

LIVESTOCK

CHAPTER 275

SENATE BILL NO. 2051

(Barth, Schultz)

(From Legislative Audit and Fiscal Review Committee Study)

LIVESTOCK DEALER LICENSING

AN ACT to amend and reenact sections 36-04-01, 36-04-03, 36-04-04, 36-04-05, 36-04-07, 36-04-09, 36-04-10, 36-04-11, 36-04-12, 36-04-13, 36-04-14, 36-04-15, 36-04-16, 36-04-17, 36-04-18, 36-04-19, and 36-04-20 of the North Dakota Century Code; to repeal sections 36-04-06 and 36-04-08 of the North Dakota Century Code, all relating to livestock dealer licensing and bonding.

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

SECTION 1. AMENDMENT.) Section 36-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-01. "DEALER" DEFINED.) In this chapter, unless the context or subject matter otherwise requires:

1. "Dealer" shall mean any person, copartnership, association, or corporation engaged in the business of buying or dealing in horses, mules, cattle, hogs, sheep, or wool from the producer, terminal market, or livestock auction market for resale, slaughter, or shipment within or without the state, and also resale in the local market.
2. "Department" shall mean the department of agriculture.
3. "Commissioner" shall mean the commissioner of agriculture.

SECTION 2. AMENDMENT.) Section 36-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-03. DEALER'S LICENSE REQUIRED - AGENT LICENSED - LIABILITY OF OWNER FOR AGENT'S ACTS.) All dealers shall be licensed as provided in this chapter. No agent shall act for any such dealer unless the dealer is licensed and has designated such agent or agents to act in his behalf and has notified the department of such appointment in his application for a license or in a separate written instrument and requested the department to issue to such agent or agents an agent's identification card in such form as may be prescribed by the commissioner. Agents,

as such, shall not deal in their own names or issue a check or any other commercial paper except in the name of their principals. A dealer shall be accountable and responsible for all the acts of his designated agent or agents.

SECTION 3. AMENDMENT.) Section 36-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-04. APPLICATION FOR LICENSE - CONTENTS - REFUSAL TO LICENSE - SUSPENSION AND REVOCATION.)

1. Before entering into a business of a kind described in this chapter and annually, on or before January first, each dealer shall file an application for a license to transact such business with the department on a form prescribed by it. The application shall show:
 - a. The nature of the business for which a license is desired and whether it is for the business of buying livestock or wool, or for both such businesses;
 - b. The name or names of the persons applying for the license;
 - c. The full name of each member thereof if the applicant is a firm, association, or partnership, or the names of the officers thereof if the applicant is a corporation;
 - d. The name of the agent or agents of the applicant;
 - e. The postoffice address and the principal place of business of the applicant;
 - f. If the applicant is a foreign corporation, its principal place of business without this state, the name of the state in which it is incorporated, and that it has complied with the laws of this state relating to foreign corporations; and
 - g. Such other facts as the department may prescribe.
2. The commissioner shall refuse to issue or renew a license if the applicant:
 - a. Has not filed a surety bond in the form and amount required under the provisions of this chapter;
 - b. Has not satisfactorily demonstrated that his current assets exceed his current liabilities; or
 - c. Has been found by the commissioner to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions.

Whenever the commissioner finds that any livestock dealer has

violated the provisions of this subsection, he may suspend the license of such offender in the manner provided by law.

SECTION 4. AMENDMENT.) Section 36-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-05. DEALER TO FILE BOND WITH DEPARTMENT - ADDITIONAL BOND MAY BE REQUIRED.) Each applicant for a license under the provisions of this chapter shall file with his application a bond issued by an approved surety company. The department shall be named as the obligee in each such bond but the bond shall be held for the purpose of protecting and for the benefit of any person selling livestock or wool, as the case may be, to the licensed dealer or his agent. Such bond shall be conditioned for:

1. The faithful performance by the dealer of his duties as such;
2. The compliance by the dealer with all of the provisions of this Code relating to the purchase of livestock or wool, as the case may be;
3. The full and complete payment to the seller for all livestock or wool purchased by the dealer; and
4. The full protection of any person who deals with such dealer.

Each such bond shall cover the license period of the dealer or such greater time as the commissioner may prescribe and shall be approved as to amount, form, and sufficiency by the department. The minimum amount of bond shall be five thousand dollars, and shall be for such greater amount as may be determined by computing the amount of bond on the same basis as prescribed for dealers subject to the provisions of the Packers and Stockyards Act, 1921 (7 U.S.C. 181). The department may demand an additional or increased bond whenever in its judgment the volume of business of the principal warrants such demand.

In lieu of the bond required of dealers under the provisions of this section, the applicant may file with the department the dealer's bond filed by him with the United States department of agriculture and in effect pursuant to the provisions of the Packers and Stockyards Act, 1921 (7 U.S.C. 181), naming the commissioner as the trustee of such bond. Bonds from out-of-state applicants may be in favor of a trustee who shall be a financially responsible, disinterested person satisfactory to the commissioner. The minimum amount of such bond shall be five thousand dollars, unless the department shall determine that the amount of such bond is insufficient in any instance, in which event the department shall require the reasonable amount of the bond required to protect the public interest.

SECTION 5. AMENDMENT.) Section 36-04-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-07. ISSUANCE OF LICENSES - FEES - TERM OF LICENSE -

LICENSES NOT TRANSFERABLE.) The department shall issue to each applicant who has complied with the provisions of this chapter a license of the kind applied for upon the payment by him of fees as follows:

1. For a livestock dealer's license, twenty-five dollars;
2. For a wool dealer's license, ten dollars;
3. Penalty fee for any late applicant's application or late fee shall be five dollars per month from January first of any year.

Each license issued under the provisions of this chapter shall license the conduct of the business described therein at the place or places named in the application therefor, and shall expire on the thirty-first day of December next following the date of its issue. Licenses issued hereunder are not transferable between persons or places.

SECTION 6. AMENDMENT.) Section 36-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-09. DISPOSITION OF FEES - INSPECTIONS.) All fees collected by the department under the provisions of this chapter shall be credited to the general fund of the state treasury. The provisions of this chapter shall be enforced by the commissioner and the regular inspectors of the department. Any person who shall hinder, impede, resist, or otherwise interfere in any way with any such inspector while engaged in the lawful performance of his official duties in the enforcement of the provisions of this chapter shall be subject to the penalty provided for herein.

SECTION 7. AMENDMENT.) Section 36-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-10. DEPARTMENT MAY REFUSE TO GRANT AND MAY REVOKE LICENSE.) The department may decline to grant a license, or may revoke a license which it has granted, when it is satisfied that:

1. The applicant or licensee has violated any of the laws of this state governing the handling, shipment, or transportation of livestock or wool;
2. The applicant or licensee has been guilty of deceit, fraud, dishonesty, forgery, or theft as a dealer in livestock or wool, or in dealing therein;
3. The applicant made or caused to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
4. The applicant has failed to keep and maintain suitable records, which disclose all purchases and sales of

- livestock, or has refused, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any and all of such records relating to his business; or
5. The applicant has failed or refused to furnish the information required under the terms of this chapter and as prescribed by the department.
 6. Terminal markets, auction markets, and weigh stations are subject to the provisions of this section.

SECTION 8. AMENDMENT.) Section 36-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-11. HEARING HAD BEFORE LICENSE REVOKED - REGULATIONS GOVERNING - APPEAL FROM ORDER.) Before any license issued shall be revoked, the licensee shall be furnished with a copy of the complaint made against him, and a hearing shall be had thereon before the department to determine whether or not such license shall be revoked. The licensee shall be given notice of such hearing at least fifteen days prior thereto. Such notice may be served either by registered or certified mail addressed to the given address of the licensee or in the manner provided by this Code and the North Dakota Rules of Civil Procedure for the service of a summons. At the time and place fixed for the hearing, the department, or any member or duly authorized agent thereof, shall take and receive evidence, administer oaths, examine witnesses, and take the testimony offered, and shall submit and file the same with the department. The department upon the evidence received, shall make and file an order either dismissing the proceedings or revoking the license. The aggrieved party may take an appeal to the district court of Burleigh County.

SECTION 9. AMENDMENT.) Section 36-04-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-12. DEPARTMENT TO BECOME TRUSTEE UPON DEFAULT IN DEALER'S BOND.) If any dealer defaults in the provisions of any bond provided for in this chapter, he shall be deemed to be insolvent within the meaning of this chapter. The cause of action for damages upon any such bond, and the amount recovered in any cause of action for the conversion of livestock or wool, as the case may be, purchased by such dealer while such license is in force and effect, shall constitute a trust fund in the hands of the department for all persons having a cause of action against such dealer on said bond.

SECTION 10. AMENDMENT.) Section 36-04-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-13. APPLICATION BY DEPARTMENT FOR APPOINTMENT OF TRUSTEE - HEARING - APPOINTMENT.) Upon the insolvency of a dealer as defined in section 36-04-12, the department shall apply to the district court of Burleigh County for the appointment of itself

as trustee. Upon such notice to the dealer as the court shall prescribe, but not exceeding ten days, or upon waiver of such notice in writing by the dealer, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court that the dealer is insolvent within the meaning of this chapter and that it would be for the best interest of persons holding claims against the dealer for the purchase price of livestock or wool sold to such dealer or to his agent that the department shall execute such trust, the court shall issue an order appointing the department as a trustee, without bond, and the department shall proceed to perform its duties as such trustee in the manner set out in this chapter without further direction from the court.

SECTION 11. AMENDMENT.) Section 36-04-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-14. DEPARTMENT TO TAKE POSSESSION OF RECORDS AND PROPERTY AS TRUSTEE - NOTICE TO FILE CLAIMS - WHEN CLAIMS BARRED.) Upon its appointment as trustee, the department shall be entitled to possession of all the books and records of the dealer which were kept by him in connection with such business, and shall take possession thereof, and of all livestock or wool purchased by such dealer under the license granted to him and still remaining in his possession. The department, as such trustee, by publication of a notice published once each week for three successive weeks in the official newspaper of the county in which the dealer operated, shall notify all persons having claims against the dealer to file the same with the department. Any such person who shall fail to file his claim with the department and to surrender to it any receipts which he obtained from such dealer within forty-five days after the last publication of such notice shall be barred from participation upon such claim in any fund marshaled by the department as prescribed in this chapter.

SECTION 12. AMENDMENT.) Section 36-04-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-15. MAINTENANCE OF ACTIONS TO MARSHAL ASSETS OF INSOLVENT DEALER.) The department, in its capacity as trustee, may maintain suits or special proceedings in the name of the state of North Dakota upon its own relation but for the benefit of all claimants against the dealer's bond, upon such bond and against any person who shall have converted any of the livestock or wool, for the purpose of marshaling all of the trust assets of the insolvent dealer and distributing the same among the claimants. Recourse shall be had against the bond, however, before recourse is had against a person who knowingly and in good faith converted any of such livestock or wool unless the department shall deem it necessary that all such remedies be pursued at the same time.

SECTION 13. AMENDMENT.) Section 36-04-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-16. REMEDY OF CLAIMANTS - SEPARATE ACTION BY CLAIMANT PERMISSIBLE.) No claimant shall have a separate cause of action against the dealer's bond unless the department shall fail or refuse to apply for its own appointment as trustee as provided in this chapter. The provisions of this chapter shall not prohibit any claimant, either independently or in conjunction with other claimants, from pursuing concurrently with the department any other remedy which he or they may have against the dealer, or against the property of the dealer, for the whole of his or their claims or for any deficiency which occurs after payments have been made from the trust fund.

SECTION 14. AMENDMENT.) Section 36-04-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-17. APPEAL OR COMPROMISING OF ACTION BY THE DEPARTMENT.) The department may prosecute an action for any claims arising under the provisions of this chapter in any court, may appeal from any adverse judgment to the courts of last resort, and may settle and compromise any such action whenever in its judgment it will be for the best interests of the claimants. Upon payment to it of the amount of any such compromise, or of the full amount of any bond or conversion claim, the department may exonerate the person compromising or paying the same from further liability growing out of such action.

SECTION 15. AMENDMENT.) Section 36-04-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-18. MONEYS COLLECTED ON CLAIMS TO BE DEPOSITED IN BANK OF NORTH DAKOTA.) All moneys collected and received by the department as trustee shall be deposited in the Bank of North Dakota pending the marshaling of said fund.

SECTION 16. AMENDMENT.) Section 36-04-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-19. DEPARTMENT TO FILE REPORT UPON RECOVERY OF TRUST FUND - NOTICE TO CLAIMANTS - APPROVING OR MODIFYING REPORT.) Upon recovery of the trust fund, or so much thereof as it is possible to recover or as is necessary to pay all outstanding claims, the department shall file its report in court showing the amount payable upon each claim, after recognizing any proper liens or pledges thereon or assignments thereof or deductions therefrom, with legal interest thereon. If the fund shall prove insufficient to redeem all claims in full, the fund shall be prorated among the claimants in such manner as the department shall deem fair and equitable. Thereupon the court shall cite such claimants upon such notice by mail as it shall prescribe to appear upon a day fixed in the notice and show cause why such report should not be approved and distribution of said fund made as outlined in the report. Upon such hearing, the court shall approve such report or modify the same as justice may require and shall issue an order directing the

distribution of the fund and discharging the department from its trust.

SECTION 17. AMENDMENT.) Section 36-04-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-20. ATTORNEY GENERAL TO REPRESENT DEPARTMENT AND MAY EMPLOY ASSISTANTS - DEPARTMENT NEED NOT PAY COURT COSTS.) The attorney general shall represent the department in any action or proceeding brought under the provisions of this chapter, and he may employ outside legal assistance when he deems it necessary to do so, and may deduct the expense in connection therewith from the trust fund. The department shall not be required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought by it under the provisions of this chapter when such fee, cost, or disbursement accrues to the state or to a county of this state.

SECTION 18. REPEAL.) Sections 36-04-06 and 36-04-08 of the North Dakota Century Code are hereby repealed.

Approved March 27, 1973

CHAPTER 276

HOUSE BILL NO. 1203
(K. Johnson, Rundle, Gackle, Stoltenow, Thorsgard)

BRUCELLOSIS VACCINATION OF CALVES

AN ACT to amend and reenact section 36-15-21 of the North Dakota Century Code, and to repeal section 36-15-20 of the North Dakota Century Code, relating to brucellosis vaccination of calves, and providing a penalty.

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

SECTION 1. AMENDMENT.) Section 36-15-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-15-21. CALFHOOD VACCINATION AGAINST BRUCELLOSIS REQUIRED - PENALTY.) No person shall bring into this state any female cattle over ten months of age for dairy or breeding purposes within this state that have not been officially calfhood vaccinated against brucellosis. "Officially calfhood vaccinated" shall mean a bovine female animal vaccinated against brucellosis under the supervision of a federal or state veterinary official within age limits prescribed by the North Dakota livestock sanitary board in compliance with USDA recommended uniform methods and rules, with a vaccine approved by the North Dakota state veterinarian, and permanently identified as such a vaccinate and reported at the time of vaccination to the appropriate state or federal agency cooperating in the eradication of brucellosis. However, the board in its discretion may grant a hearing to any person under such rules and regulations as the board may prescribe, as to whether or not an exception should be made to the provisions of this section. An appeal may be taken from the decision of the board under the provisions of chapter 28-32. Any person who shall bring into this state or acquire within this state any cattle contrary to the provisions of this section, shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

SECTION 2. REPEAL.) Section 36-15-20 of the North Dakota Century Code is hereby repealed.

Approved March 24, 1973