

# ENVIRONMENTAL QUALITY

## CHAPTER 216

### SENATE BILL NO. 2109

(Energy and Natural Resources Committee)  
(At the request of the State Department of Health)

AN ACT to create and enact a new subsection to section 23.1-04-08 of the North Dakota Century Code, relating to the duties and responsibilities of the department of environmental quality; to amend and reenact section 23.1-01-11, subsection 6 of section 23.1-04-15, and section 23.1-08-10 of the North Dakota Century Code, relating to the duties and responsibilities of the department of environmental quality; to repeal section 23.1-06-03 and chapters 23.1-09 and 61-30 of the North Dakota Century Code, relating to the duties and responsibilities of the department of environmental quality; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23.1-01-11 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-01-11. Appeal from permit proceedings. (Contingent effective date - [See note](#))**

1. An appeal from the issuance, denial, modification, or revocation of a permit issued under chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 may be made by the person who filed the permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. An appeal must be taken within thirty days after the final permit application determination is mailed by first-class mail to the permit applicant and to any interested person who has requested a copy of the final permit determination during the permit hearing process. Except as provided in this section, an appeal of the final permit determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and 28-32-49. The department may substitute final permit conditions and written responses to public comments for findings of fact and conclusions of law. Except for a violation of chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 which occurs after the permit is issued, or any permit condition, rule, order, limitation, or other applicable requirement implementing those chapters which occurs after the permit is issued, any challenge to the department's issuance, modification, or revocation of the permit or permit conditions must be made in the permit hearing process and may not be raised on any collateral or subsequent legal proceeding, and the applicant and any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process.

2. Notwithstanding subsection 1, the department may adopt any procedures governing appeals it determines are necessary and appropriate to develop, implement, or enforce a federally delegated, authorized, or approved program.

**SECTION 2.** A new subsection to section 23.1-04-08 of the North Dakota Century Code is created and enacted as follows:

Any facility required to have a permit under this section which was in existence on July 1, 1981, or the effective date of any statutory or regulatory change in the hazardous waste management which requires the facility to have a permit, and has made an application for a permit under this section, must be treated as having been issued the permit until the final administrative disposition of the application is made.

**SECTION 3. AMENDMENT.** Subsection 6 of section 23.1-04-15 of the North Dakota Century Code is amended and reenacted as follows:

6. An administrative action brought under this chapter must be conducted in accordance with ~~North Dakota Administrative Code article 33-22chapter 28-32.~~

**SECTION 4. AMENDMENT.** Section 23.1-08-10 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-08-10. Fees - Deposit in operating fund. (Contingent effective date - [See note](#))**

The department by rule may prescribe the payment and collection of reasonable fees to issue permits or registration certificates for registering, licensing, or permitting solid waste generators, transporters, and treatment, storage, recycling, or disposal facilities. The fees must be based on the anticipated cost of filing and processing the application, taking action on the requested permit or registration certificate, and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit licensing or registration fees must be deposited in the department operating fund in the state treasury, and any expenditures from the fund are subject to appropriation by the legislative assembly. Applicants for special ~~use~~waste solid waste management facilities shall submit a minimum fee as follows:

1. Twenty thousand dollars for any facility that receives on average one hundred tons [90718 kilograms] or more per day.
2. Ten thousand dollars for any facility which receives on average more than ten tons [9071.80 kilograms] but less than one hundred tons [90718 kilograms] per day.

**SECTION 5. REPEAL.** Section 23.1-06-03 and chapters 23.1-09 and 61-30 of the North Dakota Century Code are repealed.

**SECTION 6. EFFECTIVE DATE.** This Act is effective upon filing with the secretary of state, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received before filing with the secretary of state, this Act is effective on the date certification is received.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 217

### SENATE BILL NO. 2107

(Energy and Natural Resources Committee)  
(At the request of the State Department of Health)

AN ACT to create and enact a new section to chapter 23.1-01 of the North Dakota Century Code, relating to the certification of environmental laboratories; to repeal section 61-28.1-07 of the North Dakota Century Code, relating to certification of laboratories; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 23.1-01 of the North Dakota Century Code is created and enacted as follows:

#### **Environmental laboratories - Certification required - Fees.**

1. The department shall establish and administer a certification program for environmental laboratories. The department may:
  - a. Establish standards and procedures for certifying environmental laboratories;
  - b. Issue certifications to all applicants who satisfy the requirements for certification under this section and any rules under this section, to renew certifications, and to deny, suspend, or revoke certifications for cause after notice and opportunity for hearing;
  - c. Specify in a certification the parameters and analytical procedures the environmental laboratory is certified to conduct;
  - d. Conduct onsite evaluations of certified environmental laboratories and applicants for certification;
  - e. Establish reasonable fees for certifying environmental laboratories, which must be deposited in the department operating fund and spent subject to appropriation by the legislative assembly;
  - f. Reject any testing or data submitted by an environmental laboratory not certified by the department;
  - g. Refuse to accept testing or data from a certified environmental laboratory when the department reasonably determines that the results do not meet reasonable criteria for validation; and
  - h. Adopt and enforce rules as necessary for implementation of this section.
2. Unless exempted by the department, all environmental laboratories that conduct tests or prepare data for submittal to the department must be certified by the department and comply with any conditions imposed by the certification.

3. The department may grant interim approval to operate an environmental laboratory required to obtain certification under this section if the laboratory was certified under any department program as of July 31, 2019. An environmental laboratory with interim approval shall apply immediately for certification once the department adopts rules for the issuance of certifications under this section. The interim approval is valid until the department acts on the application.

**SECTION 2. REPEAL.** Section 61-28.1-07 of the North Dakota Century Code is repealed.

**SECTION 3. EFFECTIVE DATE.** This Act is effective on August 1, 2019, if the Legislative Council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification in this section is not received by August 1, 2019, this Act is effective on the date certification is received.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 218

### SENATE BILL NO. 2345

(Senators Wanzek, Dotzenrod, Luick)  
(Representatives Brandenburg, D. Johnson, Pollert)

AN ACT to amend and reenact sections 11-33-02.1, 11-33-22, 23-25-11, 23.1-06-15, 58-03-11.1, and 58-03-17 of the North Dakota Century Code, relating to animal feeding operations and zoning regulations; to provide a report to the legislative management; to provide an effective date; to provide a contingent effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 11-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **11-33-02.1. Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:

a. ~~"Concentrated Animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:~~

(1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for at least forty-five days in a twelve-month period; and

(2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:

(1) The production of timber or forest products; or

(2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.

c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.

- d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a ~~a concentrated~~ an animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of health.
2. For purposes of this section, animal units are determined as follows:
- a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
  - b. ~~One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;~~
  - c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;~~
  - d. ~~One cow-calf pair equals 1.0 animal unit;~~
  - e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;~~
  - f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;~~
  - g. ~~One horse equals 2.0 animal units;~~
  - h. ~~One sheep or lamb equals 0.1 animal unit;~~
  - i. ~~One turkey equals 0.0182 animal unit;~~
  - j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
  - k. ~~One laying hen equals 0.012 animal unit;~~
  - l. ~~One duck equals 0.033 animal unit; and~~
  - m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight, provided in subdivision c of subsection 7 of section 23-25-11.~~
3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.
4. A board of county commissioners may not preclude the development of a ~~a concentrated~~ an animal feeding operation in the county.
5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.

6. A board of county commissioners may adopt regulations that establish different standards for the location of ~~concentrated~~animal feeding operations based on the size of the operation and the species and type being fed.
7. If a regulation would impose a substantial economic burden on a ~~concentrated~~an animal feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any ~~concentrated~~animal feeding operation in existence before the effective date of the regulation.
8.
  - a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for ~~concentrated~~animal feeding operations and related agricultural operations are less than those in other districts.
  - b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for ~~concentrated~~animal feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
  - c. The setbacks provided for in this subsection may not vary by more than fifty percent from exceed those established in subdivision a of subsection 7 of section 23-25-11 unless the county can demonstrate compelling, objective evidence specific to the county which requires a greater setback within the county, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23-25-11 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23-25-11, a person whose animal feeding operation will be or has been affected by the applicable county ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful.
  - d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a ~~concentrated~~an animal feeding operation.
9. A person intending to construct an animal feeding operation may petition the board of county commissioners for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the state department of health under section 11-33-22 before the date the petition was received by the county. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of county commissioners does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the county zoning regulations. If the county allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's

authority under this section, and the approval process must comply with this section. The county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application. If the board of county commissioners determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the county may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the state department of health, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. A board of county commissioners may not:

- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section; or
- b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations.

**(Contingent effective date - See note) Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:

- a. ~~"Concentrated Animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:~~
  - (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for at least forty-five days in a twelve-month period; and
  - (2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.
- b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
  - (1) The production of timber or forest products; or
  - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
- c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
- d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a ~~concentrated~~ an animal feeding operation,

including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of environmental quality.

2. For purposes of this section, animal units are determined as follows:
  - a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
  - b. ~~One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;~~
  - c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;~~
  - d. ~~One cow-calf pair equals 1.0 animal unit;~~
  - e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;~~
  - f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;~~
  - g. ~~One horse equals 2.0 animal units;~~
  - h. ~~One sheep or lamb equals 0.1 animal unit;~~
  - i. ~~One turkey equals 0.0182 animal unit;~~
  - j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
  - k. ~~One laying hen equals 0.012 animal unit;~~
  - l. ~~One duck equals 0.033 animal unit; and~~
  - m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weights as provided in subdivision c of subsection 7 of section 23.1-06-15.~~
3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.
4. A board of county commissioners may not preclude the development of a concentrated animal feeding operation in the county.
5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
6. A board of county commissioners may adopt regulations that establish different standards for the location of concentrated animal feeding operations based on the size of the operation and the species and type being fed.

7. If a regulation would impose a substantial economic burden on a ~~concentrated~~an animal feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any ~~concentrated~~animal feeding operation in existence before the effective date of the regulation.
8.
  - a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for ~~concentrated~~animal feeding operations and related agricultural operations are less than those in other districts.
  - b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for ~~concentrated~~animal feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
  - c. The setbacks provided for in this subsection may not ~~vary by more than fifty percent from~~exceed those established in subdivision a of subsection 7 of section 23.1-06-15 unless the county can demonstrate compelling, objective evidence specific to the county which requires a greater setback within the county, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23.1-06-15, a person whose animal feeding operation will be or has been affected by the applicable county ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful.
  - d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a ~~concentrated~~an animal feeding operation.
9. A person intending to construct an animal feeding operation may petition the board of county commissioners for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the department of environmental quality under section 11-33-22 before the date the petition was received by the county. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of county commissioners does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the county zoning regulations. If the county allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application. If the board of county commissioners determines the animal

feeding operation would comply with zoning regulations or fails to object under this section, the county may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the department of environmental quality, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. A board of county commissioners may not:

- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section; or
- b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations.

**SECTION 2. AMENDMENT.** Section 11-33-22 of the North Dakota Century Code is amended and reenacted as follows:

**11-33-22. Regulation of concentrated animal feeding operations - Central repository.**

1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation, ~~as defined in section 11-33-02.1,~~ and which is promulgated by a county after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to ~~concentrated~~ animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.
2. For purposes of this section:
  - a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
  - b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

**(Contingent effective date - See note) Regulation of concentrated animal feeding operations - Central repository.**

1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation ~~and, as defined in section 11-33-02.1,~~ is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10.
2. For purposes of this section:
  - a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are~~

~~concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~

- b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

**SECTION 3. AMENDMENT.** Section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

**23-25-11. Regulation of odors - Rules. (Contingent repeal - [See note](#))**

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [150 meters] of the property boundary of the agricultural operation.
2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:
  - a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [800 meters] of the source of the odor after the source of the odor has been built or established;
  - b. At any point located beyond one-half mile [800 meters] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or
  - c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [800 meters] under either section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is greater than one-half mile [800 meters], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [800 meters] from the facility under subdivision b, except for any

residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the pre-existing facility.

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.
4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the state department of health. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.
5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the state department of health has established a specific limitation by rule.
6. For purposes of this section, ~~a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is:~~
  - a. "Business" means a commercial building used primarily to carry on a for-profit or nonprofit business which is not residential and not used primarily to manufacture or produce raw materials, products, or agricultural commodities;
  - b. "Campground" means a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis;

- c. "Church" means a building owned by a religious organization and used primarily for religious purposes;
  - d. "Park" means a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law;
  - e. "Public building" means a building owned by a county, city, township, school district, park district, or other unit of local government; the state; or an agency, industry, institution, board, or department of the state; and
  - f. "School" means a public school or nonprofit, private school approved by the superintendent of public instruction.
7. a. In a county or township that does not regulate the nature, scope, and location of an animal feeding operation under section 41-33-0211-33-02.1 or section 58-03-11.1, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.
- (1) If there are fewer than three hundred animal units, there is no minimum setback requirement.
  - (2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [.80 kilometer].
  - (3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers] and the setback for any other animal operation is one-half mile [.80 kilometer].
  - (4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers] and the setback for any other animal operation is three-fourths mile [1.20 kilometers].
  - (5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers] and the setback for any other animal operation is one mile [1.60 kilometers].
- b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is closer.
- c. For purposes of this section:
- (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
  - (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
  - (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;

- (4) One cow-calf pair equals 1.0 animal unit;
  - (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
  - (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
  - (7) One horse equals 2.0 animal units;
  - (8) One sheep or weaned lamb equals 0.1 animal unit;
  - (9) One turkey equals 0.0182 animal unit;
  - (10) One chicken, ~~other than a laying hen,~~ equals ~~0.0080~~0.01 animal unit;
  - (11) ~~One laying hen equals 0.012 animal unit;~~
  - (12) One duck or goose equals ~~0.0330~~0.2 animal unit; and
  - (13)~~(12)~~ Any weaned livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
- d. In a county or township that regulates the nature, scope, or location of an animal feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant for an animal feeding operation permit shall submit to the department with the permit application the zoning determination made by the county or township under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1, unless the animal feeding operation is in existence by January 1, 2019, and there is no change in animals or animal units which would result in an increase in the setbacks provided for in this section. The department may not impose additional odor setback requirements.
- e. An animal feeding operation is not subject to zoning regulations adopted by a county or township after the date an application for the animal feeding operation is submitted to the department, provided construction of the animal feeding operation commences within three years from the date the final permit is issued and any permit appeals are exhausted. Unless there is a change to the location of the proposed animal feeding operation or there is a change in animal units which would result in an increase in the setbacks under this section, this exemption remains in effect if the department requires the applicant to submit a revised application.
- 8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.
  - 9. Neither a county nor a township may regulate or through any means impose restrictions or requirements on animal feeding operations or on other agricultural operations except as permitted under sections ~~44-33-02~~11-33-02.1 and ~~58-03-11~~58-03-11.1.

**SECTION 4. AMENDMENT.** Section 23.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-06-15. Regulation of odors - Rules. (Contingent effective date - [See note](#))**

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the person making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.
2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:
  - a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established;
  - b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or
  - c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the pre-existing facility.
3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the department of environmental quality, and only by inspectors certified by the department who have successfully completed a department-sponsored

odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.

4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the department of environmental quality. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.
5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the department of environmental quality has established a specific limitation by rule.
6. For purposes of this section, ~~a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is:~~
  - a. "Business" means a commercial building used primarily to carry on a for-profit or nonprofit business which is not residential and not used primarily to manufacture or produce raw materials, products, or agricultural commodities;
  - b. "Campground" means a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis;
  - c. "Church" means a building owned by a religious organization and used primarily for religious purposes;
  - d. "Park" means a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law;
  - e. "Public building" means a building owned by a county, city, township, school district, park district, or other unit of local government; the state; or an agency, industry, institution, board, or department of the state; and

- f. "School" means a public school or nonprofit, private school approved by the superintendent of public instruction.
7. a. In a county or township that does not regulate the nature, scope, and/or location of an animal feeding operation under section 41-33-0211-33-02.1 or section 58-03-11.1, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.
- (1) If there are fewer than three hundred animal units, there is no minimum setback requirement.
  - (2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [.80 kilometer].
  - (3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers], and the setback for any other animal operation is one-half mile [.80 kilometer].
  - (4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers], and the setback for any other animal operation is three-fourths mile [1.20 kilometers].
  - (5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers], and the setback for any other animal operation is one mile [1.60 kilometers].
- b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is closer.
- c. For purposes of this section:
- (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
  - (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
  - (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
  - (4) One cow-calf pair equals 1.0 animal unit;
  - (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
  - (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
  - (7) One horse equals 2.0 animal units;

- (8) One sheep or weaned lamb equals 0.1 animal unit;
- (9) One turkey equals 0.0182 animal unit;
- (10) One chicken, ~~other than a laying hen,~~ equals ~~0.0080.01~~ 0.01 animal unit;
- (11) ~~One laying hen equals 0.012 animal unit;~~
- (12) One duck or goose equals ~~0.0330.2~~ 0.2 animal unit; and
- (13)~~(12)~~ Any weaned livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms], whether single or combined animal weight.

d. In a county or township that regulates the nature, scope, or location of an animal feeding operation under section 11-33-02.1 or 58-03-11.1, an applicant for an animal feeding operation permit shall submit to the department with the permit application the zoning determination made by the county or township under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1, unless the animal feeding operation is in existence by January 1, 2019, and there is no change in animals or animal units which would result in an increase in the setbacks provided for in this section. The department may not impose additional odor setback requirements.

e. An animal feeding operation is not subject to zoning regulations adopted by a county or township after the date an application for the animal feeding operation is submitted to the department, provided construction of the animal feeding operation commences within three years from the date the application is submitted. Unless there is a change to the location of the proposed animal feeding operation, this exemption remains in effect if the department requires the applicant to submit a revised application.

- 8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.
- 9. A county or township may not regulate or impose restrictions or requirements on animal feeding operations or other agricultural operations except as permitted under sections ~~41-33-02.1~~ 11-33-02.1 and ~~58-03-11.1~~ 58-03-11.1.

**SECTION 5. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**58-03-11.1. Farming and ranching regulations - Requirements - Limitations - Definitions.**

- 1. For purposes of this section:
  - a. ~~"Concentrated Animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:~~

- (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for at least forty-five days in a twelve-month period; and
  - (2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.
- b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
- (1) The production of timber or forest products; or
  - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
- c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
- d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a ~~concentrated~~ animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the state department of health.
2. For purposes of this section, animal units are determined as follows:
- a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
  - b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a equals 1.0 animal unit;~~
  - c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;~~
  - d. ~~One cow-calf pair equals 1.0 animal unit;~~
  - e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;~~
  - f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;~~
  - g. ~~One horse equals 2.0 animal units;~~
  - h. ~~One sheep or lamb equals 0.1 animal unit;~~
  - i. ~~One turkey equals 0.0182 animal unit;~~

- j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
  - k. ~~One laying hen equals 0.012 animal unit;~~
  - l. ~~One duck equals 0.033 animal unit; and~~
  - m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight provided under subdivision c of subsection 7 of section 23-25-11.~~
3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
  4. A regulation may not preclude the development of a ~~concentrated~~ animal feeding operation in the township.
  5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
  6. A board of township supervisors may adopt regulations that establish different standards for the location of ~~concentrated~~ animal feeding operations based on the size of the operation and the species and type being fed.
  7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ animal feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any ~~concentrated~~ animal feeding operation in existence before the effective date of the regulation.
  8.
    - a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for ~~concentrated~~ animal feeding operations and related agricultural operations are less than those in other districts.
    - b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for ~~concentrated~~ animal feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
    - c. The setbacks provided for in this subsection may not ~~vary by more than fifty percent from~~ exceed those established in subdivision a of subsection 7 of section 23-25-11 unless the township can demonstrate compelling, objective evidence specific to the township which requires a greater setback within the township, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23-25-11 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23-25-11, a person whose animal feeding operation will be or has been affected by the applicable township ordinance may request the

agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful.

- d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a ~~concentrated~~an animal feeding operation.

9. A person intending to construct an animal feeding operation may petition the board of township supervisors for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the state department of health under section 58-03-17 before the date the petition was received by the township. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of township supervisors does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the township zoning regulations. If the township allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application. If the board of township supervisors determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the township may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the state department of health, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. A board of township supervisors may not:

- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section; or
- b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations.

**(Contingent effective date - See note) Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:

- a. "ConcentratedAnimal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:

- 
- (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and
  - (2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.
- b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
    - (1) The production of timber or forest products; or
    - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
  - c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
  - d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a ~~concentrated~~ animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of environmental quality.
2. For purposes of this section, animal units are determined as follows:
- a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
  - b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a equals 1.0 animal unit;~~
  - c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;~~
  - d. ~~One cow-calf pair equals 1.0 animal unit;~~
  - e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;~~
  - f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;~~
  - g. ~~One horse equals 2.0 animal units;~~
  - h. ~~One sheep or lamb equals 0.1 animal unit;~~
  - i. ~~One turkey equals 0.0182 animal unit;~~

- j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
  - k. ~~One laying hen equals 0.012 animal unit;~~
  - l. ~~One duck equals 0.033 animal unit; and~~
  - m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight provided under subdivision c of subsection 7 of section 23.1-06-15.~~
3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
  4. A regulation may not preclude the development of a ~~concentrated~~an animal feeding operation in the township.
  5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
  6. A board of township supervisors may adopt regulations that establish different standards for the location of ~~concentrated~~animal feeding operations based on the size of the operation and the species and type being fed.
  7. If a regulation would impose a substantial economic burden on a ~~concentrated~~an animal feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any ~~concentrated~~animal feeding operation in existence before the effective date of the regulation.
  8.
    - a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for ~~concentrated~~animal feeding operations and related agricultural operations are less than those in other districts.
    - b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for ~~concentrated~~animal feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
    - c. The setbacks provided for in this subsection may not ~~vary by more than fifty percent from~~exceed those established in subdivision a of subsection 7 of section 23.1-06-15 unless the township can demonstrate compelling, objective evidence specific to the township which requires a greater setback within the township, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23.1-06-15, a person whose animal feeding operation will be or has been affected by the applicable township ordinance may request the

agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful.

- d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a ~~concentrated~~an animal feeding operation.

9. A person intending to construct an animal feeding operation may petition the board of township supervisors for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the department of environmental quality under section 58-03-17 before the date the petition was received by the township. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of township supervisors does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the township zoning regulations. If the township allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application. If the board of township supervisors determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the township may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the department of environmental quality, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. A board of township supervisors may not:

- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section; or
- b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations.

**SECTION 6. AMENDMENT.** Section 58-03-17 of the North Dakota Century Code is amended and reenacted as follows:

**58-03-17. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

4. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation, as defined in section 58-03-11.1, and which is promulgated by a township after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.

2. For purposes of this section:

- a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
- b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

**(Contingent effective date - See note) Regulation of concentrated animal feeding operations - Central repository.**

- 1. Any zoning regulation that pertains to a ~~concentrated~~an animal feeding operation and which is promulgated by a township after July 31, 2007, as defined in section 58-03-11.1, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10. Any zoning regulation that pertains to a ~~concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the department of environmental quality for inclusion in the central repository.~~

2. For purposes of this section:

- a. ~~"Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.~~
- b. ~~"Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

**SECTION 7. REPORT TO THE LEGISLATIVE MANAGEMENT - PERMIT APPLICATION APPROVALS AND DENIALS.** On or before October 1, 2020, the department of environmental quality shall provide a report to the legislative management on all animal feeding operation permit applications approved or denied by the department, including the relevant county and township zoning and setback determinations, and related issues during the first full year of the 2019-21 biennium. Through October 1, 2020, all local government entities that review animal feeding operation permit applications shall report to the department of environmental quality each permit approval and denial within thirty days of the decision to approve or deny the application.

**SECTION 8. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE - EXPIRATION DATE.** The portions of sections 1, 2, 5, and 6 of this Act not subject to an existing contingency become effective on August 1, 2019, and remain in effect until the legislative council receives certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been

transferred to the department of environmental quality. The remainder of sections 1, 2, 5, and 6 become effective on August 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If, by August 1, 2019, the legislative council has not received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality, the remainder of sections 1, 2, 5, and 6 of this Act become effective on the date certification is received.

Approved May 1, 2019

Filed May 2, 2019

## CHAPTER 219

### HOUSE BILL NO. 1200

(Representatives D. Ruby, Becker, Johnston, Kasper, Lanning, Lefor, Marschall)  
(Senators Hogue, Kreun, Vedaa)

AN ACT to create and enact section 23-29-07.12 and a new section to chapter 23.1-08 of the North Dakota Century Code, relating to prohibiting a political subdivision from regulating an auxiliary container; to amend and reenact sections 23-29-03 and 23.1-08-02 of the North Dakota Century Code, relating to the definition of auxiliary container; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 23-29-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-29-03. Definitions. (Contingent repeal - [See note](#))**

1. "Auxiliary container" means a bag, cup, bottle, straw, or other packaging, whether reusable or single-use, which is:
  - a. Made of cloth, paper, plastic, corrugated material, aluminum, glass, postconsumer recycled material, or a similar material or substrate, including a coated, laminated, or multilayer substrate; and
  - b. Designated for transporting, consuming, or protecting merchandise, food, or beverages from or at a food service or retail facility.
2. "Collection" means the aggregation of solid waste from the places at which the waste was generated.
- ~~2-3.~~ "Department" means the state department of health.
- ~~3-4.~~ "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
- ~~4-5.~~ "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
- ~~5-6.~~ "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
- ~~6-7.~~ "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.

- ~~7-8.~~ "Litter" means discarded and abandoned solid waste materials that are not special waste or industrial waste.
- ~~8-9.~~ "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or other similar appliance.
- ~~9-10.~~ "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities; by public and private facilities; and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.
- ~~10-11.~~ "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.
- ~~11-12.~~ "Person" means any individual, corporation, limited liability company, partnership, firm, association, trust, estate, public or private institution, group, federal agency, political subdivision of this state or any other state or political subdivision thereof, and any legal successor, representative agent, or agency of the foregoing.
- ~~12-13.~~ "Political subdivision" means a city, county, township, or solid waste management authority.
- ~~13-14.~~ "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from solid waste.
- ~~14-15.~~ "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
- a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
  - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
- ~~15-16.~~ "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
- ~~16-17.~~ "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production;

waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.

47-18. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.

48-19. "Transport" means the offsite movement of solid waste.

**SECTION 2.** Section 23-29-07.12 of the North Dakota Century Code is created and enacted as follows:

**23-29-07.12. Prohibition on political subdivision ordinance regulating auxiliary containers.**

1. Notwithstanding any other provision of law, a political subdivision may not adopt or enforce an ordinance that:
  - a. Regulates the use or disposition of an auxiliary container;
  - b. Prohibits or restricts an auxiliary container; or
  - c. Imposes a fee, charge, or tax on an auxiliary container.
2. This section may not be construed to prohibit or restrict:
  - a. A curbside or commercial recycling program;
  - b. A designated residential or commercial recycling location;
  - c. A political subdivision from adopting or enforcing an ordinance prohibiting littering; or
  - d. A political subdivision or a public or private facility from using or regulating an auxiliary container on property owned by the respective political subdivision or public or private facility.

**SECTION 3. AMENDMENT.** Section 23.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-08-02. Definitions. (Contingent effective date - [See note](#))**

1. "Auxiliary container" means a bag, cup, bottle, straw, or other packaging, whether reusable or single-use, which is:
  - a. Made of cloth, paper, plastic, corrugated material, aluminum, glass, postconsumer recycled material, or a similar material or substrate, including a coated, laminated, or multilayer substrate; and
  - b. Designated for transporting, consuming, or protecting merchandise, food, or beverages from or at a food service or retail facility.
2. "Collection" means the aggregation of solid waste from the places at which the waste was generated.

- 2-3. "Department" means the department of environmental quality.
- 3-4. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
- 4-5. "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23.1-04, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
- 5-6. "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
- 6-7. "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.
- 7-8. "Litter" means discarded and abandoned solid waste materials that are not special waste or industrial waste.
- 8-9. "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or similar appliance.
- 9-10. "Municipal waste" means solid waste that includes garbage; refuse; and trash generated by households, motels, hotels, recreation facilities, public and private facilities; and commercial, wholesale, private, and retail businesses. The term does not include special waste or industrial waste.
- 10-11. "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.
- 11-12. "Political subdivision" means a city, county, township, or solid waste management authority.
- 12-13. "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from solid waste.
- 13-14. "Solid waste" means any garbage; refuse; sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
- a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
  - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point

sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].

- 44-15. "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
- 45-16. "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23.1-04 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
- 46-17. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
- 47-18. "Transport" means the offsite movement of solid waste.

**SECTION 4.** A new section to chapter 23.1-08 of the North Dakota Century Code is created and enacted as follows:

**Prohibition on political subdivision ordinance regulating auxiliary containers.**

1. Notwithstanding any other provision of law, a political subdivision may not adopt or enforce an ordinance that:
  - a. Regulates the use or disposition of an auxiliary container;
  - b. Prohibits or restricts an auxiliary container; or
  - c. Imposes a fee, charge, or tax on an auxiliary container.
2. This section may not be construed to prohibit or restrict:
  - a. A curbside or commercial recycling program;
  - b. A designated residential or commercial recycling location;
  - c. A political subdivision from adopting or enforcing an ordinance prohibiting littering; or
  - d. A political subdivision or a public or private facility from using or regulating an auxiliary container on property owned by the respective political subdivision or public or private facility.

**SECTION 5. EFFECTIVE DATE - EXPIRATION DATE.** If, by August 1, 2019, the legislative council has not received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality, section 2 of this Act becomes

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effective on August 1, 2019, and remains in effect until the date certification is received, after which section 2 of this Act is ineffective. If the certification is received before August 1, 2019, section 2 of this Act does not become effective.

Sections 3 and 4 of this Act become effective on August 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by August 1, 2019, sections 3 and 4 of this Act become effective on the date certification is received.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 220

### SENATE BILL NO. 2108

(Energy and Natural Resources Committee)  
(At the request of the Department of Health)

AN ACT to create and enact a new subsection to section 23.1-08-23 of the North Dakota Century Code, relating to citizen suit and intervention; to amend and reenact section 23.1-08-04 of the North Dakota Century Code, relating to coal combustion residuals; to provide a penalty; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 23.1-08-04 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-08-04. Coal combustion ~~residues~~residuals - Present use and disposal deemed acceptable. (Contingent effective date - [See note](#))**

Notwithstanding any other provision of law, the legislative assembly deems the present use and disposal of coal combustion ~~residues~~residuals to be acceptable and that present regulation allows for the beneficial use of coal combustion ~~residues~~residuals in concrete, for other construction applications, and for other innovative uses and allows for safe disposal without coal combustion ~~residues~~residuals being regulated as a hazardous waste. If a federal law or regulation is adopted pertaining to the use and disposal of coal combustion ~~residues~~residuals, this section does not prohibit the state from seeking state primacy of the federal program.

**SECTION 2.** A new subsection to section 23.1-08-23 of the North Dakota Century Code is created and enacted as follows:

The following citizen participation provisions apply to violations of this chapter relating to coal combustion residuals or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter relating to coal combustion residuals:

- a. A person having an interest that may be affected adversely by a violation of this chapter may commence a civil action to compel compliance with this chapter, or a rule, order, or permit issued under this chapter.
- b. Notice of the violation must be given to the department and to an alleged violator sixty days before commencement of a citizen suit brought under this subsection.
- c. A person with an interest that may be affected adversely by a violation of this chapter may intervene as a matter of right in a civil action brought by the department to require compliance with this chapter.

**SECTION 3. EFFECTIVE DATE.** This Act is effective on August 1, 2019, if the Legislative Council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties

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from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification in this section is not received by August 1, 2019, this Act is effective on the date certification is received.

Approved April 4, 2019

Filed April 5, 2019

## CHAPTER 221

### HOUSE BILL NO. 1263

(Representatives Dockter, Grueneich, D. Ruby)  
(Senator Rust)

AN ACT to create and enact a new subsection to section 39-26-07 of the North Dakota Century Code, relating to right of an owner to reclaim an abandoned vehicle; to amend and reenact sections 23.1-15-01, 23.1-15-03, 23.1-15-05, 23.1-15-06, 23.1-15-07, 39-26-02, and 39-26-06 of the North Dakota Century Code, relating to custody and disposition of abandoned motor vehicles; to provide a penalty; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-01. Definitions. (Contingent effective date - [See note](#))**

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

1. "Abandoned motor vehicle" means a motor vehicle, as defined in section 39-01-01, that has remained for a period of more than forty-eight hours on public property illegally or lacking vital component parts, ~~or has remained for a period of more than forty-eight hours~~ located on private property without consent of the person in control of the property or in an inoperable condition such that it has no substantial potential further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section 23.1-15-09. An antique automobile, as defined in section 39-04-10.4, and other motor vehicles to include parts car and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this chapter.
2. "Collector" means the owner of one or more special interest vehicles that collects, purchases, acquires, trades, or disposes of special interest vehicles or parts of special interest vehicles for the person's own use in order to restore, preserve, and maintain a special interest vehicle or antique vehicle.
3. "Commercial towing service" means a registered business in North Dakota that tows motor vehicles.
4. "Department" means the department of environmental quality.
- 4.5. "Emergency towing" means the towing of a vehicle due to a motor vehicle accident, mechanical breakdown on public roadway, or other emergency-related incident necessitating vehicle removal for public safety with or without the owner's consent.

6. "Parts car" means a motor vehicle generally in nonoperable condition which is owned by the collector to furnish parts to restore, preserve, and maintain a special interest vehicle or antique vehicle.
- 5-7. "Special interest vehicle" means a motor vehicle that is at least twenty years old and has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.
- 6-8. "Unit of government" includes a state department or agency, a county, city, township, or other political subdivision.
- 7-9. "Vital component parts" means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels.

**SECTION 2. AMENDMENT.** Section 23.1-15-03 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-03. Custody of abandoned vehicle. (Contingent effective date - [See note](#))**

Units of government may take into custody and impound an abandoned motor vehicle. If requested by an owner, lessee, tenant, or occupant of private property, a commercial towing service may remove and take into custody an abandoned motor vehicle located on the private property.

**SECTION 3. AMENDMENT.** Section 23.1-15-05 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-05. Notice to owner and law enforcement of abandoned vehicle. (Contingent effective date - [See note](#))**

1. When an abandoned motor vehicle does not fall within the provisions of section 23.1-15-04, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle, and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 23.1-15-06, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale/disposal of the vehicle at a public auction pursuant to section 23.1-15-07.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy.
3. Subject to section 23.1-15-04, a commercial towing service that takes an abandoned motor vehicle into custody shall provide notice to the law

enforcement agency having jurisdiction in the location from which the motor vehicle was towed within twelve hours after completing the tow.

4. Notice under subsection 3 must include:
  - a. The license plate number and state of registration;
  - b. The location from which the motor vehicle was towed;
  - c. The location to which the motor vehicle was towed;
  - d. The name, address, and telephone number of the commercial towing service that towed and is storing the motor vehicle; and
  - e. A description of the motor vehicle, including make, model, year, and color.
5. A commercial towing service that violates subsection 3 may not collect a storage fee under section 23.1-15-06 and shall return the motor vehicle to the registered owner at no cost to the owner.

**SECTION 4. AMENDMENT.** Section 23.1-15-06 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-06. Right of owner to reclaim abandoned vehicle. (Contingent effective date - [See note](#))**

1. The owner, secured parties, or ~~any~~ a lienholder of an abandoned motor vehicle has a right to reclaim such vehicle from the unit of government taking ~~it~~ the motor vehicle into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within ~~fifteen~~ thirty days after the date of the notice required by section 23.1-15-05.
2. The owner, secured parties, or a lienholder of an abandoned motor vehicle, within thirty days after receipt of the notice required by section 23.1-15-05, has a right to reclaim the vehicle from a commercial towing service taking the motor vehicle into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody.
3. Storage charges under subsection 2 may not exceed fifty dollars per day for an abandoned passenger vehicle, pickup, van, or truck that does not exceed twenty thousand registered gross weight pounds [9071.85 kilograms].
4. Nothing in this chapter may be construed to impair any lien of a garagekeeper under the laws of this state or the right of a lienholder or secured parties to foreclose. For the purposes of this section, "garagekeeper" is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair, or maintenance of motor vehicles.
5. This section also applies to emergency towing.

**SECTION 5. AMENDMENT.** Section 23.1-15-07 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-07. ~~Public sale~~Disposal of vehicle - Disposition of proceeds. (Contingent effective date - [See note](#))**

1. An abandoned motor vehicle not more than seven model years of age taken into custody by a unit of government and not reclaimed under section 23.1-15-06 must be sold to the highest bidder at public auction or sale, following reasonable published notice. The purchaser must be given a receipt in a form prescribed by the department which is sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.
2. ~~From the proceeds of the sale of an abandoned motor vehicle, the unit of government shall reimburse itself for the cost of towing, preserving, and storing the vehicle, and all notice and publication costs incurred pursuant to this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be deposited in the state treasury as provided in section 1 of article IX of the Constitution of North Dakota and credited to the permanent school fund.~~ If a commercial towing service takes custody of an abandoned motor vehicle and the vehicle is not reclaimed under section 23.1-15-06, the commercial towing service may obtain a release from the department of transportation which is sufficient title to dispose of the vehicle. The release entitles the commercial towing service to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on the abandoned vehicle must be removed and destroyed upon receipt of the new title.
3. ~~From the proceeds of the sale of an abandoned motor vehicle, the unit of government or the commercial towing service may reimburse itself for the cost of towing, preserving, and storing the vehicle, and for all notice and publication costs incurred under this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1.~~

**SECTION 6. AMENDMENT.** Section 39-26-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-26-02. Definitions. (Contingent repeal - [See note](#))**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Abandoned motor vehicle" means a motor vehicle, as defined in section 39-01-01, that has remained for a period of more than forty-eight hours on public property illegally or lacking vital component parts, or is located on private property without consent of the person in control of such property or in an inoperable condition such that it has no substantial potential further use consistent with its usual functions unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section 39-26-10. An antique automobile, as defined in section 39-04-10.4, and other motor vehicles to include parts car and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this chapter.
2. "Collector" means the owner of one or more special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest vehicles

or parts thereof for the person's own use in order to restore, preserve, and maintain a special interest vehicle or antique vehicle.

3. "Commercial towing service" means a registered business in North Dakota that tows motor vehicles.
4. "Department" means the state department of health.
5. "Emergency towing" means the towing of a vehicle due to a motor vehicle accident, mechanical breakdown on public roadway, or other emergency-related incident necessitating vehicle removal for public safety with or without the owner's consent.
6. "Parts car" means a motor vehicle generally in nonoperable condition which is owned by the collector to furnish parts to restore, preserve, and maintain a special interest vehicle or antique vehicle.
- ~~6-7.~~ "Special interest vehicle" means a motor vehicle which is at least twenty years old and which has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.
- ~~7-8.~~ "Unit of government" includes a state department or agency, a county, city, township, or other political subdivision.
- ~~8-9.~~ "Vital component parts" means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels.

**SECTION 7. AMENDMENT.** Section 39-26-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-26-06. Notice to owner of abandoned vehicle. (Contingent repeal - [See note](#))**

1. When an abandoned motor vehicle does not fall within the provisions of section 39-26-05, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 39-26-07, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the disposal of the vehicle pursuant to section 39-26-08.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy.

3. Subject to section 39-26-05, a commercial towing service that takes an abandoned motor vehicle into custody shall provide notice to the law enforcement agency having jurisdiction in the location from which the motor vehicle was towed within twelve hours after completing the tow.
4. Notice under subsection 3 must include:
  - a. The license plate number and state of registration;
  - b. The location from which the motor vehicle was towed;
  - c. The location to which the motor vehicle was towed;
  - d. The name, address, and telephone number of the commercial towing service that towed and is storing the motor vehicle; and
  - e. A description of the motor vehicle, including make, model, year, and color.
5. A commercial towing service that violates subsection 3 may not collect a storage fee under section 39-26-07 and shall return the motor vehicle to the registered owner at no cost to the owner.

**SECTION 8.** A new subsection to section 39-26-07 of the North Dakota Century Code is created and enacted as follows:

This section also applies to emergency towing.

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

Approved March 26, 2019

Filed March 27, 2019