**

Any person violating any provision of this chapter is guilty of a class B misdemeanor.

**SECTION 7.** Chapter 4.1-41 of the North Dakota Century Code is created and enacted as follows:

**4.1-41-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Brand name" means any word, name, symbol, or device, used singly or in combination, that identifies commercial feed and distinguishes it from that of all others.
2. "Commercial feed" means any materials, used singly or in combination, which are distributed, or are intended to be distributed, for use as feed or for mixing in feed, except:
  - a. Unmixed whole seeds and unmixed physically altered seeds, provided the seeds are not chemically changed or adulterated;
  - b. Commodities such as hay, straw, stover, silage, cobs, husks, and hulls, provided the commodities are:
    - (1) Not intermixed or mixed with other materials;
    - (2) Not adulterated; and

- (3) Specifically exempted by the agriculture commissioner;
  - c. Individual chemical compounds or substances, provided the chemical compounds or substances are:
    - (1) Not intermixed or mixed with other materials;
    - (2) Not adulterated; and
    - (3) Specifically exempted by the agriculture commissioner; and
  - d. Unprocessed grain screenings or unprocessed mixed grain screenings, provided:
    - (1) The distributor does not make oral or written reference to the nutritional value of the screenings;
    - (2) The screenings are not adulterated; and
    - (3) The screenings are specifically exempted by the agriculture commissioner.
- 3. "Contract feeder" means an independent contractor that feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to the independent contractor and the independent contractor's remuneration is determined in whole or in part by feed consumption, mortality, profits, or the amount or quality of the product.
- 4. "Customer-formula feed" means a commercial feed that is manufactured according to the specific instructions of the final purchaser.
- 5. "Distribute" means to:
  - a. Offer for sale, sell, exchange, or barter commercial feed or customer-formula feed; or
  - b. Supply, furnish, or otherwise provide commercial feed or customer-formula feed to a contract feeder.
- 6. "Drug" means any article:
  - a. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in an animal other than a human; and
  - b. Other than feed, intended to affect the structure or function of an animal's body.
- 7. "Feed ingredient" means each of the constituent materials making up a commercial feed.
- 8. "Label" means any printed or stamped information on or attached to a commercial feed container or its wrapper and written information accompanying the distribution of a commercial feed or customer-formula feed.
- 9. "Manufacture" means to grind, mix, blend, or further process a commercial feed for distribution.

10. "Official sample" means any feed taken by the agriculture commissioner in accordance with section 4.1-41-13.
11. "Pet food" means any commercial feed prepared and distributed for consumption by dogs or cats.
12. "Product name" means a term that identifies a commercial feed as to its kind, class, or specific use and which distinguishes that feed from all other products bearing the same brand name.
13. "Specialty pet food" means a commercial feed prepared and distributed for consumption by canaries, finches, gerbils, goldfish, hamsters, mynahs, psittacine birds, snakes, turtles, and any other domesticated animal normally maintained in a cage or a tank.

#### **4.1-41-02. Manufacturer's license - Retailer's license.**

1.
  - a. A person shall obtain a commercial feed manufacturer's license for each facility at which the person manufactures commercial feed if the person distributes the feed within this state.
  - b. A person shall obtain a commercial feed manufacturer's license if the person's name appears on the label of a commercial feed as a guarantor.
  - c. This subsection does not apply to a person that manufactures or guarantees pet food or specialty pet food.
2. A person shall obtain a commercial feed retailer's license for each facility at which the person sells commercial feed other than pet food or specialty pet food. This subsection does not apply to a person licensed as a commercial feed manufacturer.
3. In order to obtain an initial license required by this section, a person shall submit an application form at the time and in the manner required by the agriculture commissioner and:
  - a. If the person is applying for a manufacturer's license, a fee in the amount of one hundred twenty dollars for a manufacturer's license; or
  - b. If the person is applying for a retailer's license, a fee in the amount of sixty dollars.
4. To renew a license required by this section, a person shall submit an application form at the time and in the manner required by the commissioner and:
  - a. If the person is applying for a manufacturer's license renewal, a fee in the amount of one hundred dollars; or
  - b. If the person is applying for a retailer's license renewal, a fee in the amount of fifty dollars.
5. A license issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.

6. If a person fails to renew a license within thirty-one days of its expiration, that person must apply for an initial license.

#### **4.1-41-03. Product registration.**

Each commercial feed manufacturer required to be licensed under this chapter shall register all feeds distributed in this state with the agriculture commissioner, at the time and in the manner required by the commissioner. This section does not apply to customer-formula feeds.

#### **4.1-41-04. License - Registration - Hearing.**

1.
  - a. The agriculture commissioner may refuse to issue a license to an applicant that is not in compliance with this chapter.
  - b. The commissioner may revoke an existing license if the licensee is not in compliance with this chapter.
  - c. The commissioner may refuse to register any feed and may cancel the registration of any feed if the registrant is not in compliance with this chapter.
2. Before the commissioner may act under this section, the commissioner shall provide the affected person with an opportunity for an informal hearing.

#### **4.1-41-05. Pet food - Specialty pet food - Registration - Penalty.**

1. Before being distributed in this state, each pet food product and each specialty pet food product must be registered with the agriculture commissioner. This requirement does not apply to a distributor, provided the pet food or specialty pet food is registered by another person.
2. To register pet food and specialty pet food, a person shall submit:
  - a. An application form at the time and in the manner required by the agriculture commissioner; and
  - b. A fee in the amount of one hundred twenty dollars.
3. To renew a registration required by this section, a person shall submit:
  - a. An application form at the time and in the manner required by the commissioner; and
  - b. A fee in the amount of one hundred dollars.
4. A registration issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.
5. If a person fails to renew a registration within thirty-one days of its expiration, that person must apply for an initial registration.
6. Upon approving an application for an initial registration or a renewed registration, the commissioner shall furnish a certificate of registration to the applicant. A certificate of registration is not transferable.

7. Any person violating this section is subject to a penalty of twenty-five dollars for each product that must be registered.

#### **4.1-41-06. Commercial feed - Label - Content.**

Except as provided in section 4.1-41-07, any commercial feed that is distributed in this state must be labeled. The label must include:

1. The product's name, including any brand name under which the product is distributed;
2. The product's weight, volume, or quantity, as appropriate;
3. A guaranteed analysis expressed on an "as is" basis;
4. Unless waived by the agriculture commissioner in the interest of consumers, the commonly accepted name of each ingredient or, if permitted by the commissioner, a collective term for a group of ingredients that perform a similar function;
5. The name and principal mailing address of the manufacturer or the distributor;
6. Directions for use of any commercial feed containing drugs; and
7. Any precautionary statements recommended by the commissioner to ensure the safe and effective use of the feed.

#### **4.1-41-07. Customer-formula feed - Label - Content.**

Any customer-formula feed that is distributed in this state must be labeled.

1. The label must include:
  - a. The name and address of the manufacturer;
  - b. The name and address of the purchaser;
  - c. The date of delivery;
  - d. The product's name;
  - e. The weight, volume, or quantity, as appropriate, of each ingredient, including commercial feed; and
  - f. Any precautionary statement recommended by the agriculture commissioner to ensure the safe and effective use of the feed.
2. If the feed contains drugs, the label must also include:
  - a. The purpose of each drug;
  - b. The weight, volume, or quantity, as appropriate, of each drug; and
  - c. The name of each active ingredient.

**4.1-41-08. Inspection fee.**

1. An inspection fee at the rate of twenty cents per ton [907.18 kilograms] is required for all commercial feed distributed in this state. The minimum fee payable under this section is ten dollars.
2. Subsection 1 does not apply if:
  - a. The fee was paid earlier in the year by another person;
  - b. The commercial feed is to be used in the manufacturing of a registered commercial feed;
  - c. The feed is a customer-formula feed and the fee has been paid on the commercial feeds used as ingredients; or
  - d. The manufacturer produces only customer-formula feed.

**4.1-41-09. Inspection fee - Responsibility for payment - Penalty.**

1. The person responsible for payment of the inspection fee is:
  - a. The manufacturer listed on the label;
  - b. The guarantor listed on the label; or
  - c. The distributor listed on the label.
2. Before the close of business on each February fifteenth, the person responsible for the payment of the inspection fee shall provide to the agriculture commissioner:
  - a. A sworn statement indicating the number of net tons [kilograms] of commercial feed, by class, which the person distributed in this state during the immediately preceding calendar year; and
  - b. The inspection fees due in accordance with this chapter.
3. If the person responsible for the payment of the inspection fee fails to submit the assessments as required by this section, the commissioner may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date. If imposed, a penalty under this section may not be less than ten dollars nor more than two hundred fifty dollars.

**4.1-41-10. Inspection fee - Records.**

1. The person responsible for payment of the inspection fee shall maintain, for a period of three years, records of all transactions necessary to verify the statement of tonnage required by section 4.1-41-09.
2. The person shall make the records required by this section available to the agriculture commissioner for examination upon request.
3. If the commissioner determines the records required by this section were not maintained accurately, the commissioner may cancel all licenses on file for the distributor.

**4.1-41-11. Adulteration.**

A person may not distribute any commercial feed that is adulterated.

1. Commercial feed is adulterated if it contains any poisonous or harmful substance that may render the feed injurious to health. However, if the substance naturally occurs in the feed, the commercial feed may be considered adulterated under this subsection only if the substance is present in sufficient quantity to render it injurious to health.
2. Commercial feed is adulterated if it contains any added substance that is poisonous, harmful, or nonnutritive, and unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346]. This subsection does not apply to any pesticide in or on a raw agricultural commodity or to a food additive.
3. Commercial feed is adulterated if it contains any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].
4. a. Commercial feed is adulterated if it is a raw agricultural commodity and it contains a pesticide that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].
  - b. However, if a pesticide has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a] and if the raw agricultural commodity has been subjected to a process such as canning, cooking, dehydration, freezing, or milling, any pesticide residue remaining in or on the processed feed may be deemed safe, provided:
    - (1) The residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice; and
    - (2) The concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity.
  - c. The exception set forth in subdivision b does not apply if the consumption of the processed feed may result in the edible product of the animal evidencing a pesticide residue that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].
5. Commercial feed is adulterated if it contains any color additive that is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 379e].
6. Commercial feed is adulterated if it contains any new animal drug that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 360b].
7. In addition to the foregoing subsections, commercial feed is adulterated if:
  - a. Any valuable constituent has been omitted, in whole or in part, thereby providing a lower nutritive value in the finished product;

- b. The composition or quality of the feed falls below or differs from that which is stated on its label;
- c. The feed contains added hulls, screenings, straw, cobs, or other high fiber material, unless each material is stated on the label;
- d. The feed contains viable weed seeds in amounts exceeding the limits the commissioner establishes by rule;
- e. The feed contains a drug and the methods used in or the facilities or controls used for its manufacturing, processing, or packaging do not conform to current good manufacturing practice rules adopted by the commissioner;
- f. The feed consists in whole or in part of any filthy, putrid, or decomposed substance, or if the feed is otherwise unfit for its intended use;
- g. The feed has been prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health;
- h. The feed consists in whole or in part of the product of a diseased animal or of an animal that has died otherwise than by slaughter which is unsafe within the meaning of section 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 342];
- i. The feed's container is composed, in whole or in part, of any poisonous or harmful substance that may render the contents injurious to health;
- j. The feed has been packaged in bags or totes that previously contained pesticide products, treated seeds, or other hazardous materials; or
- k. The feed has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].

#### **4.1-41-12. Misbranding.**

A person may not distribute any commercial feed that is misbranded. Commercial feed is misbranded if:

- 1. Its label is false or misleading;
- 2. It is distributed under the name of another commercial feed;
- 3. It is not labeled in accordance with this chapter;
- 4. It purports to be or is represented as being a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by rules of the agriculture commissioner; or
- 5. Any information required on the label is not prominently placed, with conspicuousness, so as to render it readable and comprehensible by an individual under customary conditions of purchase and use.

**4.1-41-13. Inspection, sampling, analysis.**

1.
  - a. For purposes of enforcing this chapter, designated officers and employees of the agriculture commissioner may enter and inspect, during normal business hours, any factory, warehouse, or establishment in this state, in which commercial feeds are manufactured, processed, packed, or held for distribution, provided the individuals first present their credentials and written notice to the owner or manager.
  - b. For purposes of enforcing this chapter, designated officers and employees of the commissioner may enter and inspect any vehicle being used to transport or hold commercial feed, provided the individuals first present their credentials and written notice to the owner, manager, or driver.
2. Any inspection authorized under this section must take place at reasonable times, within reasonable limits, and in a reasonable manner. The inspection may include the verification of records and production and control procedures, as necessary to determine compliance with this chapter and rules implemented under this chapter.
3. A separate notice must be given for each authorized inspection. However, a separate notice is not required for each entry made during the period covered by the inspection. Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the individual in charge of the facility or the individual in charge of the vehicle must be notified.
4. If the officer or employee making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give to the owner or manager a receipt describing the samples obtained.
5. If an officer or employee of the commissioner is denied entry as authorized by this section, the commissioner may obtain a warrant directing the owner or manager to submit the premises described in the warrant to inspection.
6. Any officer or employee of the commissioner authorized to enter any structure or vehicle in accordance with this section, may obtain samples and examine records relating to distribution of commercial feeds.
7. Sampling under this section must be conducted in accordance with generally recognized methods and any analysis of the samples taken must be conducted in accordance with generally recognized laboratory methods.
8. The commissioner shall forward the results of any sample analysis to the person named on the label and to the purchaser.
9. If an analysis indicates that a commercial feed has been adulterated or misbranded, within thirty days following receipt of the analysis, the person named on the label may request that the commissioner provide a portion of the sample.
10. In determining for administrative purposes whether a commercial feed is deficient in any component, the commissioner must be guided by the official sample.

**4.1-41-14. Detained commercial feeds.**

1. If the agriculture commissioner has reasonable cause to believe a lot of commercial feed is being distributed in violation of this chapter or any rules implementing this chapter, the commissioner may issue a "withdrawal from distribution" order, prohibiting the distributor from disposing of the lot until written permission is given by the commissioner or by a court. The commissioner shall release the lot of commercial feed when there has been compliance with this chapter and the rules implementing this chapter. If compliance is not obtained within thirty days, the commissioner may begin, or upon request of the distributor shall begin, proceedings for condemnation.
2. Any lot of commercial feed not in compliance with this chapter or rules implementing this chapter is subject to seizure on complaint of the commissioner to a court of competent jurisdiction. If the court finds the commercial feed to be in violation of this chapter or rules implementing this chapter and orders the condemnation of the commercial feed, it must be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. A court may not order disposition of the commercial feed without first giving the claimant an opportunity to apply for its release or for permission to process or relabel the commercial feed to bring it into compliance with this chapter and rules implementing this chapter.

**4.1-41-15. Penalties.**

1. It is a class A misdemeanor for any person to violate this chapter, the rules implementing this chapter, or impeding, obstructing, hindering, preventing, or attempting to prevent the agriculture commissioner from performing the commissioner's duties in connection with this chapter. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the person performing the analysis, or that person's authorized agent, must be accepted as prima facie evidence of the composition.
2. This chapter does not require the commissioner to seek prosecution or take any other legal action based on minor violations of the chapter if the commissioner deems the public interest will be best served by a suitable written warning.
3. Each state's attorney to whom any violation is reported shall institute appropriate proceedings to be prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for prosecution, the commissioner shall provide an opportunity for the distributor to show cause why the violation should not be reported for prosecution.
4. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule implementing this chapter. An injunction must be issued without bond.
5. Any person adversely affected by an act, order, or ruling made pursuant to this chapter may within forty-five days appeal the action to the district court for Burleigh County.

**4.1-41-16. Publications.**

1. The agriculture commissioner may publish information regarding commercial feeds, including their production, sales, and use, and publish a comparison of the analyses of official samples of commercial feeds sold in this state with the analyses guaranteed in their registration and on their label.
2. Information regarding the production and use of commercial feeds may not disclose the operations of any person.

**4.1-41-17. Cooperation with other entities.**

The commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, the federal government, and private associations to carry out this chapter.

**4.1-41-18. Certificates - Fees.**

The agriculture commissioner may:

1. Implement a program to inspect, audit, and certify commercial feed manufacturing and distribution facilities, at the request of an owner;
2. Issue commercial feed export certificates; and
3. Establish a schedule of fees for the services provided under this section.

**4.1-41-19. Deposit of fees.**

The commissioner shall forward all inspection fees, license fees, and registration fees received under this chapter to the state treasurer. The state treasurer shall deposit the first seven hundred twenty-seven thousand five hundred dollars of fees received under this chapter each biennium in the environment and rangeland protection fund and any remaining fees in the general fund.

**SECTION 8.** Chapter 4.1-53 of the North Dakota Century Code is created and enacted as follows:

**4.1-53-01. Definitions.**

As used in this chapter:

1. "Livestock medicine" means all devices, remedies, cures, tonics, powders, proprietary medicines, type A medicated articles, and similar preparations for the treatment or prevention of any disease of livestock, poultry, or other domestic animals which are administered internally for their stimulating, invigorating, curative, or other than nutritive powers, and also all powders, sprays, dips, and other preparations for external use in the curing of scab or the eradication of ticks, lice, and other mites and parasites on livestock, poultry, or other domestic animals. The term does not include medicines that are manufactured, sold, or recommended primarily for human use.
2. "Type A medicated article" means a product with standardized potency containing one or more new animal drugs intended for use in the manufacture of another medicated article or a medicated feed.

**4.1-53-02. Registration of livestock medicine.**

The commissioner shall register any livestock medicine that does not violate this chapter, upon the completion of an application by the manufacturer or distributor of the livestock medicine and the payment of the registration fee prescribed in section 4.1-53-04. Registration of livestock medicine is valid for a two-year period beginning July first and ending June thirtieth of every even-numbered year unless it is canceled by the commissioner because a change is made in the ingredients or formula of the livestock medicine or in the name, brand, or trademark under which the medicine is sold. In the event of any change, the medicine must be registered once again through an original application with the commissioner.

The certificate of registration must include a disclosure of the name and quantity or proportion of each active ingredient and the names of the inert ingredients or fillers.

**4.1-53-03. Regulations for sale.**

A person may not sell, offer for sale, expose for sale, or possess with the intent to sell, any livestock medicine:

1. That is sold under a name, brand, trademark, or labeling that is misleading, deceptive, false, or dangerous to animals under the conditions of use prescribed in the labeling or advertising;
2. That purports to cure any infectious disease of domestic animals for which no genuine cure is known;
3. That has not been registered by the commissioner for sale in this state;
4. That does not have printed or written upon the label of each package sold at retail, in type not less than one-fourth the size of the largest type on the package:
  - a. The common name, in English, of all active ingredients in the order of their predominance in the product;
  - b. A statement of the actual percentage or relative amounts of each ingredient active and inert, unless exemptions are established by rules adopted by the commissioner;
  - c. The net contents, by weight, measure, or numerical count of the package;
  - d. The name and principal address of the manufacturer or person responsible for placing the livestock medicine on the market; and
  - e. Complete and explicit directions for use of the medicine.
5. If the contents of the package as originally manufactured have been removed in whole or in part, and other contents have been placed in the package.

**4.1-53-04. Registration fee.**

A registration fee of forty dollars must be paid to the commissioner for each livestock medicine that is registered prior to each two-year registration ending June thirtieth of every even-numbered year. An application for registration which is received

by the commissioner after July thirty-first of the year in which the application is due must be assessed an additional late registration fee of ten dollars.

#### **4.1-53-05. Commissioner may cancel registration.**

The commissioner may cancel the registration of any livestock medicine that is sold in violation of this chapter.

#### **4.1-53-06. Commissioner may adopt rules, take testimony, grant public hearings.**

The commissioner may adopt rules under chapter 28-32, governing applications for registration, the submission of samples for analysis, and all other matters necessary to give effect to this chapter. The commissioner may take expert and other testimony and, upon request, shall grant a public hearing prior to the cancellation of a registration and also to any manufacturer or distributor whose request for registration of any livestock medicine has been denied.

#### **4.1-53-07. Enforcement.**

The commissioner shall enforce this chapter through inspection, chemical analysis, and any other appropriate method. All samples for analysis must be taken from stocks held within, or intended for sale in, this state. The commissioner may require any manufacturer or distributor applying for registration of a livestock medicine to supply samples of the medicine for analysis. The commissioner may institute any action at law or in equity as may appear necessary to enforce compliance with the provisions of this chapter, and in addition to any other remedy, may apply to the district court for relief by injunction, mandamus, or any other appropriate remedy in equity. In such actions, the commissioner is not required to give or post bond in any action to which the commissioner is a party whether upon appeal or otherwise.

#### **4.1-53-08. Penalty - Criminal - Civil.**

It is a class B misdemeanor for any person to willfully violate a provision of this chapter or any rule adopted under this chapter, or who willfully and falsely represents that any livestock medicine is registered for sale in this state. A person who violates a provision of this chapter or a rule adopted under this chapter is subject to a civil penalty not to exceed five hundred dollars per violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32.

<sup>27</sup> **SECTION 9. AMENDMENT.** Secti on 23-01-25 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-01-25. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function.**

Notwithstanding any other provision of law, any laboratory test or analysis required under chapter 19-13-14.1-41, 19-18, or 19-20.1 must be performed by the state department of health for the agriculture commissioner at no charge.

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<sup>27</sup> Section 23-01-25 was also amended by section 12 of Senate Bill No. 2027, chapter 67.

**SECTION 10. AMENDMENT.** Section 36-21-01 of the North Dakota Century Code is amended and reenacted as follows:

**36-21-01. ~~Regulations governing fraudulent~~Fraudulent registration or representation of purebred livestock - Penalty.**

~~Any~~It is a class B misdemeanor for a person who shallto:

1. ~~Fraudulently~~ represent any animal ~~to be~~as purebred;
2. Post or publish, or cause to be posted or published, any false pedigree or certificate;
3. Procure by fraud, false pretense, or misrepresentation, the registration of any animal ~~which is to be used for service, sale, or exchange in this state, for the purpose of deception as to the animal's pedigree thereof;~~
4. Sell, or otherwise dispose of, any animal as a purebred when the person knows or has reason to believe that the animal is not the offspring of a regularly registered purebred sire and dam; or
5. Sell, or otherwise dispose of, any animal as a registered purebred ~~by the use of~~fusing a false pedigree or certificate of registration;

~~is guilty of a class B misdemeanor.~~

**SECTION 11. AMENDMENT.** Section 36-21-10 of the North Dakota Century Code is amended and reenacted as follows:

**36-21-10. Dogs, wolves, and coyotes worrying livestock or poultry may be killed.**

Any person ~~may kill~~who kills any dog, wolf, or coyote kept as a domestic animal ~~is not liable in any civil action to the owner of the animal:~~

1. When the person sees such animal in the act of killing, chasing, worrying, or damaging any livestock or poultry; or
2. When the person discovers such animal under circumstances ~~which satisfactorily show evidence that the animal recently it has been engaged in~~ killing killed or chasing chased sheep.

~~A person who kills any dog, wolf, or coyote under conditions specified in this section is not liable in any civil action to the owner of such animal.~~

**SECTION 12. AMENDMENT.** Section 36-21-11 of the North Dakota Century Code is amended and reenacted as follows:

**36-21-11. ~~Owners of dogs liable~~Liability for damages done to livestock - Procedure when damages done by pack of dogs.**

The owner of any dog ~~which that~~ kills, wounds, or chases any sheep or other domestic animal or poultry belonging to another person is liable to ~~such other that~~ person for all resulting damages caused thereby. If ~~one or more of several dogs which are than one dog,~~ owned by different persons, participates in the killing, wounding, or chasing of sheep or other domestic animals or poultry ~~while running together,~~ the owners of the respective dogs ~~so running together~~ may be sued jointly, and a joint

~~verdict and judgment may be rendered against the owners of such dogs the owners. If one or more of the defendants pays such a joint judgment and if the damages committed by the dogs may be prorated, the payor or payors may have receive contribution from the defendants who have not paid in an appropriate action in which the respective damages committed by the several dogs running together may be prorated. No exemption is allowed to any person against whom a judgment is entered under the provisions of this section.~~

**SECTION 13. AMENDMENT.** Section 36-21-12 of the North Dakota Century Code is amended and reenacted as follows:

**36-21-12. Killing of livestock by railroad is prima facie evidence of negligence.**

The killing or damaging of any livestock by a railroad car or locomotive is prima facie evidence of ~~carelessness and negligence on the part of~~by the railway company or corporation.

**SECTION 14. AMENDMENT.** Section 36-21-13 of the North Dakota Century Code is amended and reenacted as follows:

**36-21-13. Exemplary damages for wrongful injuries to domestic animals.**

Exemplary damages may be ~~given to the owner of any animal~~applied for any wrongful injury thereto ~~when such injury is to an animal~~ committed willfully or by gross negligence.

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

**36-21-15. Sale of livestock by weight.**

All livestock sold by weight at any public market must be sold subject to the weight at the place of sale on the day sold by the auctioneer.

**SECTION 16. AMENDMENT.** Section 36-21-18 of the North Dakota Century Code is amended and reenacted as follows:

**36-21-18. Title to property to remain in market with seller until settlement made.**

~~Before any~~Any person, association, copartnership, firm, corporation, or limited liability company may become a purchaser ~~that purchases livestock at any sale conducted by an auction market established under the laws of this state, such prospective purchaser must file satisfactory evidence with the operator of such auction market that any~~pay for the livestock with cash, check, draft, or bill of exchange issued and delivered to such auction market in payment of any livestock purchased shall be honored by the drawee bank any other method of payment generally accepted by financial institutions in this state. For a noncash purchase and transfer of title to be valid, the financial institution of the purchaser shall honor the payment at the time of presentation for payment, and until such check, draft, or other bill of exchange has been duly honored and paid, the title to the livestock so purchased is in the auction market making such sale.

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

**36-21-19. Equine processing assessment - Continuing appropriation - Provision of grants.**

1. For each equine processed at an equine processing facility in this state, the owner of the facility shall ~~submit~~remit to the agriculture commissioner, at the time and in the manner directed by the commissioner, an assessment in the amount of five dollars. The commissioner shall forward the assessment to the state treasurer for deposit of the first fifty thousand dollars in the state general fund and any additional amount in the equine processing fund.
2. All moneys in the equine processing fund are appropriated on a continuing basis to the agriculture commissioner to be used as ~~follows~~to:
  - a. ~~The agriculture commissioner shall return to the state general fund the fifty thousand dollars appropriated to the department of commerce for the equine processing facility feasibility study.~~
  - b. ~~Upon completion of the requirement set forth in subdivision a, the commissioner shall:~~
    - (1) Provide an annual grant equaling forty percent of any assessments collected to Dickinson state university in support of the equine management program;
    - (2)b. Provide an annual grant equaling forty percent of any assessments collected to North Dakota state university in support of the equine studies program; and
    - (3)c. Provide an annual grant equaling twenty percent of any assessments collected to public or private entities conducting equine research or offering hippotherapy to individuals with disabilities.

**SECTION 18. REPEAL.** Chapters 19-13.1, 19-14, 36-05, 36-05.1, 36-06, and 36-07 and section 36-21-05 and chapter 36-24 of the North Dakota Century Code are repealed.

Approved April 5, 2017

Filed April 5, 2017

## CHAPTER 69

### HOUSE BILL NO. 1127

(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact subsection 21 of section 4-30-01 and sections 4-30-36.2, 4-30-36.3, and 4-30-36.4 of the North Dakota Century Code, relating to the definition of Pasteurized Milk Ordinance and to the Pasteurized Milk Ordinance revision.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 21 of section 4-30-01 of the North Dakota Century Code is amended and reenacted as follows:

21. "Pasteurized Milk Ordinance" means the ~~2013~~2015 revision of the Grade "A" Pasteurized Ordinance issued by the United States food and drug administration and by the United States department of agriculture's public health service.

**SECTION 2. AMENDMENT.** Section 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines.**

The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - ~~2013~~2015 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines in the Standard Methods.

**SECTION 3. AMENDMENT.** Section 4-30-36.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines.**

The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the Standard Methods and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~2013~~2015 Edition".

**SECTION 4. AMENDMENT.** Section 4-30-36.4 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-36.4. Grade A pasteurized milk ordinance.**

Dairy producers, processors, and manufacturers shall comply with the Pasteurized Milk Ordinance and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ~~2013~~2015 Revision".

Approved March 2, 2017

Filed March 3, 2017

## CHAPTER 70

### HOUSE BILL NO. 1291

(Representatives D. Johnson, Boschee, Trottier)  
(Senators Armstrong, O. Larsen, Luick)

AN ACT to create and enact a new section to chapter 4.1-72 of the North Dakota Century Code, relating to authority to use a uniform summons and complaint by brand inspectors who are licensed peace officers; to amend and reenact section 4.1-72-04 of the North Dakota Century Code, relating to brand inspectors as licensed peace officers; to provide a penalty; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4.1-72-04 of the North Dakota Century Code is amended and reenacted as follows:

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

The chief brand inspector and any individual employed by the North Dakota stockmen's association to serve as a deputy brand inspector must be licensed peace officers in accordance with chapter 12-63 or hold a limited peace officer license under section 12-63-09. As used in this section "peace officer" has the same meaning as in section 12-63-01. These individuals peace officers may exercise the full authority of their license to enforce the brand laws and any other state laws relating to livestock. The chief brand inspector and the deputy brand inspectors may provide aid and assistance to other law enforcement agencies or officers, upon request, provided the requests are not for continuous or ongoing assistance.

**SECTION 2.** A new section to chapter 4.1-72 of the North Dakota Century Code is created and enacted as follows:

**Uniform complaint and summons - Promise to appear - Penalty.**

1. There is established a uniform complaint and summons that may be used by licensed peace officers under section 4.1-72-04 in cases involving violations of this title or other violations of state law. Whenever the complaint and summons established by this section is used, the provisions of the North Dakota Rules of Criminal Procedure apply. The uniform complaint and summons must comply with the North Dakota Rules of Criminal Procedure.
2. The time of court appearance to be specified in the summons must be at least five days after the issuance of the summons unless the defendant demands an earlier hearing.
3. Upon receipt from the defendant of a written promise to appear at the time and place specified in the summons, the defendant must be released from custody. After signing a promise to appear, the defendant must be given a copy of the uniform complaint and summons. Any individual refusing to give a written promise to appear may be arrested if proper cause exists, or

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proceeded against by complaint and warrant of arrest as provided in the North Dakota Rules of Criminal Procedure.

4. If an individual fails to appear in court after promising to do so, the court may issue an arrest warrant.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 5, 2017

Filed April 5, 2017

## CHAPTER 71

### HOUSE BILL NO. 1208

(Representatives D. Johnson, Boschee, Kempenich, Trottier)  
(Senators Dotzenrod, Erbele, O. Larsen, Luick, Wanzek)

AN ACT to amend and reenact section 4.1-73-18 of the North Dakota Century Code, relating to livestock bills of sale; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4.1-73-18 of the North Dakota Century Code is amended and reenacted as follows:

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

1. a. Except as provided in subsection 2, a person may not sell any livestock carrying a recorded brand unless the seller is the owner of the recorded brand and delivers a bill of sale for the livestock to the purchaser. The bill of sale must include:
  - (1) The date;
  - (2) The name, address, and signature of the seller;
  - (3) The name, address, and signature of an individual who is at least eighteen years of age and who can verify the name and signature of the seller;
  - (4) The name and address of the buyer;
  - (5) The total number of animals sold;
  - (6) A description of each animal sold as to sex and color; and
  - (7) A depiction of the recorded brand.
- b. The seller must deliver a bill of sale to the purchaser within fifteen days of the date of the sale.
- c. The buyer shall retain the bill of sale for as long as the buyer owns any animals described in the bill of sale.
- d. The seller shall provide a copy of the bill of sale to the individual hauling the livestock. The individual shall ensure that the document remains with the livestock while in transit.
- e. The bill of sale or a copy of the bill of sale must be shown by the possessor on demand to any law enforcement officer or brand inspector.
- f. The bill of sale is prima facie evidence of the sale of the livestock described in the bill of sale.

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2. Subsection 1 does not apply to the sale of livestock for which a brand inspector has issued a certificate of ownership.
  3. Any person willfully violating this section is guilty of a class B misdemeanor for a first offense and a class A misdemeanor for a second or subsequent offense.

Approved March 14, 2017

Filed March 15, 2017