

Introduced by

1 A BILL for an Act

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

3 **SECTION 1. AMENDMENT.** Section 19-07-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **~~19-07-01. Eggs to be graded – Exemption.~~**

6 ~~All eggs sold or offered for sale to an ultimate consumer in this state must be candled,~~
7 ~~graded, and labeled with the correct grade designation. "Eggs" in this chapter means eggs in~~
8 ~~the shell which are the product of the domesticated chicken. A producer of eggs when selling~~
9 ~~only eggs of the producer's own flock production is exempt from the provisions of this chapter.~~

NOTE: The contents of this section have been moved to the new section in Chapter 4.1-19
created in Section 3.

10 **SECTION 2. AMENDMENT.** Section 19-07-02 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **~~19-07-02. Rulemaking power.~~**

13 ~~The agriculture commissioner may adopt appropriate rules pursuant to chapter 28-32 to~~
14 ~~establish registration of egg dealers and to establish standards for candling, grading, and~~
15 ~~inspecting eggs as to size, quality, purity, strength, holding requirements, transportation,~~
16 ~~labeling, and sanitation. The agriculture commissioner must be guided in establishing the~~
17 ~~standards by United States department of agriculture regulations governing the grading and~~
18 ~~inspecting of eggs. The state department of health may adopt appropriate rules pursuant to~~
19 ~~chapter 28-32 to establish standards for proper labeling and temperature during the retail~~
20 ~~storage and sale of shell eggs.~~

NOTE: The contents of this section relating to rules of the Agriculture Commissioner have
been moved to the new section in Chapter 4.1-19 created in Section 3. The contents of this

section relating to rules of the State Department of Health have been moved to the new section in Chapter 19-02.1 created in Section 4.

1 **SECTION 3.** A new section to chapter 4.1-19 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Eggs to be graded - Exemption - Definition.**

4 All eggs sold or offered for sale to an ultimate consumer in this state must be candled,
5 graded, and labeled with the correct grade designation.

6 A producer of eggs when selling only eggs of the producer's own flock production is exempt
7 from the provisions of this section.

8 As used in this section, "eggs" means eggs in the shell which are the product of the
9 domesticated chicken.

10 The agriculture commissioner may adopt appropriate rules under chapter 28-32 to provide
11 for registration of egg dealers and standards for candling, grading, and inspecting eggs as to
12 size, quality, purity, strength, holding requirements, transportation, labeling, and sanitation in
13 conformity with United States department of agriculture regulations governing the grading and
14 inspecting of eggs.

15 **SECTION 4.** A new section to chapter 19-02.1 of the North Dakota Century Code is created
16 and enacted as follows:

17 **Eggs - Labeling and temperature rules.**

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

22 **SECTION 5. REPEAL.** Chapter 19-07 of the North Dakota Century Code is repealed.

17.0020.03000

Sixty-fifth
Legislative Assembly
of North Dakota

Introduced by

SECOND DRAFT:
Prepared by the Legislative Council staff for the
Agriculture and Natural Resources Committee
February 2016

- 1 A BILL for an Act to repeal chapter 4-32 of the North Dakota Century Code, relating to the
2 interstate compact on pest control.

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

- 4 **SECTION 1. REPEAL.** Chapter 4-32 of the North Dakota Century Code is repealed.

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**3 **SECTION 1. AMENDMENT.** Section 4-13.2-01 of the North Dakota Century Code is
4 amended and reenacted as follows:5 **4-13.2-014.1-19-01. Definitions**~~Definition.~~6 As used in this chapter, "poultry" means ~~chickens, turkeys, domestic geese, and domestic~~
7 ~~ducks~~domesticated fowl bred for the primary purpose of producing eggs or meat, or both,
8 including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds,
9 but excluding doves and pigeons.

NOTE: The Department of Agriculture suggested this definition after the December 3, 2015, committee meeting review of the bill draft.

10 **SECTION 2. AMENDMENT.** Section 4-13.2-02 of the North Dakota Century Code is
11 amended and reenacted as follows:12 **4-13.2-024.1-19-02. Administration - Enforcement.**13 ~~Within the department of agriculture there must be a poultry division~~The agriculture
14 commissioner shall administer and enforce this chapter.

NOTE: It appears there is currently no "poultry division" within the department but the functions are still performed. Removing the "division" requirement gives the commissioner greater administrative flexibility.

15 **SECTION 3. AMENDMENT.** Section 4-13.2-03 of the North Dakota Century Code is
16 amended and reenacted as follows:17 **4-13.2-034.1-19-03. Purposes - Duties.**18 The agriculture commissioner ~~may adopt rules pursuant to chapter 28-32 to effectuate the~~
19 ~~purposes of this chapter, and the agriculture commissioner, or the commissioner's designee,~~
20 ~~shall enforce this chapter. The agriculture commissioner shall:~~

1. ~~Work toward improving~~Promote improved poultry breeding practices and cooperate with the board of animal health in controlling and eradicating ~~communicable~~contagious or infectious diseases of poultry.
2. Act as the official state agency for North Dakota in cooperation with the ~~bureau of animal industry~~veterinary services, animal plant health inspection service, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan.
3. Act as the state agency to cooperate with the United States department of agriculture, to provide federal-state grading service for poultry and poultry products offered for sale at the retail level, to supervise the federal-state poultry grading service, and to enforce regulations at the retail level as to identification by grade of all poultry sold.
4. Promote ~~generally~~ the welfare and improvement of the poultry industry and the marketing of poultry and poultry products within the state ~~through such means and in such manner as may be deemed by the commissioner conducive to such~~ improvement.
5. ~~Enforce the licensing and bonding requirements provided by this chapter.~~
6. ~~Administer chapter 4.1-12, at the advice of the North Dakota turkey federation~~Adopt rules under chapter 28-32 as necessary to effectuate the purposes of this chapter.

NOTE: Enforcement is now required by Section 4.1-19-02 as part of administering the chapter. Chapter 4.1-12, referred to in subsection 6, is administered by the Agriculture Commissioner. The commissioner may expend funds under Chapter 4.1-12 after consultation with a committee appointed by the North Dakota Turkey Federation. The Department of Agriculture suggested revisions in subsections 1 and 2 after the December 3, 2015, committee meeting review of the bill draft.

SECTION 4. AMENDMENT. Section 4-13.2-05 of the North Dakota Century Code is amended and reenacted as follows:

4-13.2-054.1-19-04. Licensing - Fees - Bonding.

~~No~~A person may ~~must be licensed by the agriculture commissioner to~~ engage in the business of poultry buyer, processor, packer, hatchery operator, ~~baby chick jobber, or salesman,~~ without first securing from the North Dakota department of agriculture a license to engage ~~therein~~as a salesperson. ~~All such licenses~~Licenses issued under this chapter expire on the first day of July of each year, ~~first~~ and must be issued or renewed only upon payment to the ~~department~~commissioner of the license fees ~~set forth herein together with~~fee of five dollars for each business activity subject to licensing and the furnishing of such ~~the bond as may be~~

1 required by rules and regulations ~~promulgated~~adopted by the agriculture commissioner. The-
2 ~~annual license fee for each foregoing operation is five dollars. Failure~~Engaging in a business
3 activity subject to licensing under this chapter without a valid license or failure to pay any
4 license fee or to furnish the required bond within ten days after the same ~~it~~it becomes due or
5 required ~~constitutes~~is a violation of this chapter.

NOTE: The Department of Agriculture suggested revisions to the language of this section after the December 3, 2015, committee meeting review of the bill draft.

6 **SECTION 5. AMENDMENT.** Section 4-13.2-06 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-13.2-064.1-19-05. Penalty.**

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

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-18 of the North Dakota Century Code, relating
2 to licenses to grow or process industrial hemp for commercial or research purposes; and to
3 repeal chapter 4-41 of the North Dakota Century Code, relating to licenses to grow or process
4 industrial hemp for commercial or research purposes.

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

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

8 **4.1-18-01. Industrial hemp (cannabis sativa L.) - Oilseed.**

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

14 **4.1-18-02. Industrial hemp - Licensure - Reporting requirements - Continuing**
15 **appropriation.**

- 16 1. Any person desiring to grow or process viable kernels of industrial hemp for
17 commercial purposes or research shall apply to the agriculture commissioner for a
18 license on a form prescribed by the commissioner.
- 19 a. The application for a license must include the name and address of the applicant
20 and the legal description of the land area to be used to produce or process
21 industrial hemp.
- 22 b. Except for employees of the state seed department, the agricultural experiment
23 station, or the North Dakota state university extension service involved in
24 research and extension-related activities, the commissioner shall require each

1 applicant for initial licensure to submit to a statewide and nationwide criminal
2 history record check. The nationwide criminal history record check must be
3 conducted in the manner provided in section 12-60-24. All costs associated with
4 the criminal history record check are the responsibility of the applicant.

5 c. Criminal history records provided to the commissioner under this section are
6 confidential. The commissioner may use the records only in determining an
7 applicant's eligibility for licensure.

8 d. Any person with a prior criminal conviction may be denied licensure.

9 e. If the applicant has completed the application process to the satisfaction of the
10 commissioner, the commissioner shall issue the license, which is valid for a
11 period of one year.

12 f. Any person licensed under this section is presumed to be growing or processing
13 industrial hemp for commercial purposes or research.

14 g. A license required by this section is not conditioned on or subject to review or
15 approval by the United States drug enforcement agency.

16 h. This subsection does not apply to any person licensed by the United States drug
17 enforcement agency to conduct research.

18 i. An application for a license under this subsection may be filed with the
19 commissioner at any time.

20 2. a. Each licensee must file with the commissioner documentation indicating that the
21 seeds planted were of a type and variety certified to have no more than
22 three-tenths of one percent tetrahydrocannabinol and a copy of any contract to
23 grow industrial hemp.

24 b. Each licensee shall notify the commissioner of the sale or distribution of any
25 industrial hemp grown by the licensee, and the names of the persons to whom
26 the hemp was sold or distributed.

27 3. The commissioner shall adopt rules to allow the industrial hemp to be tested during
28 growth for tetrahydrocannabinol levels and to allow for supervision of the industrial
29 hemp during its growing, harvesting, and processing.

30 4. To provide sufficient funds to pay costs associated with monitoring and testing
31 industrial hemp in the state, the commissioner shall assess each applicant a fee of five

1 dollars per acre. The minimum fee assessed must be one hundred fifty dollars per
2 applicant. Collections from this fee must be deposited in the commissioner's operating
3 fund and are appropriated to the commissioner to be used to enforce this chapter.

4 **4.1-18-03. Industrial hemp seed - Authorized activity - Research.**

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

10 **SECTION 2. REPEAL.** Chapter 4-41 of the North Dakota Century Code is repealed.

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**3 **SECTION 1. AMENDMENT.** Section 36-24-01 of the North Dakota Century Code is
4 amended and reenacted as follows:5 **~~36-24-014.1-31-01.~~ Definitions.**6 In this chapter, ~~unless the context otherwise requires:~~

- 7 1. "Adulterated" means a
- ~~whole carcass, part of a carcass,~~
- or meat food product:
-
- 8 a. That
- ~~bears or contains~~
- includes
- a poisonous or harmful substance that may
-
- 9 render it injurious to health;
-
- 10 b. That
- ~~bears or contains~~
- includes
- a chemical pesticide that is unsafe under the
-
- 11 federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
-
- 12 c. That
- ~~bears or contains~~
- includes
- a food or color additive that is unsafe under the
-
- 13 federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
-
- 14 d. That
- ~~contains~~
- includes
- a filthy, putrid, or decomposed substance or is for any
-
- 15 other reason unfit for human food;
-
- 16 e. That has been prepared, packed, or held under unsanitary conditions;
-
- 17 f. That
- ~~is wholly or partly~~
- includes
- the product of an animal that has died in a
-
- 18 manner other than slaughter
- or includes the product of an animal condemned by
-
- 19
- reason of disease that existed at the time of slaughter;
-
- 20 g. The container of which
- ~~is wholly or partly composed of~~
- includes
- a poisonous or
-
- 21 harmful substance that may make the contents harmful to health;
-
- 22 h. That has been intentionally subjected to radiation, unless the use of the radiation
-
- 23 conformed with a regulation or exemption in effect under the federal Food, Drug,
-
- 24 and Cosmetic Act [21 U.S.C. 301 et seq.];

- 1 i. That is damaged or inferior and that damage or inferiority has been concealed; or
2 j. That has had a substance added to it or mixed or packed with it so as to increase
3 its bulk or weight, or make it appear better than or of greater value than it is.
- 4 2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, horses,
5 equines, bison, other large domesticated animals, and poultry.
- 6 3. ~~"Commissioner" means the agriculture commissioner.~~ "Carcass" includes all or any part
7 of an animal carcass.
- 8 4. ~~"Container" includes a can, pot, tin, canvas, or other~~ means a receptacle containing ~~of a~~
9 meat food product.
- 10 5. "Custom processing" means slaughtering, eviscerating, dressing, or processing an
11 animal carcass or ~~processing~~ meat food products for the owner of the animal carcass
12 or of the meat food products, if all meat food products derived from the custom
13 ~~operation~~ processing are returned to the that owner of the animal or of the meat
14 products.
- 15 6. "Inspector" means an inspector appointed by the commissioner to perform duties
16 under this chapter.
- 17 7. "Intrastate commerce" means commerce within this state.
- 18 78. "Meat food product" means a product usable as human food ~~and made wholly or in~~
19 ~~part from meat or a portion of~~ which contains any part of an animal carcass. The term
20 does not include any product that contains meat or other portions of the carcasses of
21 animals any part of an animal carcass in a relatively small proportion or which
22 historically ~~have~~ has not been considered by consumers as a product of the meat food
23 industry, and which is not represented as a meat food product.
- 24 89. "Poultry" includes domesticated ~~chickens, ducks, geese, pheasants, quail, ratites, and~~
25 ~~turkeys~~ fowl bred for the primary purpose of producing eggs or meat, or both, including
26 chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds,
27 but excluding doves and pigeons.
- 28 910. "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise
29 manufactured or processed.

NOTE: "Commissioner" will be defined in Chapter 4.1-01 for purposes of all of Title 4.1 to be the Agriculture Commissioner or the Commissioner's designee or authorized representative, to eliminate the frequent repetition of that phrasing. "Carcass" is defined to eliminate the repetition in this chapter of whole carcass or part of a carcass. "Poultry" is

redefined to match the definition in bill draft 17.0022.02000, which was suggested by the Department of Agriculture after the December 3, 2015, committee meeting review of that bill draft.

1 **SECTION 2. AMENDMENT.** Section 36-24-02 of the North Dakota Century Code is

2 amended and reenacted as follows:

3 **36-24-024.1-31-02. Inspectors - Appointments - Duties.**

- 4 1. The commissioner shall appoint inspectors to examine and inspect meat food products
5 prepared solely for intrastate commerce in a slaughtering, meat canning, salting,
6 packing, or similar establishment. The inspections must take place at any time during
7 which the slaughtering of animals or the preparation of meat food products is being
8 conducted. Upon completing an inspection, the inspector shall mark, stamp, tag, or
9 label the product "North Dakota inspected and passed" if it is unadulterated or as
10 "North Dakota inspected and condemned" if the product is found to be adulterated.
- 11 2. The commissioner shall appoint inspectors to examine and inspect each slaughtering,
12 meat canning, salting, packing, or similar establishment in which meat food products
13 are prepared solely for intrastate commerce. The commissioner shall adopt rules of
14 sanitation applicable to these establishments. ~~If any facility does not meet the sanitary~~
15 ~~conditions required by the commissioner, the~~The commissioner may not allow any
16 meat food product from ~~that~~any facility not meeting the sanitary conditions required by
17 those rules to be labeled, marked, stamped, or tagged as "North Dakota inspected
18 and passed".
- 19 3. Meat food products inspected and passed under this chapter may be sold at retail in
20 this state.
- 21 4. Neither the commissioner, nor any inspector appointed by the commissioner, may
22 undertake any activity that is duplicative of an activity performed by meat inspectors of
23 the United States department of agriculture.

24 **SECTION 3. AMENDMENT.** Section 36-24-03 of the North Dakota Century Code is

25 amended and reenacted as follows:

26 **36-24-034.1-31-03. Access by inspectors - Penalty.**

- 27 1. ~~The~~For purposes of enforcement of this chapter, the commissioner and any authorized
28 ~~representative of the commissioner have access to~~may enter and inspect:
 - 29 a. Any place where food or any other product, the manufacture, sale, use, or
30 transportation of which is restricted, regulated, or prohibited by a law of this state,

- 1 is or may be manufactured, prepared, stored, sold, used, transported, offered for
- 2 sale or transportation, or possessed with intent to use, sell, or transport;
- 3 b. Any place where an animal is pastured or stabled;
- 4 c. Any ~~car or other carriage~~vehicle used to transport a meat food product or an
- 5 animal;
- 6 d. Any place where food is or may be cooked, prepared, sold, or kept for sale to or
- 7 for the public or distributed as a part of the compensation of an employee or
- 8 agent; and
- 9 e. Any place where a meat food product may be manufactured, sold, used, offered
- 10 for sale or transportation, or possessed with intent to use, sell, or transport.
- 11 2. The commissioner ~~and any authorized representative of the commissioner~~ may
- 12 inspect any container believed to hold food, a food ingredient, or some other product,
- 13 the manufacture, use, sale, or transportation of which is restricted, regulated, or
- 14 forbidden by state law, and may take samples from it for analysis.
- 15 3. It is a class A misdemeanor for any person to obstruct entry or inspection under this
- 16 chapter or to fail, upon request, to assist in an inspection authorized by this chapter.

17 **SECTION 4. AMENDMENT.** Section 36-24-04 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **36-24-044.1-31-04. Marks and labels.**

- 20 1. If a meat food product ~~which~~that is inspected and marked "North Dakota inspected
- 21 and passed" is being placed or packed in a container, the person preparing the
- 22 product shall attach to the container, under supervision of an inspector, a label
- 23 indicating that the product has been "North Dakota inspected and passed". An
- 24 inspection under this chapter is not complete until the product has been sealed or
- 25 enclosed in the container, under the supervision of an inspector.
- 26 2. A meat food product inspected under this chapter and found not to be adulterated
- 27 must bear, directly or on its container, a legible label or official mark as required by the
- 28 commissioner.
- 29 3. The commissioner shall prescribe by rule the style and size of type to be used in
- 30 labeling meat under this chapter and standards of identity, composition, and fill of

1 container for meat food products inspected under this chapter, but the standards must
2 be consistent with those established under federal law.

3 **SECTION 5. AMENDMENT.** Section 36-24-05 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **36-24-054.1-31-05. False or misleading marks, labels, and containers.**

6 A person may not sell in intrastate commerce any meat food product subject to inspection
7 under this chapter under a name, mark, or label ~~which~~that is false or misleading, or in a
8 container of a misleading form or size. If the commissioner has reason to believe that a mark,
9 label, or container is false or misleading, the commissioner may direct that its use be withheld
10 unless the mark, label, or container is modified in a manner approved by the commissioner. If
11 the person using or proposing to use the mark, label, or container does not accept the
12 determination of the commissioner, the person may request a hearing. The commissioner may
13 direct that the mark, label, or container not be used pending a hearing and final determination
14 by the commissioner. A determination by the commissioner is conclusive unless the person
15 adversely affected appeals to the district court within thirty days after receiving the notice of final
16 determination.

17 **SECTION 6. AMENDMENT.** Section 36-24-06 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **36-24-064.1-31-06. Prohibitions.**

20 A person may not:

- 21 1. Slaughter an animal or prepare an article usable as human food at any establishment
22 preparing articles solely for intrastate commerce, unless the person complies with this
23 chapter;
- 24 2. Sell, transport, offer for sale or transportation, or receive for transportation, in
25 intrastate commerce any article that is usable as human food and which is adulterated
26 or misbranded or any article that has not been inspected and passed under this
27 chapter; or
- 28 3. Alter an article that is usable as human food while the article is being transported in
29 intrastate commerce or held for sale after transportation, if the alteration is intended to
30 cause or has the effect of causing the article to be adulterated or misbranded.

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

3 ~~36-24-074.1-31-07.~~ **Official marks and certificates - Required authorization.**

4 A person may not:

- 5 1. Cast, print, or otherwise make a device containing an official mark, simulation of an
6 official mark, label bearing a mark or simulation, or form of official certificate or
7 simulation, without authorization from the commissioner;
- 8 2. Forge an official device, mark, or certificate;
- 9 3. Use a real or simulated official device, mark, or certificate, or alter, detach, deface, or
10 destroy an official device, mark, or certificate, without authorization from the
11 commissioner;
- 12 4. Fail to use an official device, mark, or certificate if appropriate;
- 13 5. Knowingly possess, without promptly notifying the commissioner, a counterfeit,
14 simulated, forged, or improperly altered official certificate, device, or label, or a whole-
15 carcass ~~or part of a carcass~~ bearing a counterfeit, simulated, forged, or improperly
16 altered official mark;
- 17 6. Knowingly make a false statement in a certificate; or
- 18 7. Knowingly represent falsely that an article has been inspected and passed, or
19 exempted, under this chapter.

20 **SECTION 8. AMENDMENT.** Section 36-24-08 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 ~~36-24-084.1-31-08.~~ **Horse meat - Requirements.**

23 A person may not sell, transport, offer for sale or transportation, or receive for transportation
24 in intrastate commerce whole carcasses ~~or parts of carcasses~~ of horses, mules, or other
25 equines or meat food products derived from them, unless they are plainly and conspicuously
26 marked, labeled, or otherwise identified to show the kinds of animals from which they were
27 derived. The commissioner by rule may require that the preparation of whole equine carcasses,
28 ~~parts of equine carcasses,~~ and equine meat food products take place in establishments
29 separate from those in which cattle, sheep, swine, or goats are slaughtered or in which their
30 carcasses, ~~parts of their carcasses,~~ or meat food products are prepared.

1 **SECTION 9. AMENDMENT.** Section 36-24-09 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~36-24-094.1-31-09.~~ **Bribery.**

4 A person may not give or receive anything of value to influence the performance of an
5 inspector under this chapter.

6 **SECTION 10. AMENDMENT.** Section 36-24-10 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 ~~36-24-104.1-31-10.~~ **Individual and custom processing - Exemption from inspection**
9 **requirements.**

- 10 1. This chapter does not apply to an individual processing the individual's own animals
11 and the individual's preparation and transportation in intrastate commerce of the whole-
12 carcasses, ~~parts of carcasses,~~ and meat food products provided the animals are for
13 the exclusive use of the individual, members of the individual's household, the
14 individual's nonpaying guests, and employees.
- 15 2. The provisions of this chapter requiring inspection of the slaughter of animals, the
16 preparation of the carcasses and ~~parts thereof,~~ and meat and meat food products at
17 establishments conducting such operations do not apply to the custom processing by
18 a person of animals delivered by the owner for processing, and the preparation or
19 transportation in intrastate commerce of the whole carcasses, ~~parts of carcasses,~~ and
20 meat food products of the animals, provided that the products are to be used
21 exclusively in the household of the animal's owner by the owner and members of the
22 owner's household, nonpaying guests, and employees.
- 23 3. A custom processor may not engage in the business of buying or selling whole-
24 carcasses, ~~parts of carcasses,~~ or meat food products of animals, other than poultry,
25 usable as human food unless the whole carcasses, ~~parts of carcasses,~~ or meat food
26 products have been inspected and passed and are identified as inspected and passed
27 by the commissioner or the United States department of agriculture.
- 28 4. The provisions of this chapter requiring inspection of the preparation of poultry
29 carcasses and ~~parts thereof,~~ and poultry food products at establishments conducting
30 those operations do not apply to any retailer with respect to poultry products sold in
31 commerce directly to consumers in an individual retail store, provided that the retailer

1 does not engage in the business of custom slaughter, and provided that the poultry
2 products sold in commerce are derived from poultry inspected and passed by the
3 commissioner or the United States department of agriculture.

4 **SECTION 11. AMENDMENT.** Section 36-24-11 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **36-24-114.1-31-11. Storing and handling conditions.**

7 The commissioner shall adopt rules regarding the manner in which all whole carcasses,
8 parts of carcasses, and meat food products of animals usable as human food and subject to
9 this chapter must be stored, handled, and transported.

10 **SECTION 12. AMENDMENT.** Section 36-24-12 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **36-24-124.1-31-12. Articles not intended as human food.**

13 The commissioner may not provide inspection under this chapter at an establishment for
14 the slaughter of animals or the preparation of carcasses or parts or products of animals which
15 are not intended for use as human food. Before these articles are offered for sale or
16 transportation in intrastate commerce, they must be denatured or otherwise identified, as
17 prescribed by rules of the commissioner, to deter their use for human food, unless they are
18 naturally inedible by humans. A person may not buy, sell, transport, offer for sale or
19 transportation, or receive for transportation, in intrastate commerce, any carcasses, parts of
20 carcasses, or meat food products of animals which are not intended for use as human food,
21 unless the articles are denatured or otherwise identified.

22 **SECTION 13. AMENDMENT.** Section 36-24-13 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **36-24-134.1-31-13. Records.**

25 The following persons shall keep records that fully and accurately disclose the transactions
26 described:

- 27 1. A person in the business of slaughtering animals or preparing, freezing, packaging, or
28 labeling animal carcasses, parts, or products of carcasses for use as human or animal
29 food.
- 30 2. A person buying, selling, transporting, or storing animal carcasses or parts or products
31 of animal carcasses.

- 1 3. A person rendering or buying, selling, or transporting dead, dying, disabled, or
2 diseased animals or ~~parts of~~ the carcasses of animals that died other than by
3 slaughter.

4 **SECTION 14. AMENDMENT.** Section 36-24-14 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **36-24-144.1-31-14. Records - Examination.**

7 Upon notice by the commissioner, any person subject to the recordkeeping requirements of
8 this chapter shall give the commissioner and the United States department of agriculture access
9 to the person's place of business at all reasonable times and an opportunity to examine the
10 facilities, inventory, and records of the business, to copy business records, and to take
11 reasonable samples of the person's inventory upon payment of the fair market value of the
12 samples.

13 **SECTION 15. AMENDMENT.** Section 36-24-15 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **36-24-154.1-31-15. Records - Retention.**

16 Any person subject to the recordkeeping requirements of this chapter shall maintain the
17 records for the period prescribed by the commissioner.

18 **SECTION 16. AMENDMENT.** Section 36-24-16 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **36-24-164.1-31-16. Registration of business.**

21 A person may not engage in intrastate business as a meat broker, renderer, or animal food
22 manufacturer; a wholesaler of animal carcasses, ~~carcass parts or products of carcasses,~~
23 intended for human food or other purposes; a public warehouse operator storing carcasses ~~or~~
24 ~~parts of carcasses~~ of animals in or for intrastate commerce; or a buyer, seller, or transporter of
25 dead, dying, disabled, or diseased animals, or ~~parts of~~ the carcasses of animals that died other
26 than by slaughter, unless the person first provides the commissioner with the person's name,
27 the address of each place of business under which the person conducts business, and all trade
28 names under which the person conducts business.

29 **SECTION 17. AMENDMENT.** Section 36-24-17 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **~~36-24-174.1-31-17.~~ Dead, dying, disabled, or diseased animals - Rules.**

2 The commissioner shall adopt rules to ensure that dead, dying, disabled, or diseased
3 animals are not used as human food.

4 **SECTION 18. AMENDMENT.** Section 36-24-18 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **~~36-24-184.1-31-18.~~ Cooperation with federal government.**

7 The commissioner shall cooperate with the United States department of agriculture to
8 develop and administer the state meat inspection program provided for under this chapter and
9 to ensure that its requirements are at least equal to those imposed by federal law. The
10 commissioner may accept, from the United States department of agriculture, advice and
11 assistance in planning and otherwise developing the state meat inspection program; technical
12 and laboratory assistance and training, including necessary curricular and instructional
13 materials and equipment; and financial and other assistance for the administration of the
14 program.

15 **SECTION 19. AMENDMENT.** Section 36-24-19 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **~~36-24-194.1-31-19.~~ Refusal or withdrawal of inspection.**

- 18 1. For the length of time the commissioner considers necessary to carry out the purposes
19 of this chapter, the commissioner may refuse to provide, or may withdraw, inspection
20 services from an establishment if after a hearing the commissioner determines that the
21 recipient or potential recipient is unfit to engage in any business requiring inspection
22 under this chapter because the recipient, potential recipient, or anyone responsibly
23 connected with the recipient or potential recipient has been convicted of:
- 24 a. An offense determined by the commissioner to have a direct bearing on the
25 person's ability to serve the public in a business requiring inspection under this
26 chapter, or the commissioner determines the person is not sufficiently
27 rehabilitated under section 12.1-33-02.1;
 - 28 b. More than one violation of a law based on the acquisition, handling, or
29 distributing of unwholesome, mislabeled, or deceptively packaged food; or
 - 30 c. Fraud in connection with transactions involving food.

2. For the purpose of this section anyone responsibly connected with a business means an individual who is a partner, officer, director, holder, or owner of ten percent or more of its voting stock or an employee in a managerial or executive capacity.

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

36-24-204.1-31-20. Detention of animals or products.

1. ~~If an~~An inspector may detain an article or animal for up to twenty days pending a hearing or notification of authorities having jurisdiction over the article or animal if the inspector finds a whole carcass, part of a carcass, or meat food product, a product exempted from the definition of a meat food product, or a dead, dying, disabled, or diseased animal the article or animal on premises where it is held for purposes of, during, or after distribution in intrastate commerce; and the inspector reasonably believes that the:
- a. The article or animal is adulterated or misbranded and ~~is~~would otherwise be usable as human food; ~~or that it;~~
- b. The article or animal has not been inspected, in violation of this chapter or federal law; ~~or that the~~
- c. The article or animal has been or is intended to be distributed in violation of this chapter or federal law; ~~the inspector may detain the article for up to twenty days pending a hearing or notification of federal authorities having jurisdiction over the article or animal.~~
2. ~~The~~Until it is released by the commissioner, a detained article or animal may not be moved by any person from the place at which it was located when detained, ~~until released by the commissioner.~~ The commissioner may require all official marks to be removed from the detained article or animal before it is released unless the commissioner is satisfied that the article or animal is eligible to retain the official marks.

NOTE: It appears that if an article or animal is "adulterated or misbranded" it could still be suitable for use as human food if the deficiency can be corrected. The section has been reorganized to simplify an unwieldy, excessively long sentence. The reference to "federal" authorities in subsection 1 is eliminated. State personnel would be the only authorities having jurisdiction.

1 **SECTION 21. AMENDMENT.** Section 36-24-21 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~36-24-214.1-31-21.~~ **Seizure and condemnation.**

4 The commissioner may initiate action to seize and condemn a whole carcass, ~~part of a~~
5 ~~carcass~~, or meat food product, or a dead, dying, disabled, or diseased animal that is being
6 transported in intrastate commerce, or is held for sale in this state after transportation in
7 intrastate commerce if:

- 8 1. The article is or has been prepared, sold, transported, or otherwise distributed or
9 offered or received for distribution in violation of this chapter;
- 10 2. The article is ~~usable~~adulterated or misbranded and not suitable for use as human food
11 ~~and is adulterated or misbranded~~; or
- 12 3. The article is in any other way violative of this chapter.

NOTE: It appears that if an article or animal is "adulterated or misbranded" it would not be suitable for use as human food. This section does not use "article or animal" as was the case in the preceding section. In addition, the reasons for seizure in this section do not match the reasons for detention in the preceding sections. It seems these sections should have matching provisions.

13 **SECTION 22. AMENDMENT.** Section 36-24-22 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 ~~36-24-224.1-31-22.~~ **SaleDestruction or sale of condemned items.**

16 If an article or animal is condemned, it must be disposed of by destruction or sale, as
17 directed by a court. If it is sold, the proceeds must be paid to the state, less the court costs,
18 fees, storage, and reasonable expenses, but the article or animal must not be sold contrary to
19 this chapter or federal law. If a bond is delivered conditioned that the article or animal not be
20 sold or otherwise disposed of contrary to this chapter or federal law, the court may direct that
21 the article or animal be delivered to its owner subject to supervision by the commissioner.

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

24 ~~36-24-234.1-31-23.~~ **Types of proceedings - Award of costs.**

25 If a decree of condemnation is entered against an article or animal and it is released under
26 bond or destroyed, a court may award costs, fees, storage, and other reasonable expenses
27 against any person intervening as a claimant of the article or animal. Either party to a
28 proceeding may demand trial by jury of any issue of fact joined in the case, and all proceedings

1 must be in the name of the state. Nothing in this section changes the authority for
2 condemnation or seizure otherwise conferred by law.

3 **SECTION 24. AMENDMENT.** Section 36-24-24 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **36-24-244.1-31-24. Powers of commissioner.**

6 For the purposes of this chapter, the commissioner may:

- 7 1. Gather and compile information concerning and investigate the organization, business,
8 conduct, practices, and management of a person in intrastate commerce and the
9 person's relation to other persons.
- 10 2. Require that a person engaged in intrastate commerce file with the commissioner, in
11 the form and manner prescribed by the commissioner, annual and special reports or
12 written answers to specific questions, giving the commissioner the information the
13 commissioner requires about the organization, business, conduct, practices,
14 management, and relation to other persons, of the person filing the reports or
15 answers.
- 16 3. Examine and copy documentary evidence of a person being investigated or being
17 proceeded against. A person may not refuse to submit to the commissioner, for
18 inspection and copying, any documentary evidence of a person subject to this chapter
19 in the person's possession or control.
- 20 4. ~~Fix the time of filing for a person required by this chapter to file an annual or special~~
21 ~~report may not fail to do so within the time fixed by the commissioner, and, A person~~
22 ~~required by this chapter to file an annual or special report may not continue the failure~~
23 ~~for thirty days after notice of failure to file.~~
- 24 5. Adopt rules to implement this chapter, including establishing inspection fees for
25 providing inspection services under this chapter.

NOTE: Subsections 1, 2, 3, and 5 begin with a verb, to connect with the lead-in language
"the commissioner may." Subsection 4 does not connect with the lead-in language.

26 **SECTION 25. AMENDMENT.** Section 36-24-25 of the North Dakota Century Code is
27 amended and reenacted as follows:

1 **~~36-24-254.1-31-25.~~ Interstate shipment.**

2 Meat and meat products inspected under this chapter may be shipped in interstate
3 commerce when federal law permits state-inspected meat and meat products to be marketed
4 interstate.

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

7 **~~36-24-264.1-31-26.~~ Penalties.**

8 1. A person who willfully violates a provision of this chapter is guilty of a class A
9 misdemeanor.

NOTE: A penalty clause outside Title 12.1 must contain culpability language or it may be considered a strict liability offense. In statute, "willfully" means intentionally, knowingly, or recklessly but does not include negligently (Section 12.1-02-02). It would be preferable to identify the specific provisions of this chapter that would be subject to penalty.

10 2. A person willfully violating this chapter or a rule adopted under this chapter is subject
11 to a civil penalty not to exceed two hundred fifty dollars for each violation. The civil
12 penalty may be imposed by a court or by the agriculture commissioner in an
13 administrative proceeding.

14 3. Imposing a penalty allowed in subsection 1 or 2 does not preclude the commissioner
15 from seeking to impose other sanctions or from seeking other remedies for violation of
16 this chapter or rules adopted under this chapter.

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**3 **SECTION 1. AMENDMENT.** Section 4-08-01 of the North Dakota Century Code is amended
4 and reenacted as follows:5 **4-08-0111-38-01. Extension workCounty extension agent - Petition to authorize or**
6 **discontinue levy - Submitting to voteElection - Levy limitations.**7 Upon the filing with the county auditor at least sixty-four days before the date of a general
8 election of a petition to authorize or discontinue a tax levy for extension work, containing the
9 names of twenty percent of the qualified electors of the county as determined by the votes cast
10 for governor in the county at the last precedingin the most recent gubernatorial election, the
11 board of county commissioners shall submit to the qualified electors at the next general election
12 the question of providingauthorizing or discontinuing a tax levy for extension work. Upon
13 approval by a majority of qualified electors of the county voting on the question of authorizing a
14 tax levy for extension work, the board of county commissioners may levy a tax of up to two mills
15 as provided in subsection 2 of section 57-15-06.7. Upon approval by a majority of qualified
16 electors of the county voting on the question of discontinuing a tax levy for extension work, the
17 board of county commissioners shall terminate any levy or additional levy previously authorized
18 under this chapter and may terminate county expenditures for extension work.19 The board of county commissioners may submit to the electors at a primary or general
20 election the question of approval of voter-approved additional levy authority for extension work
21 for a period not exceeding ten years and if approved by a majority of the electors voting on the
22 question the board of county commissioners may levy an additional tax not exceeding the
23 limitation in subsection 2 of section 57-15-06.7. Voter-approved additional levy authority
24 authorized by electors of a county before January 1, 2015, remains in effect through taxable

year 2024 or for the time period authorized by the electors, whichever expires first. After January 1, 2015, approval or reauthorization by electors of voter-approved additional levy authority under this section may not be effective for more than ten taxable years.

The board of county commissioners may appropriate funds out of the county general fund to cover any unanticipated deficiency in funding for extension work. All funds raised by levies under this chapter must be appropriated by the board of county commissioners for the purposes set forth in this chapter.

NOTE: Provisions for petitions to authorize or discontinue the levy are consolidated in a single section. Filing required 64 days before the election is to be consistent with an extensive revision by 2013 Senate Bill No. 2374, suggested by the Secretary of State's office to allow adequate time to prepare and deliver absentee ballots for overseas and military voters.

SECTION 2. AMENDMENT. Section 4-08-02 of the North Dakota Century Code is amended and reenacted as follows:

4-08-0211-38-02. Form of petitionpetitions.

The ~~petition~~petitions provided for in section ~~4-08-04~~11-38-01 must be in substantially the following form:

PETITION PROVIDING FORREGARDING LEVY FOR EXTENSION WORK

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

SECTION 3. AMENDMENT. Section 4-08-03 of the North Dakota Century Code is amended and reenacted as follows:

4-08-0311-38-03. Form of ballot.

The question to be voted upon as provided in section ~~4-08-04~~11-38-01 must be submitted on a separate ballot and must be worded as follows:

1. For a petition to authorize a levy:

For extension work _____ ☐

Against extension work _____ ☐

2. For a petition to discontinue a levy:

For discontinuing the extension work levy _____ ☐

Against discontinuing the extension work levy _____ ☐

1 **SECTION 4. AMENDMENT.** Section 4-08-04 of the North Dakota Century Code is amended
2 and reenacted as follows:

3 ~~4-08-0411-38-04. Election held -- Candidates presented to county commissioners --~~
4 ~~Funds available for extension work~~**Extension agent selection.**

5 When a majority of the votes are cast to authorize a tax levy for extension work, by the
6 following July first the North Dakota state university extension service ~~on the first day of July~~
7 ~~following the election~~ shall ~~present~~conduct interviews and select a candidate ~~or candidates~~ for
8 extension agent to the board of county commissioners for its selection and final approval. A sum-
9 of not less than two thousand dollars ~~must be made available for this purpose from county~~
10 funds, but in no case may such levy exceed two mills.

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

NOTE: A two-mill levy limit is provided under Section 57-15-06.7(2) plus authority for approval of an added two mills. Restating the two-mill limit is unnecessary in this section. Adding the provision on filling a vacancy in the position eliminates the need for the existing Section 4-08-13.

14 **SECTION 5. AMENDMENT.** Section 4-08-05 of the North Dakota Century Code is amended
15 and reenacted as follows:

16 ~~4-08-05. Petition for discontinuance of extension work -- Form of petition -- Election.~~

17 ~~The question of the discontinuance of extension work may be submitted to the qualified~~
18 ~~electors in the manner provided in section 4-08-01. A separate ballot worded as is provided in~~
19 ~~section 4-08-03 must be used at the election. The petition for discontinuing the levy must be in~~
20 ~~the following form:~~

21 ~~We, the undersigned qualified electors of _____ County, North Dakota, petition the~~
22 ~~board of county commissioners that it place on the ballot at the next general election the~~
23 ~~question of discontinuing extension work.~~

NOTE: Petition for discontinuance has been consolidated in Section 11-38-02.

24 **SECTION 6. AMENDMENT.** Section 4-08-06 of the North Dakota Century Code is amended
25 and reenacted as follows:

1 **~~4-08-06. Filing date of petitions for election.~~**

2 ~~No board of county commissioners may place the question of extension work on a ballot~~
3 ~~without having received a notification from the county auditor that the petitions, as provided for~~
4 ~~in this chapter, have been filed at least sixty days before the date of election.~~

NOTE: The requirement of this section has been incorporated into Section 11-38-01.

5 **SECTION 7. AMENDMENT.** Section 4-08-07 of the North Dakota Century Code is amended
6 and reenacted as follows:

7 **~~4-08-07~~11-38-05. Discontinuance of extension agentwork levy - Distribution of funds-**
8 **~~accumulated~~Transfer of unobligated funds.**

9 If a majority of the votes cast at an election ~~held to discontinue authority for a tax levy under~~
10 ~~section 4-08-05~~11-38-01 are against continuing in favor of discontinuing authority for the levy for
11 extension work, the tax levy and the services of the extension agent must be discontinued on
12 the thirty-first day of December following the date of election. ~~If the majority of the votes cast are~~
13 ~~for the support of extension work, the county commissioners shall continue the tax levy as~~
14 ~~provided in this chapter. Upon the discontinuance of extension work, accumulated and~~
15 unobligated funds remaining in the treasury ~~may be distributed to any other fund or funds~~
16 ~~deemed expedient by the board of county commissioners~~special fund for that purpose must be
17 transferred to the county general fund and the special fund must be closed out.

NOTE: Transfer of unobligated funds to the general fund is consistent with the changes
 under 2015 Senate Bill No. 2144.

18 **SECTION 8. AMENDMENT.** Section 4-08-08 of the North Dakota Century Code is amended
19 and reenacted as follows:

20 **~~4-08-08. Expending funds.~~**

21 ~~All funds raised in accordance with the provisions of this chapter must be expended by and~~
22 ~~under the direction and control of the board of county commissioners in such manner as it may~~
23 ~~deem best adapted to accomplish the purposes set forth in this chapter.~~

NOTE: This section is eliminated but the language has been transferred to the end of
 Section 1 of this draft.

24 **SECTION 9. AMENDMENT.** Section 4-08-09 of the North Dakota Century Code is amended
25 and reenacted as follows:

1 **4-08-0911-38-06. Budgeting for extension agentwork.**

2 When the board of county commissioners is authorized to make a levy for the employment
3 of an extension agent, it shall provide ~~aan annual~~ budget that stipulates the salary of the agent,
4 field and office expenses, and allowance for ~~clerical hire~~staff.

5 The budget shall be revised annually to account for changes in agent and staff salaries and
6 operating expenses. The board of county commissioners shall annually provide the North
7 Dakota state university extension service input on the extension agent's performance. The
8 extension agent's annual salary adjustment must be agreed upon by the board of county
9 commissioners and the extension service based on the agent's annual performance and
10 consideration of county and extension service budget limitations.

11 After ~~mutually~~ agreeing upon a budget and after deducting the amount of funds contributed
12 from federal and state funds, the board of county commissioners shall ~~proceed to make a levy~~
13 within the authorization under this chapter or appropriate funds out of the county general fund,
14 or both, as it may deem necessary to cover the county's share of the budget. ~~Until the office of~~
15 ~~extension agent is discontinued, the board shall agree upon a similar budget and annually shall~~
16 ~~make the levy and appropriation.~~

NOTE: This section is revised based on mutual recommendations from the North Dakota
 Association of Counties and the NDSU Extension Service. The recommended language
 addresses the salary of the agent but not staff and expenses. Should those be subject to
 the performance evaluation?

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

19 **4-08-1011-38-07. Extension agent to submit monthly account of expenditures --**
20 **Position adjustments -- Budget section report.**

21 The extension agent shall submit monthly an accurate itemized account of all expenditures
22 incurred by the agent in the regular conduct of duties to the North Dakota state university
23 extension service for examination and audit. When charges are made by an extension agent for
24 money expended in the performance of official duties and consistent with the approved budget,
25 ~~all items of one dollar or more expended and charged for~~expenditures must be covered by a
26 subvoucher or receipt ~~that must be signed by the person to whom the money was~~
27 ~~paid~~according to county policy for reimbursement. The subvoucher or receipt must show at
28 what place, on what date, and for what the money expended was paid. The extension agent
29 shall forward the subvouchers or receipts with the bill, claim, account, or demand against the

1 county. ~~When charges are~~Charges made for transportation expenses, they may not exceed the
2 amounts provided by section 11-10-15, and must be in itemized form showing the mileage
3 traveled, the days when and how traveled, and the purpose ~~thereof~~of travel, verified by affidavit.
4 The account must be transmitted and recommended for payment by the North Dakota state
5 university extension service which shall audit ~~the same and which may~~ approve or disallow any
6 expense item therein. ~~The state board of agricultural research and education and the president~~
7 ~~of North Dakota state university shall control and administer the North Dakota state university~~
8 ~~extension service subject to the supervision of the state board of higher education. Funds~~
9 ~~appropriated to the North Dakota state university extension service may not be commingled~~
10 ~~with funds appropriated to North Dakota state university. An appropriation request to defray~~
11 ~~expenses of the North Dakota state university extension service must be separate from an~~
12 ~~appropriation request to defray expenses of North Dakota state university. Subject to the~~
13 ~~availability of funds, the director of the North Dakota state university extension service may~~
14 ~~adjust or increase full-time equivalent positions in order to carry out activities to accomplish the~~
15 ~~mission of the extension service. All full or part time positions must be separate from North~~
16 ~~Dakota state university. Annually, the director of the North Dakota state university extension~~
17 ~~service shall report to the office of management and budget and to the budget section any~~
18 ~~adjustments or increases made pursuant to this section.~~

NOTE: The overstruck language at the end of this section has been moved to a new,
independent Section 11-38-12 in this bill draft based on mutual recommendations from the
North Dakota Association of Counties and the NDSU Extension Service.

19 **SECTION 11. AMENDMENT.** Section 4-08-10.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **4-08-10.11-38-08. Achievement days - Premiums - Report of extension agent.**

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

1 **SECTION 12. AMENDMENT.** Section 4-08-12 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **~~4-08-1211-38-09. Direction and supervision of extension agent.~~**

4 ~~The active direction and supervision of North Dakota state university extension service shall~~
5 ~~actively direct and supervise the work of the extension agent must be carried on by the North-~~
6 ~~Dakota state university extension service. The extension agent shall regularly request feedback~~
7 ~~from the board of county commissioners has general administrative authority and must be~~
8 ~~consulted frequently with reference to the general policy and the work of the agent on county~~
9 ~~programs, based on local and state needs considerations. The suggestions and directions of~~
10 ~~the board must be followed when work of the county agent may not in conflict with state and/or~~
11 federal laws or regulations governing appropriations for extension work.

12 **SECTION 13. AMENDMENT.** Section 4-08-11 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **~~4-08-1111-38-10. Report to board of county auditor commissioners.~~**

15 An extension agent shall file with the board of county ~~auditor~~ commissioners either monthly,
16 or within a mutually agreed upon timeframe not to exceed one year, a statement of the agent's
17 work, ~~which, in turn, must be presented by the auditor to the board of county commissioners.~~

18 **SECTION 14. AMENDMENT.** Section 4-08-13 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **~~4-08-13. Vacancies - How to be filled.~~**

21 ~~In case a vacancy occurs in the position of extension agent, the procedure for the selection~~
22 ~~of a successor must be similar to that provided for in the selection of an agent when the work is~~
23 ~~instituted in the county.~~

NOTE: This section is eliminated and the language is included in changes to Section 4 of
this draft.

24 **SECTION 15. AMENDMENT.** Section 4-08-14 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **~~4-08-1411-38-11. Dissatisfaction with extension agent - Meeting to be arranged.~~**

27 If the North Dakota state university extension service or the board of county commissioners
28 becomes dissatisfied with the performance of an extension agent or the level of funding support
29 required, the dissatisfied entity shall arrange a joint meeting ~~must be arranged~~ at which detailed
30 information as to the misconduct, negligence, or inefficiency dissatisfaction with the

1 performance of the agent or the level of funding support required must be presented and such
2 joint action taken as is justified by the evidence.

3 **SECTION 16. AMENDMENT.** Section 4-08-15 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **~~4-08-15. Extension work levy and funding -- Additional levy with voter approval.~~**

6 ~~If a levy for extension work has been approved under sections 4-08-01 and 4-08-03, the~~
7 ~~board of county commissioners may levy for extension work in an amount not exceeding the~~
8 ~~limitation in subsection 2 of section 57-15-06.7.~~

9 ~~The board of county commissioners may submit to the electors at a primary or general~~
10 ~~election the question of approval of voter approved levy authority for extension work for a period~~
11 ~~not exceeding ten years and if approved by a majority of the electors voting on the question the~~
12 ~~board of county commissioners may levy an additional tax not exceeding the limitation in~~
13 ~~subsection 2 of section 57-15-06.7. Voter approved levy authority authorized by electors of a~~
14 ~~county before January 1, 2015, remains in effect through taxable year 2024 or for the time~~
15 ~~period authorized by the electors, whichever expires first. After January 1, 2015, approval or~~
16 ~~reauthorization by electors of voter approved levy authority under this section may not be~~
17 ~~effective for more than ten taxable years.~~

18 ~~The board of county commissioners may appropriate additional funds out of the county~~
19 ~~general fund to cover any unanticipated deficiency in funding for extension work.~~

NOTE: This section has been consolidated with the voter approval to establish a levy for
extension work under Section 11-38-01.

20 **SECTION 17.** A new section to chapter 11-38 of the North Dakota Century Code is created
21 and enacted as follows:

22 **11-38-12. Administration - Position adjustments - Budget section report.**

23 The state board of agricultural research and education and the president of North Dakota
24 state university shall control and administer the North Dakota state university extension service
25 subject to the supervision of the state board of higher education. Funds appropriated to the
26 North Dakota state university extension service may not be commingled with funds appropriated
27 to North Dakota state university. An appropriation request to defray expenses of the North
28 Dakota state university extension service must be separate from an appropriation request to
29 defray expenses of North Dakota state university. Subject to the availability of funds, the director
30 of the North Dakota state university extension service may adjust or increase full-time or

- 1 part-time equivalent positions to carry out the mission of the extension service. All full-time or
2 part-time positions must be separate from North Dakota state university. Annually, the director of
3 the North Dakota state university extension service shall report to the office of management and
4 budget and to the budget section any adjustments or increases made under this section.

NOTE: It was suggested that this language from current Section 4-08-10 be moved to a separate section because it is an independent subject matter.

- 5 **SECTION 18. AMENDMENT.** Subsection 2 of section 57-15-06.7 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 2. A county levying a tax for extension work as provided in section ~~4-08-15~~11-38-01 may
8 levy a tax not exceeding two mills and if a majority of the electors of the county have
9 approved additional levy authority under section ~~4-08-15~~11-38-01, the county may levy
10 a voter-approved additional tax not exceeding ~~an additional tax of~~ two mills.

Introduced by

1 A BILL for an Act

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

3 **SECTION 1. AMENDMENT.** Section 36-21-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **36-21-01. Regulations governing fraudulent**Fraudulent registration or representation
6 **of purebred livestock - Penalty.**

NOTE: The provisions on livestock were originally listed for removal to the new Title 4.1.
The committee should consider whether to retain Title 36, on livestock, which has existed
as a separate Title since 1907 or longer.

7 Any~~It is a class B misdemeanor for a person who shall to:~~

- 8 1. Fraudulently represent any animal ~~to be~~as purebred;
- 9 2. Post or publish, or cause to be posted or published, any false pedigree or certificate;
- 10 3. Procure by fraud, false pretense, or misrepresentation, the registration of any animal
11 ~~which is~~ to be used for service, sale, or exchange in this state, for the purpose of
12 deception as to the animal's pedigree thereof;
- 13 4. Sell, or otherwise dispose of, any animal as a purebred when the person knows or has
14 reason to believe that the animal is not the offspring of a regularly registered purebred
15 sire and dam; or
- 16 5. Sell, or otherwise dispose of, any animal as a registered purebred ~~by the use of~~using
17 a false pedigree or certificate of registration;
- 18 ~~is guilty of a class B misdemeanor.~~

19 **SECTION 2. AMENDMENT.** Section 36-21-05 of the North Dakota Century Code is
20 amended and reenacted as follows:

1 **~~36-21-05. Skinning dead livestock – Restrictions governing.~~**

2 ~~No person other than the owner or the owner's agent or employee may skin, or remove the~~
3 ~~skin, hide, or pelt from the carcass of any neat cattle, swine, or sheep found dead, except when~~
4 ~~such animal is killed by a railroad train, in which case the employees of the railroad may remove~~
5 ~~the hide from such animal.~~

NOTE: The committee directed the Legislative Council staff to provide for repeal of this section at the December committee meeting.

6 **SECTION 3. AMENDMENT.** Section 36-21-10 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **36-21-10. Dogs, wolves, and coyotes worrying livestock or poultry may be killed.**

9 Any person ~~may kill~~ who kills any dog, wolf, or coyote kept as a domestic animal is not
10 liable in any civil action to the owner of the animal:

- 11 1. When the person sees such animal in the act of killing, chasing, worrying, or damaging
12 any livestock or poultry; or
 - 13 2. When the person discovers ~~such animal under circumstances which satisfactorily~~
14 ~~show evidence~~ that the animal recently ~~it has been engaged in killing~~ killed or
15 ~~chasing~~ chased sheep.
- 16 ~~A person who kills any dog, wolf, or coyote under conditions specified in this section is not liable~~
17 ~~in any civil action to the owner of such animal.~~

NOTE: It is not clear why different language is used for damage to livestock or poultry and damage to sheep. In addition, "livestock" is defined to include sheep at least twice in Title 36.

18 **SECTION 4. AMENDMENT.** Section 36-21-11 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **~~36-21-11. Owners of dogs liable~~ Liability for damages done to livestock – Procedure**
21 **~~when damages done by pack of by dogs.~~**

22 The owner of any dog ~~which~~ that kills, wounds, or chases any sheep or other domestic
23 animal or poultry belonging to another person is liable to ~~such other~~ that person for all resulting
24 damages caused thereby. If one or more than one of several dogs dog, which are owned by
25 different persons, participates in the killing, wounding, or chasing of sheep or other domestic
26 animals or poultry ~~while running together~~, the owners of the respective dogs ~~so running together~~
27 may be sued jointly, and a joint verdict and judgment may be rendered against ~~the owners of~~
28 ~~such dogs~~ them. If one or more of the defendants pays such a joint judgment, the payor or

1 payors may ~~have~~receive contribution from the defendants who have not paid in an appropriate
2 action in which where the respective damages committed by the several dogs running together
3 may be prorated. ~~No exemption is allowed to any person against whom a judgment is entered~~
4 ~~under the provisions of this section.~~

NOTE: Again there is variable usage of the words sheep, domestic animal, and poultry. The caption uses "livestock" but the section does not contain that word. Section 36-21-11 adds wolf or coyote kept as a domestic animal as permissible to kill but this section does not allow the owner of such a wolf or coyote to be subject to damages.

5 **SECTION 5. AMENDMENT.** Section 36-21-12 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **36-21-12. Killing of livestock by railroad is prima facie evidence of negligence.**

8 The killing or damaging of any livestock by a railroad car or locomotive is prima facie
9 evidence of ~~carelessness~~ and negligence ~~on the part of~~ by the railway company or corporation.

NOTE: "Carelessness" is generally not grounds for civil damages. It is usually defined in law dictionaries to mean "negligence."

10 **SECTION 6. AMENDMENT.** Section 36-21-13 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **36-21-13. Exemplary damages for ~~wrongful~~ injuries to domestic animals.**

13 Exemplary damages may be ~~given to the owner of any animal~~ applied for any wrongful injury
14 ~~thereto when such injury is to an animal~~ committed willfully or by gross negligence.

NOTE: Use of the word "animal" in this chapter, which refers to livestock, poultry, sheep, etc. creates an interpretation problem. The caption uses "domestic animal" but the caption is not a part of the law. Clarification is needed. This section may be unnecessary... section 32-03-53 allows exemplary damages for damage or destruction to crops, livestock, or commodities.

15 **SECTION 7. AMENDMENT.** Section 36-21-15 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **36-21-15. Sale of livestock by weight.**

18 All livestock sold by weight at any public market must be sold subject to the weight at the
19 place of sale on the day sold by the auctioneer.

20 **SECTION 8. AMENDMENT.** Section 36-21-18 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **36-21-18. Title to property to remain in market until settlement made.**

23 Before any person, ~~association, copartnership, firm, corporation, or limited liability company~~
24 may become a purchaser at any sale conducted by an auction market established under the

1 laws of this state, ~~such~~the prospective purchaser must file ~~satisfactory evidence~~ with the
2 operator of ~~such~~the auction market, proof that any check, draft, or bill of exchange issued and
3 delivered to ~~such~~the auction market in payment ~~effor~~ any livestock purchased ~~shall~~will be
4 honored by the drawee bank at the time of presentation for payment, ~~and until~~. Until such
5 check, draft, or other bill of exchange has been duly honored and paid, the title to the
6 purchased livestock ~~so purchased is in the~~held by the auction market making ~~such~~the sale.

NOTE: Examination should be made of whether this section is current with livestock auction financial transactions.

7 **SECTION 9. AMENDMENT.** Section 36-21-19 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **36-21-19. Equine processing assessment - Continuing appropriation - Provision of**
10 **grants.**

- 11 1. For each equine processed at an equine processing facility in this state, the owner of
12 the facility shall ~~submit~~remit to the agriculture commissioner, at the time and in the
13 manner directed by the commissioner, an assessment in the amount of five dollars.
14 The commissioner shall forward the assessment to the state treasurer for deposit of
15 the first fifty thousand dollars in the state general fund and any additional amount in
16 the equine processing fund.
- 17 2. All moneys in the equine processing fund are appropriated on a continuing basis to the
18 agriculture commissioner to be used ~~as follows~~to:
 - 19 a. ~~The agriculture commissioner shall return to the state general fund the fifty-~~
20 ~~thousand dollars appropriated to the department of commerce for the equine-~~
21 ~~processing facility feasibility study.~~
 - 22 b. ~~Upon completion of the requirement set forth in subdivision a, the commissioner-~~
23 ~~shall:~~
 - 24 (1) Provide an annual grant equaling forty percent of any assessments
25 collected to Dickinson state university in support of the equine management
26 program;
 - 27 (2)b. Provide an annual grant equaling forty percent of any assessments
28 collected to North Dakota state university in support of the equine studies
29 program; and

- 1 (~~3~~)c. Provide an annual grant equaling twenty percent of any assessments
- 2 collected to public or private entities conducting equine research or offering
- 3 hippotherapy to individuals with disabilities.

NOTE: The appropriation to the Department of Commerce was made in 2009. It appears unlikely the amount will be collected.

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-15 of the North Dakota Century Code, relating
2 to the northern crops institute; and to repeal chapter 4-14.2 of the North Dakota Century Code,
3 relating to the northern crops institute.

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

5 **SECTION 1.** Chapter 4.1-15 of the North Dakota Century Code is created and enacted as
6 follows:

7 **4-14.2-014.1-15-01. Northern crops institute - Establishment - DirectorNorthern crops**
8 **council - Powers and duties - Gifts and grants - Continuing appropriation.**

- 9 1. A The northern crops institute is established to be administered by and in conjunction
10 with North Dakota state university.
- 11 2. ~~A director must be appointed by the~~ The northern crops council, in consultation with the
12 president of North Dakota state university, shall appoint the director of the northern
13 crops institute and may remove the director for cause. The director shall manage the
14 institute, hire and compensate necessary personnel within the limits of legislative
15 appropriations, prepare a biennial budget, and serve as executive secretary to the
16 northern crops council. The council shall fix the salary of the director, within the limits
17 of legislative appropriations, ~~and may remove the director for cause~~ in consultation
18 with the president of North Dakota state university.
- 19 3. ~~The council shall provide the~~ The president of North Dakota state university ~~with an~~
20 ~~opportunity to~~ may participate in the hiring of a director for the institute, including
21 serving on search committees, advertising, and interviewing candidates, and
22 negotiating with potential candidates.
- 23 4. Funds appropriated to the northern crops institute may not be commingled with funds
24 appropriated to North Dakota state university. Appropriation requests to defray

1 expenses of the northern crops institute must be separate from appropriation requests
2 to defray expenses of North Dakota state university.

3 **4-14.2-024.1-15-02. Northern crops council - Duties - Chairman - Meetings.**

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

6 1. The council consists of:

- 7 a. The agriculture commissioner or the commissioner's designee;
- 8 b. The president of North Dakota state university of agriculture and applied science
- 9 or the president's designee;
- 10 c. The president and general manager of the North Dakota mill and elevator
- 11 association;
- 12 d. An individual selected by the North Dakota barley council;
- 13 e. An individual selected by the North Dakota oilseed council;
- 14 f. An individual selected by the North Dakota soybean council;
- 15 g. An individual selected by the North Dakota wheat commission;
- 16 h. No fewer than five nor more than seven individuals who produce northern crops,
- 17 selected by the members referenced in subdivisions a through g; and
- 18 i. No more than four representatives of industries that process northern crops,
- 19 selected by the members designated in subdivisions a through g.
- 20 2. a. The term of office for each member of the council referenced in subdivisions d
- 21 through i of subsection 1 is three years, and those members are limited to two
- 22 3-year terms.
- 23 b. Each term of office begins with the first meeting after the date of the member's
- 24 appointment.
- 25 3. Annually, the council members shall select one of the individuals referenced in
- 26 subdivisions d through i of subsection 1 to serve as the chairman.
- 27 4. The council shall meet at least three times annually at such times and places as
- 28 determined by the council and may meet in special meeting upon such call and notice
- 29 as may be prescribed by rules adopted by the council.
- 30 5. If a member is unable to attend a meeting of the council, the member may be
- 31 represented by an individual who has a written proxy from the member.

1 **~~4-14.2-034.1-15-03.~~ Purpose - Powers and duties.**

2 The ~~purpose of the~~ northern crops institute is ~~to~~shall provide technical and marketing
3 assistance through specialized training courses and technical services ~~which~~that facilitate
4 domestic and market development and expanded sales of northern grown crops. The institute
5 shall render services ~~consistent with its purpose which include, but are not limited to~~including:

- 6 1. In-plant consultations ~~for the purpose of discussing~~regarding crop quality problems,
7 product manufacturing, and possible purchasing methods and standards.
- 8 2. Short courses in product milling and processing, plant management, county elevator
9 management, grain grading, and marketing of crops.
- 10 3. Educational and career and technical education training programs in milling,
11 processing, manufacturing, purchasing methods, marketing procedures, product sales
12 techniques, and other related subjects to be conducted for users of northern crops.
- 13 4. Short-term investigations, consultation, evaluation, and research to solve technical
14 problems involved in the maintenance of quality and utilization of northern crops.
- 15 5. Annual surveys and quality analyses of new northern crops and monitoring of the
16 quality and condition of commodities in market channels.
- 17 6. Research on northern crop damage problems and solutions.
- 18 7. Identification of problem areas in marketing northern crops abroad.
- 19 8. Preparation of instructional, informational, and reference publications on the end use
20 ~~of northern crops, technical aspects of marketing northern crops, and utilization of~~
21 northern crops for distribution domestically and abroad.

22 **~~4-14.2-044.1-15-04.~~ Gifts and grants - Continuing appropriation.**

23 ~~In order to carry out its duties under this chapter, the~~The northern crops institute may
24 contract for and accept private contributions, and gifts, and grants-in-aid from the federal
25 government, private industry, and other sources. ~~Additional income must~~Such funds may be
26 spent only for the purposes of this chapter and for the purposeany purposes designated, if any,
27 in the gift, grant, or donation and those funds are appropriated on a continuing basis to the
28 northern crops institute for those purposes.

29 **SECTION 2. REPEAL.** Chapter 4-14.2 of the North Dakota Century Code is repealed.

Introduced by

1 A BILL for an Act to create and enact chapter 54-60.3 of the North Dakota Century Code,
2 relating to the agricultural products utilization commission; and to repeal chapter 4-14.1 of the
3 North Dakota Century Code, relating to the agricultural products utilization commission.

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

5 **SECTION 1.** Chapter 54-60.3 of the North Dakota Century Code is created and enacted as
6 follows:

7 **54-60.3-01. Agricultural products utilization commission - Composition -**

8 **Appointment.**

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

21 **54-60.3-02. Agricultural products utilization commission - Authority.**

22 1. The North Dakota agricultural products utilization commission may apply for, accept,
23 and expend any appropriation, grant, gift, or service made available from public or
24 private sources.

2. The commission may administer grant programs including:

a. A basic and applied research grant program;

b. A utilization and marketing grant program;

c. A cooperative marketing grant program;

d. A nature-based tourism grant program;

e. A technical assistance grant program for value-added businesses;

f. A farm diversification grant program;

g. An agricultural prototype development grant program;

h. An agricultural technologies grant program; and

i. A North American marketing grant program.

3. As a condition of any grant administered by the commission, the commission may require that the recipient repay some or all of the grant if the recipient does not fulfill the conditions of the grant. Repayment may be monetary or any other type or method determined by the commission.

54-60.3-03. Agricultural products utilization commission - Meetings - Personnel -

Reports.

The agricultural products utilization commission, an office of the department of commerce division of economic development and finance, shall meet as necessary and shall report to each session of the legislative assembly. The commission may secure office space, employ required personnel for the performance of its duties, hire consultants, spend any funds appropriated to the commission, and contract with public entities or private parties for services.

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

Compensation.

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

1 one hundred dollars for each day of a regular meeting attended as payment for reviewing and
2 evaluating grant proposals.

3 **54-60.3-05. Agricultural products utilization commission - Administrative expenses.**

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

9 **54-60.3-06. Agricultural products utilization fund - Purposes.**

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

14 **SECTION 2. REPEAL.** Chapter 4-14.1 of the North Dakota Century Code is repealed.

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**3 **SECTION 1. AMENDMENT.** Section 4-30-01 of the North Dakota Century Code is amended
4 and reenacted as follows:5 **~~4-30-014.1-23-01.~~ Definitions.**6 In this chapter, ~~unless the context otherwise requires:~~7 1. ~~"Approved laboratory" means a laboratory in which the entire facilities and equipment~~
8 ~~have been approved by the department as being adequate to perform the necessary~~
9 ~~official tests in accordance with the North Dakota laws and the rules of the~~
10 ~~department.~~**NOTE:** "Approved laboratory" is a phrase not used anywhere in this chapter except in this definition.11 ~~2.1.~~ "Cheese factory" means a ~~place where~~facility that makes cheese is made for
12 commercial purposes.13 ~~3.2.~~ "Commissioner" means the agriculture commissioner or the commissioner's designee.14 4. ~~"Composite sample" means a mixture of single samples of milk or milk products taken~~
15 ~~from different lots or deliveries, the amount taken each time being in proportion to the~~
16 ~~amount of milk or milk products delivered. Composite samples are usually taken for~~
17 ~~determining the butterfat content of a product and are tested at a frequency of not less~~
18 ~~than once every fifteen days. Preservatives may be added.~~**NOTE:** The words "composite sample" and the word "composite" are never used in this chapter, except in this definition. In section 4-30-20, there is a description of samples to be taken by a purchaser, but it does not match this unused definition. The sampling requirement in Section 4-30-20 was revised in 1979, eliminating the use of the phrase "composite sample", but this definition was not eliminated at that time. It is obsolete.

1 ~~5-3.~~ "Condensery" means a ~~place~~facility where condensed or evaporated milk is produced
2 ~~or where milk is changed to a thick liquid by evaporation of a part of the water.~~

3 ~~6-4.~~ "Dairy animal" means any mammal maintained for the commercial production of milk
4 to be offered for sale for use in the processing or manufacturing of milk or dairy
5 products.

NOTE: This definition includes milk from any mammal. Chapter 4.1-05, on dairy promotion, defines dairy product as a product for human consumption which is derived from the processing of milk from cows. Chapter 4.1-26, on the Milk Marketing Board, defines milk as the lacteal secretion of a cow.

6 ~~7-5.~~ "Dairy ~~or dairy~~ farm" means a place where one or more dairy animals are kept, ~~a part~~
7 ~~or all of the milk or milk products from which is sold or offered for sale.~~

8 ~~8-6.~~ "Dairy product" includes milk, cream, sour cream, butter cream, skimmed milk, ice
9 cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk,
10 cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix,
11 sherbet, condensed milk, evaporated milk, or concentrated milk.

NOTE: "Dairy product" is used and partially defined in the definition of "Filled dairy products." Defining it here somewhat simplifies the definition of "Filled dairy products."

12 ~~7.~~ "Department" means the department of agriculture.

13 ~~9-8.~~ "Distributor" means a person ~~or company~~ that provides storage, transportation,
14 delivery, or distribution of ~~milk and milk~~dairy products to any person who ~~offers for sale~~
15 ~~or sells to any consumer milk or milk~~dairy products.

NOTE: This chapter does not define "milk" or "milk products." "Dairy products" is defined and is substituted. "Person" is defined for any use of the term in the Century Code in Section 1-01-49(8) to mean "an individual, organization, government, political subdivision, or government agency or instrumentality." However, the word is defined in this section, for this chapter, to mean "individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements." Use of "or company" in this subsection is incorrect because it is more restrictive than the definition in this section.

16 ~~10-9.~~ "Drying plant" means a ~~place which~~facility that manufactures dry milk products
17 ~~obtained by the removal of~~removing water from milk or milk products.

18 ~~11-10.~~ "Filled dairy products" means any milk, cream, or skimmed milk, or any combination
19 ~~thereof~~of them, whether or not condensed, evaporated, concentrated, frozen,
20 powdered, dried, or desiccated, or any food product made or manufactured
21 ~~therefrom~~from those products, to which has been added, ~~or which has been blended,~~
22 or compounded with, any fat or oil, other than milkfat ~~so that the resulting product is in~~

1 ~~imitation or semblance of any, to imitate a~~ dairy product, including milk, cream, sour-
2 cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim-
3 milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed-
4 cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or
5 concentrated milk; provided, however, that this term shall. "Filled dairy products" may
6 not be construed to mean or include:

- 7 a. Any distinctive proprietary food compound not readily mistaken for a dairy
8 product, ~~where such~~if the compound is customarily used on the order of a
9 physician and is prepared and designed for medicinal or special dietary use and
10 prominently so labeled;
- 11 b. Any dairy product flavored with chocolate or cocoa, or the vitamin content of
12 which has been increased, or both, ~~whereif~~if the fats or oils other than milkfat
13 contained in ~~such~~the product do not exceed the amount of cacao fat naturally
14 present in the chocolate or cocoa used and the food oil, not in excess of
15 one-hundredth per centum of the weight of the finished product, used as a carrier
16 of such vitamins; or

NOTE: It is uncertain what was intended here by use of "one-hundredth per centum." Per centum means one hundredth, so literal application is one-hundredth of one-hundredth or one-hundredth of one percent.

- 17 c. ~~Oleomargarine~~Margarine.

NOTE: Oleomargarine is pretty much obsolete usage for margarine. It is also not clear it covers the blends marketed today.

18 ~~42.11.~~ "Grading" means the examination of milk or milk products by sight, odor, taste, or
19 laboratory analysis, the results of which determine a ~~grade-designating~~ rating of the
20 quality of the product.

NOTE: Use of "grade" to define "grading" is improper usage.

21 ~~43.12.~~ "Ice cream plant" means a ~~place where~~facility that makes ice cream is made for
22 commercial purposes.

23 ~~44.13.~~ "Ice milk plant" means a ~~place where~~facility that makes ice milk is made for
24 commercial purposes.

NOTE: Use of "ice cream" or "ice milk" to define a plant making that product is improper usage and of questionable value to the reader.

25 ~~45.14.~~ "Imitation milk" or "imitation milk product" means a food product or food compound
26 made to resemble milk or a milk product when any of the following occurs:

- 1 a. The food physically resembles milk or a milk product. "Physical resemblance"
- 2 means those characteristics relating to the composition of food, including fat and
- 3 moisture content, nonfat solids content, and functional ingredient or food additive
- 4 content such as emulsifiers, stabilizers, flavor, or color additives.
- 5 b. The packaging used resembles the packaging used for milk or for a milk product.
- 6 c. The food product or food compound is displayed in a retail establishment in the
- 7 same manner as milk or a milk product.
- 8 d. Verbal or pictorial expressions are used on the food products or food compounds,
- 9 labeling, or in advertisements or other similar devices used to promote the food
- 10 products or food compounds that state or imply that the food is milk or a milk
- 11 product.
- 12 e. The food product or food compound in any other way is manufactured, packaged,
- 13 or labeled so as to resemble the identity, intended use, or physical and sensory
- 14 properties of milk or a milk product. "Physical and sensory properties" means
- 15 those characteristics relating to flavor, texture, smell, and appearance of a food
- 16 product or food compound.

17 ~~46.15.~~ "Milk hauler" means a person who owns vehicles used to transport raw milk from a

18 dairy farm to a dairy facility.

19 ~~47.16.~~ "Milk plant or bottling plant" means a ~~place~~facility where milk or milk products are

20 collected, handled, processed, stored, and prepared for distribution.

21 ~~48.17.~~ "Milk solids or total solids" means the total amount of solids in milk.

22 ~~19. "Overrun" means the increase in volume of a manufactured product due to the~~

23 ~~incorporation of water, air, or other substance commonly used in the manufacturing~~

24 ~~processes.~~

NOTE: The only section (Section 4-30-42) of the chapter using the term "overrun" was repealed in 2001.

25 ~~20.18.~~ "Pasteurization" as applied to milk or skim milk means ~~the~~ either:

- 26 a. The process of heating every particle of milk to at least one hundred forty-five
- 27 degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products
- 28 to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and
- 29 holding it at ~~such~~that temperature continuously for at least thirty minutes; or
- 30 heating

b. Heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it at ~~such~~that temperature continuously for at least fifteen seconds in approved and properly operated equipment.

When applied to cream for buttermaking, "pasteurization" means the cream ~~shall~~must be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds.

Nothing contained in this ~~definitions~~subsection may be construed as barring any other process ~~which~~that has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the ~~dairy~~ commissioner.

NOTE: There is no dairy commissioner.

~~21.19.~~ "Pasteurized Milk Ordinance" means the 2013 revision of the Grade "A" Pasteurized Ordinance issued by the United States food and drug administration and by the United States department of agriculture's public health service.

~~22.20.~~ "Peddler" means a person who purchases milk or milk products and sells them directly to consumers at any place other than from a store, stand, or other fixed place of business.

NOTE: "Peddler" occurs only in Section 2 of this draft, which requires a license for a place of business. By this definition there is no place of business. Is this of any value?

~~23.21.~~ "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.

~~24.22.~~ "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner ~~which~~that changes the natural, physical, or chemical properties of the original product.

~~25.23.~~ "Producer dairy" means a dairy farm ~~which~~that sells milk or cream to a dairy plant for processing or manufacturing.

1 ~~26-24.~~ "Producer-processor" or "producer-distributor" means a producer who is also a
2 processor or distributor.

NOTE: "Producer-distributor" is defined in this section but never used in any other provision of law.

3 ~~27-25.~~ "Raw milk or raw milk products" means products ~~which~~that have not been treated by
4 the process of pasteurization ~~as defined in this section.~~

5 ~~28.~~ ~~"Receiving and transfer station" means a place where milk or milk products are~~
6 ~~collected for shipment to a processing or manufacturing plant. This definition must not~~
7 ~~be interpreted to include the warehouses, docks, loading platforms, or storage rooms~~
8 ~~of commercial carriers.~~

NOTE: "Receiving and transfer station" is not used anywhere in this chapter except in this definition.

9 ~~29-26.~~ "Retail" means the sale of milk or milk products directly to the consumer.

10 ~~30-27.~~ "Sampler" means a person, other than a milk producer or dairy plant employee, who
11 transports samples for official use or raw milk or milk products from a dairy farm to a
12 dairy facility.

13 ~~31-28.~~ "Sampling" means a procedure whereby taking a portion ~~or specimen~~ of milk or milk
14 products ~~is taken for the purpose of~~ grading or testing.

15 ~~32-29.~~ "Shared animal ownership agreement" means any contractual arrangement under
16 which an individual:

- 17 a. Acquires an ownership interest in a milk-producing animal;
18 b. Agrees to pay another for, reimburse another for, or otherwise accept financial
19 responsibility for the care and boarding of the milk-producing animal at the dairy
20 farm; and
21 c. Is entitled to receive a proportionate share of the animal's raw milk production as
22 a condition of the contractual arrangement.

23 ~~33-30.~~ "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been
24 removed.

25 ~~34-31.~~ "Standard Methods" means the seventeenth edition of the Standard Methods for the
26 Examination of Dairy Products published by the American public health association.

NOTE: It appears the 17th Edition, published 2004, is the most current publication.

1 ~~35:32.~~ "Testing" means an examination of milk, or milk products by sight, odor, taste, or
2 laboratory analysis to determine the quality, wholesomeness, or composition thereof
3 the product.

4 ~~36.~~ ~~"3A standards" means standards which have been established for certain equipment,~~
5 ~~utensils, and other items by the 3A sanitary standards committee of the international~~
6 ~~association of milk and food sanitarians, incorporated.~~

NOTE: "3A" is not used anywhere in this chapter except in this definition. It is used in the dairy rules adopted by the Agriculture Commissioner, but is not defined there. It appears to be generally covered by federal laws and rules. There appears to be no reason for this definition in this chapter.

7 ~~37.~~ ~~"Transfer station" means a place where milk or milk products are regularly transferred~~
8 ~~from one vehicle to another. This definition shall not be interpreted to include the~~
9 ~~warehouses, docks, loading platforms, or storage rooms of commercial carriers.~~

NOTE: "Transfer station" is not used anywhere in this chapter except in this definition and the definition of "Receiving and transfer station."

10 ~~38:33.~~ "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of
11 resale.

NOTE: This does not appear to do anything not covered by the dictionary definition.

12 **SECTION 2. AMENDMENT.** Section 4-30-02 of the North Dakota Century Code is amended
13 and reenacted as follows:

14 ~~4-30-024.1-23-02.~~ **Licenses required - Fees - Term.**

15 Every

16 1. The license required by this section must be obtained for each place of business in
17 this state owned or operated by:

18 a. A producer-processor, peddler, or distributor, every;

NOTE: Not sure about the use of "peddler." Dictionary definition is one who travels about selling something. It sounds like someone who does not have a place of business, which is the case in the definition in Section 1. This section provides it is the "place of business" for which a license would be required. "Producer-distributor" is defined in Section 1, but not listed here as someone needing a license nor is it used anywhere else in law.

19 b. A person purchasing milk or milk products for processing or manufacturing, or;

20 c. A person owning, operating, or leasing a creamery, cheese factory, condensery,
21 drying plant, ice cream plant, ice milk plant, or milk plant, every;

22 d. A person owning, operating, or leasing any other business engaged in the
23 processing or manufacturing of milk or milk products; and every

1 e. ~~An organization acquiring milk or milk products on its own behalf or as an agent~~
2 ~~for sale on behalf of others and doing business within this state shall obtain the~~
3 ~~license required by this section for each such place of business.~~

4 2. Application for a license must be made to the commissioner upon forms as prescribed
5 by the commissioner may require. ~~Upon making~~An application for a license, it is-
6 ~~implied that consent is given by the applicant~~constitutes the implied consent of the
7 applicant for inspection by the department inspections. If the commissioner finds that
8 the applicant conforms to the North Dakota laws and the rules and regulations of the
9 ~~department~~commissioner, the commissioner shall issue a license ~~for conducting~~
10 ~~these~~to conduct the operations listed on the ~~application form~~license.

NOTE: It is the agency head in whom the ultimate legal authority of the agency is vested by law for purposes of Chapter 28-32. Therefore, it is the Commissioner who adopts rules, not the department. This correction is made in numerous places in this chapter.

11 3. If a licensee wishes to conduct operations other than those listed on an existing
12 license, the licensee may ~~request that~~make an application to the commissioner
13 ~~approve them, and if for a license to conduct additional operations.~~ If the commissioner
14 finds that the ~~proposals~~additional operations are in conformance with North Dakota
15 laws and the rules of the ~~department~~commissioner, the commissioner shall approve
16 them.

17 4. The license must be posted conspicuously in each licensed business.

18 5. All licenses issued under this section ~~must~~ expire on the thirtieth day of June of each
19 year and are not transferable.

20 6. ~~The fee for licenses~~license fee is twenty-five dollars.

NOTE: Should this provide that this is for an annual license? It could be read as a one-time license fee.

21 7. Every organization acquiring milk or milk products as an agent ~~for sale on behalf of~~
22 ~~others is, for the purposes of this chapter, is~~ deemed to be a purchaser of milk from a
23 dairy producer.

24 **SECTION 3. AMENDMENT.** Section 4-30-02.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

**~~4-30-02.14.1-23-03.~~ Financial records release authorization
with application for licensure.**

A purchaser of milk in North Dakota shall file with the license application a release authorizing the commissioner access to access the applicant's financial records held by financial institutions, accountants, and others. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing the applicant ~~or in the course of an~~ , conducting an investigation of ~~the~~ a complaint against the applicant due to a complaint ~~against the applicant~~ , or when ~~based upon~~ evidence is obtained establishing probable cause of a violation of this chapter. Information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to any state agency and to any prosecutorial official requiring the information for use in performing official duties.

SECTION 4. AMENDMENT. Section 4-30-03.1 of the North Dakota Century Code is amended and reenacted as follows:

~~4-30-03.14.1-23-04.~~ Financial condition - Assurance of prompt payment.

Each applicant for a license under section ~~4-30-024.1-23-02~~ who purchases milk from a dairy producer shall have first ~~satisfied~~ satisfy the department that the ~~applicant's financial condition~~ financial condition of the applicant is ~~such as to reasonably~~ adequate to assure prompt payment to the dairy producers for purchased milk.

SECTION 5. AMENDMENT. Section 4-30-03.2 of the North Dakota Century Code is amended and reenacted as follows:

~~4-30-03.24.1-23-05.~~ Statement of business operations or financial condition - Filing - Review by Bank of North Dakota - Confidential - Audited.

Each applicant for a license under section ~~4-30-024.1-23-02~~ who purchases milk from a dairy producer shall annually file with the department an audited financial statement prepared by an independent certified public accountant or licensed public accountant in accordance with generally accepted accounting practices and principles, verified by the accountant as accurately representing business operations and financial conditions of the ~~plant business~~ applicant for which the statement is rendered, prepared as of the close of the ~~plant's~~ most recent fiscal year of the applicant. In lieu of filing an audited financial statement, an applicant may file other forms of security as provided in section ~~4-30-03.34.1-23-06.~~ All audited financial statements shall be

1 reviewed by the Bank of North Dakota. All statements shall be confidential and shall not be
2 open for public inspection. The department may require additional statements to be audited by a
3 certified public accountant or a licensed public accountant.

4 **SECTION 6. AMENDMENT.** Section 4-30-03.3 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **~~4-30-03.34.1-23-06.~~ Surety bond, trustee agreement, other security or assurances.**

7 ~~In all cases where~~It appears that the financial condition of any applicant or licensee who
8 purchases milk from a dairy producer is not adequate to reasonably assure payment to dairy
9 producers when due for the milk to be purchased, or in lieu of annually filing with the
10 department an audited financial statement as required in section ~~4-30-03.24.1-23-05~~, the
11 department shall require from an applicant or licensee security or other assurances in one of
12 the following forms:

- 13 1. The filing of a surety bond acceptable to the department. The amount of the surety
14 bond must be determined on the basis of average purchases of milk from dairy
15 producers during the previous year. If payment for milk purchased from dairy
16 producers is made on a weekly basis, the amount of the surety bond must be at least
17 in an amount equal to the average weekly purchases of milk. If payment for milk
18 purchased from dairy producers is made on a semimonthly basis, the amount of the
19 surety bond must be at least in an amount equal to the average semimonthly
20 purchases of milk. If the period of payment for milk purchased from dairy producers is
21 made on a basis involving periods of time greater than semimonthly, the amount of the
22 surety bond must be at least in an amount equal to the average purchases of milk for
23 that greater period of time. The amount of the bond for each period of payment must
24 also include an amount equal to at least the average purchases for three days
25 following the close of the period of payment. The amount of the surety bond of any
26 licensee who pays assignments to creditors of a producer of milk at a lesser frequency
27 than the licensee pays the producer must also include an amount equal to the value of
28 assignments from the prior payment period. The commissioner must be named as
29 obligee, but the bond or draft must be held for the purpose of protecting, and for the
30 benefit of, any dairy producer, and the full and complete payment to that dairy
31 producer for all milk purchased by the licensee. The aggregate liability of the bonding

company or the department to all dairy producers ~~must in no event~~ may not exceed the amount of the bond.

2. ~~The providing of~~ Providing an amount of protection for dairy producers, ~~from whom milk is purchased,~~ equal to the amount of protection provided in subsection 1, ~~whereby the~~ The security is to ~~shall~~ be held by the department solely for the protection of dairy producers, in one or more of the following forms:

a. Cash deposited with a bank or trust company and held under an escrow agreement with the department;

b. Bonds of the United States deposited with the department;

c. Stocks, bonds, or other marketable securities at current market values, which securities have regularly reported quotations, deposited with the department; or

d. A certified bank draft, certified check, irrevocable letter of credit, or certificate of deposit held in favor of the department.

3. The filing of an agreement providing ~~for the~~ complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the dairy producers. The trustee shall ~~make and~~ file a trustee's bond and contracts signed by the owner or operator and the purchaser of the dairy products requiring that payment for all dairy products sold be made to the trustee. The trustee shall maintain a separate bank account for that purpose and shall at least annually render a true and correct account of trustee dealings to the department and to the dairy producers.

SECTION 7. AMENDMENT. Section 4-30-03.4 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.4.1-23-07. Financial basis for license - Statement to producer - Notification to department.

All milk purchasers licensed under section ~~4-30-024.1-23-02~~ shall inform producers ~~delivering milk~~ of the financial basis on which the license was issued, including the type and amount of security, if any, filed under section ~~4-30-03.34.1-23-06~~, by an annual written statement to each producer ~~patron at least once every year.~~ No ~~A~~ person may not receive milk ~~which that~~ will increase the amount due and accrued beyond the amount represented as a basis for the issuance of a license without first notifying the department.

1 **SECTION 8. AMENDMENT.** Section 4-30-03.5 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-30-03.54.1-23-08. Additional security.**

4 ~~Whenever~~When the department determines that the value of milk purchased or received
5 from producers has increased or that an increase may reasonably be anticipated, so that the
6 total amount of security does not comply with the amount required by subsection 1 or 2 of
7 section ~~4-30-03.34.1-23-06~~, the department shall require additional security ~~as will~~to afford
8 producers the protection intended by section ~~4-30-03.34.1-23-06~~. The department may suspend
9 or revoke any license if the licensee fails to provide the additional security required by the
10 department pursuant to this section.

11 **SECTION 9. AMENDMENT.** Section 4-30-03.6 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **4-30-03.64.1-23-09. Filing of security before license year.**

14 ~~Surety~~An applicant or licensee shall file bonds or other security for the license year ~~must be~~
15 ~~filed with the department not~~no later than the first day of ~~the month before~~June immediately
16 preceding the beginning of each license year. ~~If any~~Any applicant or licensee who ~~purchases or~~
17 ~~receives milk from dairy producers has not filed~~fails to file a surety bond or other security, and
18 has not been relieved from filing a surety bond or other security, by ~~the~~the ~~July first day of the~~
19 ~~month~~ of the license year, the department shall notify producers ~~selling milk to the applicant or~~
20 ~~licensee~~ that the applicant or licensee has not filed any security or made other provisions for
21 assuring payments for milk purchases, for the license year.

22 **SECTION 10. AMENDMENT.** Section 4-30-03.7 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **4-30-03.74.1-23-10. Failure to file security - Notice to producers.**

25 ~~Whenever~~If an applicant or licensee fails to file a surety bond or other security within the
26 time fixed by section ~~4-30-03.64.1-23-09~~ or ~~the department's~~fails to comply with a demand for
27 additional security, the department shall publish in ~~a newspaper or~~ newspapers having
28 circulation in the ~~area or areas in which~~where the producers whose milk is sold or delivered to
29 the applicant or licensee reside, a notice stating ~~that the~~:

- 30 1. The department made a demand or request for additional security from the applicant
31 or licensee; that

1 2. That the applicant or licensee has failed to comply; that

2 3. That the department does not have on file a surety bond or other security as
3 demanded; and that

4 4. That adequate security to protect producers may not be available to them.

5 In addition to a published notice to producers, the department shall send, by registered mail, a
6 copy of the notice to each producer delivering milk to the applicant or licensee as ~~may be able~~
7 ~~to be determined from available records and the~~ The notice must be addressed to the
8 ~~producer's last-known place of residence of the producer.~~

9 **SECTION 11. AMENDMENT.** Section 4-30-03.8 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **~~4-30-03.84.1-23-11.~~ Out-of-state dealers, processors, or producers not exempt.**

12 Sections ~~4-30-03.14.1-23-04~~ through ~~4-30-03.104.1-23-13~~ apply to all milk purchasers
13 licensed under section ~~4-30-024.1-23-02~~ doing business in ~~whole or in part within~~ the state. The
14 protection to producers afforded by sections ~~4-30-03.14.1-23-04~~ through ~~4-30-03.104.1-23-13~~ is
15 available to the producers of any state selling milk to any licensee licensed under section
16 ~~4-30-024.1-23-02~~, but the surety bond or other security required by sections ~~4-30-03.34.1-23-06~~
17 and ~~4-30-03.54.1-23-08~~ is payable only for the benefit of producers who are located within this
18 state.

19 **SECTION 12. AMENDMENT.** Section 4-30-03.9 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **~~4-30-03.94.1-23-12.~~ Entry, inspection, and investigation.**

22 Authorized representatives of the department may enter, at reasonable hours, places of
23 business where a licensee or license applicant maintains books, papers, accounts, records, or
24 other documents related to the production, storage, processing, manufacturing, or sale of dairy
25 products. The commissioner may subpoena, and the commissioner's authorized representative
26 may inspect, audit, and make copies of relevant books, papers, records, accounts, or other
27 documents of persons doing business with licensees. Any information gained by the department
28 or by the commissioner under this section is confidential and may be used only for the
29 administration of this chapter, ~~but the~~ The department or the commissioner may divulge the
30 information when testifying in any departmental administrative hearing, in a duly noticed
31 proceeding before the milk marketing board, or in any court proceeding in which the department

1 or the commissioner is a party. This chapter does not prevent the use of information procured
2 by the department or the commissioner in the compiling or dissemination of from using the
3 information to compile or disseminate general statistical data containing information procured
4 from a number of licensees and compiled in a manner so as not to so long as the data does not
5 reveal individual information for any licensee or license applicant.

6 The commissioner may also subpoena and take the testimony under oath of persons
7 believed by the commissioner to have information needed ~~by the commissioner~~ in administering
8 and enforcing this chapter.

9 **SECTION 13. AMENDMENT.** Section 4-30-03.10 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **~~4-30-03.10~~ 4-30-03.1-23-13. Records and reports.**

12 Licensees shall maintain the records the commissioner ~~by rule determines~~ deems necessary
13 to effectuate the purpose of assuring assure that a licensee's financial condition the financial
14 condition of the licensee is such as to reasonably adequate to assure prompt payment to
15 producers.

16 **SECTION 14. AMENDMENT.** Section 4-30-04 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **~~4-30-04.1-23-14~~. Department to become trustee upon default in required security.**

19 If any licensee defaults in the provisions of on any of the required security provisions, the
20 licensee is deemed to be insolvent ~~within the meaning of this chapter~~. The claim for relief for
21 damages ~~upon any required security~~, and the amount recovered in any action for the
22 conversion of milk, or milk products, ~~as the case may be~~, purchased by the licensee while the
23 license is in force and effect, and the assets of the licensee not ~~made subject~~ subjected to any
24 claim in federal bankruptcy court by any secured or general creditor within four months of the
25 appointment of the department as trustee under this chapter, constitute a trust fund in the hands
26 of the department for all persons having a claim for relief against the licensee on the required
27 security.

28 **SECTION 15. AMENDMENT.** Section 4-30-05 of the North Dakota Century Code is
29 amended and reenacted as follows:

4-30-054.1-23-15. Application by department for appointment of trustee - Hearing - Appointment.

Upon the insolvency of a licensee as defined in section ~~4-30-044.1-23-14~~, the department shall apply to the district court of the county in which the licensee maintains its principal place of business for the appointment of ~~itself~~ the department as trustee. Upon such notice to the licensee as the court ~~shall prescribe~~ prescribes, but not exceeding ten days, or upon waiver of such notice in writing by the licensee, the court shall proceed to hear and determine such application ~~in a summary manner~~. If it ~~shall appear~~ appears to the court that the licensee is insolvent within the meaning of this chapter and that it ~~would be for~~ is in the best interest of persons holding claims against the licensee ~~for the purchase price of milk or milk products sold to such licensee or 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 in the manner set out in this chapter without further direction from the court.

SECTION 16. AMENDMENT. Section 4-30-06 of the North Dakota Century Code is amended and reenacted as follows:

4-30-064.1-23-16. Notice to file claims - When claims barred.

The department, as trustee, shall notify all persons having claims against the licensee personally by certified mail to file the same with the department. Any ~~such~~ person who fails to file a claim with the department and to surrender ~~to it~~ any receipts obtained from ~~such~~ the licensee within thirty days after receiving notice ~~must be~~ is barred from ~~participation upon such~~ pursuing the claim in any fund marshalled by the department as prescribed in this chapter. The department may proceed as prescribed by law when all producers have responded to the notification.

SECTION 17. AMENDMENT. Section 4-30-07 of the North Dakota Century Code is amended and reenacted as follows:

4-30-074.1-23-17. Remedy of claimants - Separate action by claimant permissible.

~~No~~ A claimant has ~~an~~ no separate claim for relief against ~~any licensee's required security~~ the required security of a licensee unless the department fails or refuses to apply for ~~its own~~ appointment as trustee ~~as provided in~~ under this chapter. Any claimant, either independently or in conjunction with other claimants, may pursue concurrently with the department any other remedy ~~which~~ the claimant or claimants may have against the licensee, or against the property

1 of the licensee, for the whole of their claim or claims or for any deficiency ~~which~~that occurs after
2 payments have been made from the trust fund.

3 **SECTION 18. AMENDMENT.** Section 4-30-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **4-30-084.1-23-18. Appeal or compromising of action by department.**

6 The department may prosecute an action for any claims arising under ~~the provisions of this~~
7 chapter in any court, may appeal from any adverse judgment to the courts of last resort, and
8 may settle and compromise any such action whenever ~~in its judgment it will be for it is in~~ the
9 best interests of the claimants. Upon payment to ~~it~~the department of the amount of any
10 compromise, or of the full amount of any required security, the department may exonerate the
11 person compromising or paying from further liability growing out of the action.

12 **SECTION 19. AMENDMENT.** Section 4-30-09 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **4-30-094.1-23-19. Moneys collected on claims**~~**Claims collections to be deposited in**~~
15 **Bank of North Dakota.**

16 All ~~moneys~~money collected and received by the department as trustee must be deposited in
17 the Bank of North Dakota ~~pending the marshalling of the fund.~~

18 **SECTION 20. AMENDMENT.** Section 4-30-10 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-30-104.1-23-20. Department to file report upon recovery of trust**~~**Trust fund report -**~~
21 **Notice to claimants - Approving or modifying report.**

22 Upon recovery of the trust fund, or so much thereof as it is possible to recover, or as is
23 necessary to pay all outstanding claims, the department shall file ~~its~~a report in court showing
24 the amount payable upon each claim, after recognizing any proper liens ~~or~~, pledges ~~thereon or~~,
25 assignments thereof, or deductions ~~therefrom~~, with legal interest ~~thereon~~. If the fund proves
26 insufficient to redeem all claims in full, the fund must be prorated among the claimants in such
27 manner as the department deems fair and equitable. ~~Thereupon~~Once the report is received
28 from the department, the court shall ~~cite such~~notify all claimants ~~upon such notice by mail as it~~
29 ~~prescribes to appear upon~~on a day fixed in the notice and show cause why ~~such~~the report
30 should not be approved and ~~distribution of the fund made~~the funds distributed as outlined in the
31 report. Upon such hearing the court shall approve ~~such report~~ or modify the ~~same~~report as

1 justice may require and shall issue an order directing the distribution of the fund and
2 discharging the department ~~from its trust~~ as trustee.

3 **SECTION 21. AMENDMENT.** Section 4-30-11 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **4-30-114.1-23-21. Attorney general to represent department and may employ**
6 **assistants - Department need not pay court costs.**

7 The attorney general shall represent the department in any action or proceeding brought
8 under the provisions of section ~~4-30-044.1-23-14~~, and may employ outside legal assistance
9 when necessary, ~~and. The attorney general may deduct the expense in connection therewith of~~
10 retaining outside legal assistance from the trust fund. The department is not required to pay any
11 filing fee or other court cost or disbursement in connection with an application for appointment
12 as trustee or with any action brought by it under the provisions of section ~~4-30-044.1-23-14~~
13 when such fee, cost, or disbursement accrues to the state or to a county of ~~this~~ the state.

14 **SECTION 22. AMENDMENT.** Section 4-30-12 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **4-30-124.1-23-22. License needed to sample, haul, or test - Training - Examination -**
17 **Term - Fee.**

18 ~~No~~ A person shall ~~may not~~ sample, haul, or test milk or milk products for the purpose of
19 determining the value or grade without obtaining a license from the department. In case of
20 illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six
21 days in one calendar year, unless specific approval for a longer period is obtained from the
22 commissioner. The licensee is responsible for the acts of the substitute. An applicant ~~for license~~
23 shall file an application with the department stating the type of sampling, hauling, or testing for
24 which the applicant wishes to be licensed ~~for~~. Before a license is issued, the ~~sampler~~ applicant
25 shall receive training in the sampling of milk or milk products as may be required by the
26 department, and shall pass a written examination prepared and ~~given~~ administered by the
27 department. The ~~sampler~~ applicant must show knowledge of the requirements of this
28 chapter ~~which pertain to sampling or testing~~, and must prove by actual demonstration that the
29 ~~sampler~~ applicant is competent and qualified to perform each type of sampling and testing listed
30 on the application. The commissioner shall ~~then~~ issue a license which ~~shall state~~ states the
31 types of sampling, hauling, or testing for which the applicant ~~has proven to be able to perform is~~

1 qualified. Additions may be added to the application form and license, without charge, after the
2 license has been issued, upon the request of the licensee ~~and, after receiving any additional~~
3 training and ~~satisfactorily~~ passing the required examinations. Examinations shall be given by
4 the department at times and places as the department shall determine. A licensee ~~needs~~ not
5 required to take any additional examinations when renewing a license unless required by the
6 commissioner ~~or the commissioner's assistants~~. All testers and samplers ~~are required to~~ shall
7 attend a training session sponsored by the department every two years. Retraining or retesting
8 or both may be required ~~by the commissioner at any time~~ when the commissioner reasonably
9 determines it to be necessary. Licenses issued under this section ~~shall~~ expire on December
10 thirtieth of each year. Testers' licenses must be posted conspicuously in the licensee's place of
11 operation, and are not transferable. Samplers' licenses must be carried by the sampler at all
12 times during sampling activities and are not transferable. The ~~fee for the annual license fee~~ is
13 ten dollars, ~~and a~~ A five dollar penalty fee is applied ~~after the thirty-first day of January~~ if
14 renewals are not paid ~~prior to that date~~ by the thirty-first day of January.

15 **SECTION 23. AMENDMENT.** Section 4-30-13.1 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **4-30-13.1-23-23. Commissioner to investigate complaint.**

18 ~~Upon receiving a statement~~ The commissioner shall investigate any complaint claiming that
19 any provision of this chapter or the rules of the ~~department~~ commissioner have been violated,
20 ~~the commissioner shall investigate the complaint as thoroughly and as soon as possible and~~
21 ~~practicable.~~ If the commissioner finds ~~upon conducting such investigation~~ that a provision of this
22 chapter or the rules of the ~~department~~ commissioner have been violated, the commissioner may
23 take any action deemed appropriate.

24 **SECTION 24. AMENDMENT.** Section 4-30-13.2 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **4-30-13.24.1-23-24. Inspections.**

27 Upon notification, the commissioner shall have free access to all places of business,
28 buildings, vehicles, and equipment used in the production, storage, handling, processing,
29 manufacturing, transporting, and marketing of milk and milk products, and their substitutes. The
30 commissioner may open and inspect any container suspected of containing a substance
31 produced, stored, handled, processed, manufactured, transported, sold, or offered for sale

1 under the provisions of this chapter. It is a violation of this chapter to refuse to allow inspections
2 of any dairy facilities licensed under this chapter. The commissioner may suspend a license for
3 failure to comply with this section.

4 **SECTION 25. AMENDMENT.** Section 4-30-15 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **4-30-154.1-23-25. Suspension or revocation of license - Judicial review - Emergency**
7 **order.**

8 Any proceedings under this chapter for the suspension or revocation of any license, or to
9 otherwise determine compliance with this chapter, or the rules and regulations and orders of the
10 department~~commissioner~~, must be conducted in accordance with the provisions of chapter
11 28-32 and appeals may be taken~~made~~ as therein provided. When an emergency exists
12 requiring immediate action to protect the public health and safety, ~~the department may~~, without
13 notice or hearing, the commissioner may issue an order reciting the existence of the emergency
14 and requiring that action be taken as necessary to meet the emergency~~protect the public health~~
15 and safety. Notwithstanding any provision of this chapter, the order is effective immediately, but
16 on application to the department an interested person must be afforded a hearing before the
17 department within ten days. On the basis of the hearing, the emergency order must be
18 continued, modified, or revoked within thirty days after the hearing.

19 ~~Any person, firm, corporation, or limited liability company whose license is suspended is not~~
20 ~~eligible during the period of the~~During a period of license suspension to a person may not
21 engage in activities that would be allowed by the suspendedonly under a valid license either
22 personally, or indirectly by having a financial interest in the business.

23 **SECTION 26. AMENDMENT.** Section 4-30-18 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **4-30-184.1-23-26. Sampling and testing procedures - Equipment - Supplies.**

26 The laboratory procedures, equipment, chemicals, and other apparatus or substances used
27 in the sampling, hauling, or testing of milk or milk products must conform to those described in
28 the Standard Methods, a copy of which must be kept on file in the department. ~~No~~Any
29 equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing
30 of milk or milk products ~~which is not in conformance with~~conforming to the requirements of this
31 chapter may not be sold or offered for sale. The commissioner, through the adoption of rules,

1 may alter, amend, or prohibit any specific requirement of this section and may approve other
2 sampling, hauling, or testing procedures or equipment. The commissioner, when appropriate,
3 may check calibration of farm bulk milk tanks and equipment.

4 **SECTION 27. AMENDMENT.** Section 4-30-20 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **4-30-204.1-23-27. Sampling of milk.**

7 Every purchaser of milk from a dairy producer shall collect a minimum sample of two
8 ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must
9 be collected and maintained in accordance with those procedures contained in the Standard
10 Methods. Records must be kept, which readily identify the sample, with those items used to
11 determine payment for the milk. Such items must include weight, butterfat content, protein,
12 solids-not-fat, and the total amount of money paid for the milk.

13 **SECTION 28. AMENDMENT.** Section 4-30-27 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **4-30-274.1-23-28. Standards for the production of manufacturing grade milk -**
16 **Commissioner to adopt minimum standards of rules.**

17 ~~The commissioner may adopt rules governing the production and processing of milk for~~
18 ~~manufactured dairy products. Rules shall, at~~At a minimum, rules governing the production and
19 processing of milk for manufactured dairy products must comply with United States department
20 of agriculture minimum standards for manufacturing grade dairy products.

NOTE: Section 59 of this bill draft provides the Commissioner rulemaking authority for any
matter within the coverage of this chapter. The Commissioner does not require added
authority to make rules, but the minimum standards requirement must be retained.

21 **SECTION 29. AMENDMENT.** Section 4-30-28 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **4-30-28. Farm certification.**

24 ~~The commissioner may promulgate rules and regulations concerning farm certification.~~

NOTE: Section 59 of this bill draft provides the Commissioner rulemaking authority for any
matter within the coverage of this chapter.

25 **SECTION 30. AMENDMENT.** Section 4-30-29 of the North Dakota Century Code is
26 amended and reenacted as follows:

1 ~~**4-30-29. Grades of milk for manufacturing purposes.**~~

2 The commissioner may promulgate rules and regulations concerning grades of milk for
3 manufacturing purposes.

NOTE: Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

4 **SECTION 31. AMENDMENT.** Section 4-30-30 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 ~~**4-30-30. Milk grading program.**~~

7 The commissioner may promulgate rules and regulations concerning a milk grading
8 program.

NOTE: Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

9 **SECTION 32. AMENDMENT.** Section 4-30-31 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 ~~**4-30-31. Rejection and exclusion of milk.**~~

12 The commissioner may promulgate rules and regulations concerning rejection and
13 exclusion of milk.

NOTE: Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

14 **SECTION 33. AMENDMENT.** Section 4-30-32 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 ~~**4-30-32. New producers -- Transfer producers.**~~

17 The commissioner may promulgate rules and regulations concerning new producers and
18 transfer producers.

NOTE: Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

19 **SECTION 34. AMENDMENT.** Section 4-30-33 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 ~~**4-30-33.1-23-29. Standards for dairy manufacturing or processing - Commissioner to**~~
22 ~~**adopt**~~**Minimum standards of rules.**

23 The commissioner may adopt rules governing the approval of dairy processing and
24 manufacturing plants and standards for grades of dairy products. Rules must, ~~at~~ At a minimum,
25 rules governing the approval of dairy processing and manufacturing plants and standards for
26 grades of dairy products must comply with United States department of agriculture general

1 specifications for approved dairy plants and standards for grades of dairy products. ~~No~~A plant
2 may not be operated or any dairy products sold in violation of these rules.

NOTE: Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter. The Commissioner does not require added authority to make rules, but the minimum standards requirement must be retained.

3 **SECTION 35. AMENDMENT.** Section 4-30-34 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 ~~**4-30-34. Inspection of dairy plants manufacturing or processing milk products.**~~

6 ~~The commissioner may promulgate rules and regulations for an inspection program of dairy-~~
7 ~~plants manufacturing or processing milk products.~~

NOTE: Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

8 **SECTION 36. AMENDMENT.** Section 4-30-35 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 ~~**4-30-35. Standards for manufactured dairy products.**~~

11 ~~The commissioner may promulgate rules and regulations establishing standards for-~~
12 ~~manufactured dairy products.~~

NOTE: Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

13 **SECTION 37. AMENDMENT.** Section 4-30-36 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 ~~**4-30-36.1-23-30. Standards for grade A milk and milk products - Adoption of**~~
16 ~~**amendments**~~rules.

17 Only grade A milk may be sold as a fluid beverage for human consumption. The minimum
18 standards for milk and milk products designated as grade A are the same as the minimum
19 requirements of the Pasteurized Milk Ordinance which includes provisions from the "Grade A
20 Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the
21 Grade A PMO". The commissioner may adopt ~~as regulations~~ rules imposing other standards in
22 the interest of public safety, wholesomeness of product, consumer interest, sanitation, good
23 supply, salability, and promotion of grade A milk and milk products.

24 **SECTION 38. AMENDMENT.** Section 4-30-36.2 of the North Dakota Century Code is
25 amended and reenacted as follows:

1 **~~4-30-36.24.1-23-31.~~ State milk sanitation rating and sampling surveillance officer -**
2 **Duties - Guidelines.**

3 The state milk sanitation rating and sampling surveillance officer is responsible for the rating
4 and certification of milk and dairy products. The rating and certification of milk and dairy
5 products must be in accordance with the procedures outlined in the public health
6 ~~service/food~~service food and drug administration publication entitled "Methods of Making
7 Sanitation Ratings of Milk Shippers - 2013 Revision, Edition" and the sampling of milk and dairy
8 products must be in accordance with the guidelines in the Standard Methods.

9 **SECTION 39. AMENDMENT.** Section 4-30-36.3 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **~~4-30-36.34.1-23-32.~~ Milk laboratory evaluations officer - Duties - Guidelines.**

12 The milk laboratory evaluations officer is responsible for the certification and evaluation of
13 milk and dairy products laboratories within the state. Evaluations and certification of milk
14 laboratories must be made in accordance with the Standard Methods and the procedures
15 outlined in the public health service/food and drug administration publication entitled "Evaluation
16 of Milk Laboratories - 2013 Edition".

17 **SECTION 40. AMENDMENT.** Section 4-30-36.4 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **~~4-30-36.44.1-23-33.~~ Grade A pasteurized milk ordinance.**

20 Dairy producers, processors, and manufacturers shall comply with the Pasteurized Milk
21 Ordinance and follow the standards set by the "Procedures Governing the Cooperative
22 State-Public Health Service Food and Drug Administration Program of the National Conference
23 on Interstate Milk Shipments, 2013 Revision".

24 **SECTION 41. AMENDMENT.** Section 4-30-37 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **~~4-30-374.1-23-34.~~ Quality records to be kept - Term.**

27 Adequate records for testing and grading in conformance with this chapter and the rules of
28 the ~~department~~commissioner must be kept by each business sampling or testing milk for at
29 least twelve months in a manner approved by the commissioner.

30 **SECTION 42. AMENDMENT.** Section 4-30-38 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 ~~4-30-38. Transportation of milk for manufacturing, processing, or bottling purposes--~~

2 ~~Commissioner to adopt rules.~~

3 ~~The commissioner may adopt rules governing the transportation of milk to be used for~~
4 ~~manufacturing, processing, or bottling purposes. No facility or vehicle may be used or operated~~
5 ~~in violation of these rules.~~

NOTE: Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

6 **SECTION 43. AMENDMENT.** Section 4-30-38.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 ~~4-30-38.14.1-23-35. Milk haulers - License required - Commissioner to adopt rules.~~

9 ~~No~~A person shall~~may not~~ own or operate any tank truck, bulk milk truck, or other vehicle
10 used or designed to carry bulk raw milk without a license issued by the department. The
11 commissioner shall ~~promulgate~~adopt rules governing the operation, inspection, design, and
12 licensure of such persons. The license of any person operating a vehicle in violation of this
13 section or the rules of the ~~department~~commissioner is subject to revocation or suspension in
14 accordance with procedure established by law. A license to haul milk issued under this section
15 may be issued in conjunction with or as part of any license to sample or test milk or milk
16 products issued pursuant to section ~~4-30-124.1-23-22.~~

NOTE: This imposes a mandatory rulemaking requirement, which is necessary to retain because the rulemaking authority otherwise provided by law is permissive.

17 **SECTION 44. AMENDMENT.** Section 4-30-39 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 ~~4-30-39. Transportation, labeling, and distribution of processed and manufactured~~
20 ~~products--Rulemaking--Violations.~~

21 ~~The commissioner may adopt rules governing the labeling, distribution, and transportation~~
22 ~~of processed and manufactured milk or milk products.~~

NOTE: Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

23 **SECTION 45. AMENDMENT.** Section 4-30-40 of the North Dakota Century Code is
24 amended and reenacted as follows:

~~4-30-404.1-23-36.~~ Adulterated, impure, or unwholesome milk or milk products not to be transported, stored, sold, or offered for sale.

Any milk or milk products produced or kept under unclean or unsanitary conditions or produced from animals ~~which~~that are diseased or fed unwholesome, impure, or toxic feed; or milk ~~which~~that tastes from colostrum; shall be deemed impure and unwholesome. ~~No milk~~Milk or milk product ~~which~~that is deemed to be adulterated, impure, or unwholesome may not be transported, stored, sold, or offered for sale in this state.

SECTION 46. AMENDMENT. Section 4-30-41 of the North Dakota Century Code is amended and reenacted as follows:

~~4-30-414.1-23-37.~~ Sale of milk or milk products in violation of this chapter prohibited.

~~No~~A person may not sell, or offer for sale, any milk or milk product, their imitations or substitutes, ~~which~~that is produced, processed, manufactured, transported, or stored, in violation of the laws of this state or the rules ~~and regulations~~ of the ~~dairy department~~commissioner, or which do not subscribe to ~~its~~the definition as stated in this chapter or hereafter defined by the ~~dairy~~ commissioner.

NOTE: There is no dairy commissioner or department.

SECTION 47. AMENDMENT. Section 4-30-41.2 of the North Dakota Century Code is amended and reenacted as follows:

~~4-30-41.24.1-23-38.~~ Exception for uses as directed by physicians.

This chapter does not prohibit the manufacture or sale of filled dairy products or imitation milk and imitation milk products when such ~~foods~~products are ~~clearly~~prominently labeled to show their composition and ~~the fact~~ that they are sold customarily for use as directed by order of a physician and are prepared and designed for medicinal or special dietary use ~~and prominently so-labeled~~.

SECTION 48. AMENDMENT. Section 4-30-41.3 of the North Dakota Century Code is amended and reenacted as follows:

~~4-30-41.34.1-23-39.~~ Sale of foods not imitation milk, imitation milk products, or filled dairy products.

This chapter does not prohibit the manufacture or sale of proprietary foods ~~which~~that are clearly not imitation milk, imitation milk products, or filled dairy products; ~~which~~ do not contain imitation milk, imitation milk product, or filled dairy product; ~~and~~ which are not conducive to

substitution, confusion, deception, and fraud upon the purchasers of milk, milk products, or filled dairy products by their manufacture or sale.

SECTION 49. AMENDMENT. Section 4-30-41.4 of the North Dakota Century Code is amended and reenacted as follows:

~~4-30-41.44.1-23-40.~~ Shared animal ownership agreement - Raw milk.

It is not a violation of this chapter to transfer or obtain raw milk under a shared animal ownership agreement. ~~However, a~~ person may not resell raw milk or raw milk products obtained under a shared animal ownership agreement.

SECTION 50. AMENDMENT. Section 4-30-45.1 of the North Dakota Century Code is amended and reenacted as follows:

~~4-30-45.14.1-23-41.~~ Labeling and identity standards.

~~All persons~~A person who ~~sell at retail in this state~~sells milk or milk products at retail in the state must comply with the labeling standards and standards of identity set forth in 21 U.S.C. 343(q)(r) and in rules adopted by the commissioner.

SECTION 51. AMENDMENT. Section 4-30-46 of the North Dakota Century Code is amended and reenacted as follows:

~~4-30-46.1-23-42.~~ Reports - Blanks - When made - Contents.

The ~~dairy~~ commissioner shall furnish blanks to all licensed creameries, cheese factories, condenseries, drying plants, ice cream plants, ice milk plants, milk plants, and producer-distributors for the purpose of making a report of the amount of milk and milk products handled. Each proprietor or manager of such businesses shall report to the commissioner on the last ~~day~~days of June and of December of each year, ~~or within thirty days thereafter~~, or immediately upon cessation of operation, the pounds [kilograms] of butterfat in cream, the pounds [kilograms] of manufacturing grade milk, and the pounds [kilograms] of bottling milk purchased during the period covered by the report, the aggregate amount paid for each, the number of pounds [kilograms] of butter and cheese, and the number of gallons [liters] of ice cream and ice milk manufactured during such period.

NOTE: There is no dairy commissioner.

SECTION 52. AMENDMENT. Section 4-30-47 of the North Dakota Century Code is amended and reenacted as follows:

1 ~~4-30-474.1-23-43. Dispute over test -- Official test made -- By whom -- Other tests --~~

2 **Fees**~~Test results disputes.~~

3 If a disagreement between a seller and a buyer or the legal representatives of both or either
4 arises over the percentage of butterfat contained in any quantity of milk sold or offered for sale
5 at the request of the owner and in the owner's presence, a sample of such milk obtained as
6 provided in section ~~4-30-204.1-23-27~~ and mutually agreed upon by the interested parties as
7 being a representative sample must be sealed ~~satisfactorily~~ and mailed by the buyer to the
8 office of the dairy commissioner. ~~There must accompany each~~ Each sample mailed to the
9 commissioner must include a statement giving the name and address of the seller and the
10 buyer of the milk in question, the net weight thereof, the percentage and amount of butterfat
11 contained therein, the price per pound [.45 kilogram] for butterfat, and the amount of money
12 paid or offered in payment for the same and bearing the signature of the seller and the buyer.
13 The commissioner ~~or the commissioner's agent~~ shall determine the percentage of butterfat
14 contained in the sample and shall ~~make a report of the result in triplicate, the original to be filed~~
15 in the commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk.
16 The percentage of butterfat so determined and reported constitutes the "official butterfat test"
17 and is the basis on which final settlement must be made. The fee for ~~the making of the official~~
18 butterfat test and any other tests required must be in such amount as set by ~~regulation~~ rule of
19 the dairy commissioner, considering the actual costs of making the test, and such fee must be
20 mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat
21 or other test.

NOTE: There is no dairy commissioner.

22 **SECTION 53. AMENDMENT.** Section 4-30-48 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 ~~4-30-484.1-23-44. Failure to agree on sample for official test -- Procedure to be~~
25 **Test sample disputes.**

26 ~~Whenever it is impossible to secure or mutually~~ If the buyer and seller do not agree upon a
27 sample of milk as provided in section ~~4-30-474.1-23-43~~, then the party selling or offering for sale
28 such milk may require that the buyer or prospective buyer ~~forward to the department to forward~~
29 the sample taken to the department in compliance with section ~~4-30-204.1-23-27~~. Each sample
30 so forwarded must be ~~accompanied by a statement in the form of~~ include an affidavit from the
31 buyer or prospective buyer, stating that the sample was taken in compliance with the provisions

of section ~~4-30-204.1-23-27~~, and the statement also must contain all information required in section ~~4-30-474.1-23-43~~, except that the signature of the seller is not required thereon. Each sample must be tested and reported on as prescribed in section ~~4-30-474.1-23-43~~, and the percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made.

SECTION 54. AMENDMENT. Section 4-30-49 of the North Dakota Century Code is amended and reenacted as follows:

~~4-30-494.1-23-45. Standards considered minimum - Municipality may provide more stringent standards.~~

The standards set forth in this chapter ~~must be considered as~~ constitute only minimum standards only. Nothing in this chapter may be construed to prevent any municipality from providing, by ordinance, more stringent or comprehensive standards than are contained herein ~~nor is anything within this chapter. Nothing~~ in this chapter or in the rules and regulations of the department ~~to~~ commissioner may be construed to prevent any person concerned with ~~dairying the dairy business~~ from using standards, inspections, or other practices or procedures ~~which that~~ are more stringent or comprehensive.

SECTION 55. AMENDMENT. Section 4-30-50 of the North Dakota Century Code is amended and reenacted as follows:

~~4-30-504.1-23-46. Fees and penalties collected to be placed in general fund.~~

All fees and penalties, collected under this chapter, must be deposited with the state treasurer and credited to the general fund.

SECTION 56. AMENDMENT. Section 4-30-52 of the North Dakota Century Code is amended and reenacted as follows:

~~4-30-524.1-23-47. Disposal of illegal milk or milk products - Seizure.~~

Any milk or cream offered for sale ~~and which is~~ in violation of any ~~provisions~~ provision of this chapter or the rules and regulations of the department ~~commissioner~~ must be colored with a harmless food coloring and returned to the ~~owner~~ seller. In addition, any milk or milk product ~~which that~~ is in violation of any provision of this chapter or the rules of the department ~~commissioner~~ may be seized or ordered held by the commissioner and must be disposed of as any other illegal food or drug as ~~outlined~~ provided in chapter 19-02.1.

1 **SECTION 57. AMENDMENT.** Section 4-30-53 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~4-30-534.1-23-48.~~ **Penalty for violation of chapter - Additional civil penalty - Failure to**
4 **pay civil penalty.**

5 Any~~A~~ person violating any of the ~~provisions~~provision of this chapter, ~~the rules of the~~
6 ~~department~~, or any rule or order of the commissioner, for which another criminal penalty is not
7 specifically provided, is guilty of a class B misdemeanor. In addition, a civil penalty not to
8 exceed five hundred dollars per day for each violation or continuing violation may be imposed.
9 The civil penalty may be imposed by the courts in a civil proceeding or by the commissioner
10 through an administrative hearing ~~pursuant to~~under chapter 28-32. If a civil penalty is imposed
11 by the commissioner through an administrative hearing and the civil penalty is not paid, the
12 commissioner may collect the civil penalty by a civil proceeding in any appropriate court. The
13 commissioner may suspend or revoke a license issued ~~pursuant to~~under this chapter for failure
14 to pay a civil penalty within thirty days after a final determination is made that the civil penalty is
15 owed. The commissioner may refuse to renew or issue a license if the licensee or license
16 applicant has repeatedly violated the provisions of this chapter, ~~the department rules~~, or rules or
17 orders of the commissioner.

18 **SECTION 58. AMENDMENT.** Section 4-30-54 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 ~~4-30-544.1-23-49.~~ **State's attorney's endorsement to complaint unnecessary upon**
21 **violation of chapter.**

22 ~~It shall be unnecessary to have the endorsement of the state's attorney to a~~A complaint
23 made for a violation of the provisions of this chapter does not require the endorsement of the
24 state's attorney, but when the court ~~before whom~~hearing a complaint is made is satisfied of the
25 truthfulness of ~~such~~the complaint, it shall issue a warrant thereon.

26 **SECTION 59. AMENDMENT.** Section 4-30-55.1 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 ~~4-30-55.14.1-23-50.~~ **Rules for enforcement of chapter.**

29 ~~The department is authorized to~~commissioner may adopt rules, ~~in accordance with~~ under
30 chapter 28-32, ~~consistent with and necessary for the enforcement of~~ to implement this chapter.

NOTE: This section provides rulemaking authority for anything addressed in the chapter.

1 **SECTION 60. AMENDMENT.** Section 4-30-55.2 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~4-30-55.24.1-23-51. Commissioner – Rulemaking authority – Limitation~~Shared animal
4 ownership agreement rules limitation.

5 Notwithstanding chapter 28-32, the commissioner may not adopt any rule that restricts,
6 limits, or imposes additional requirements on any ~~individual~~person transferring or obtaining raw
7 milk in accordance with the terms of a shared animal ownership agreement.

8 **SECTION 61. AMENDMENT.** Section 4-30-56 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 ~~4-30-564.1-23-52. Enforcement.~~

11 The commissioner ~~is authorized and directed to~~shall administer and supervise the
12 enforcement of this chapter; ~~to~~provide for periodic inspections and investigations the-
13 ~~commissioner deems~~deemed necessary to ~~disclose violations of any acts prohibited by~~ ensure
14 compliance with this chapter or the rules of the department; ~~to~~under this chapter, receive and
15 provide for the investigation of complaints; and ~~to~~ provide for the institution and prosecution of
16 civil or criminal actions or both, ~~upon the commissioner's own initiative. The provisions of~~
17 ~~this~~This chapter and the rules of the department under this chapter may be enforced by
18 injunction in any court having jurisdiction to grant injunctive relief, ~~and filled.~~ Filled dairy
19 products, imitation milk, or imitation milk products, illegally held or otherwise involved in
20 violation of this chapter ~~are subject to seizure and disposition in accordance with~~ may be seized
21 and disposed under an appropriate court order.

Introduced by

1 A BILL for an Act

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

3 **SECTION 1. AMENDMENT.** Section 4-35-01 of the North Dakota Century Code is amended
4 and reenacted as follows:

5 **~~4-35-01. Title.~~**

6 ~~This chapter must be known as the North Dakota Pesticide Act of 1975.~~

NOTE: North Dakota drafting style discourages the use of "short titles" for chapters.

7 **SECTION 2. AMENDMENT.** Section 4-35-03 of the North Dakota Century Code is amended
8 and reenacted as follows:

9 **4-35-03. Enforcing agency.**

10 ~~This chapter must be administered by the pesticide control board, hereinafter referred to as~~
11 ~~the "board".~~

NOTE: Administration by the board is stated already in North Dakota Century Code
Section 4-35-06, revised in section 6 of this Act.

12 **SECTION 3. AMENDMENT.** Section 4-35-04 of the North Dakota Century Code is amended
13 and reenacted as follows:

14 **~~4-35-04. Declaration of purpose.~~**

15 ~~The legislative assembly hereby finds that pesticides are valuable to our state's agricultural~~
16 ~~production and to the protection of man and the environment from insects, rodents, weeds, and~~
17 ~~other forms of life which may be pests; but it is essential to the public health and welfare that~~
18 ~~they be regulated to prevent adverse effects on human life and the environment. The purpose of~~
19 ~~this chapter is to regulate, in the public interest, the distribution, storage, transportation,~~
20 ~~disposal, and use and application of pesticides to control pests as hereinafter defined. New~~
21 ~~pesticides are continually being discovered or synthesized which are valuable for the control of~~

1 ~~pests, and for use as defoliants, desiccants, plant regulators, and for related purposes. The~~
2 ~~dissemination of accurate scientific information as to the proper use or nonuse of any pesticide~~
3 ~~is vital to the public health and welfare and the environment, both immediate and future.~~
4 ~~Therefore, it is deemed necessary to provide for regulation of their use and application.~~

NOTE: North Dakota drafting style discourages the use of intent statements.

5 **SECTION 4. AMENDMENT.** Section 4-35-05 of the North Dakota Century Code is amended
6 and reenacted as follows:

7 **4-35-054.1-34-01. Definitions.**

8 As used in this chapter:

- 9 1. "Animal" means all vertebrate and invertebrate species, including humans and other
10 mammals, birds, fish, and shellfish.
- 11 2. "Applicator" means any person who applies a pesticide to land.
- 12 3. "Certified applicator" means any individual who is certified under this chapter to
13 purchase or use a restricted use pesticide.
- 14 4. "Commercial applicator" means a person who by contract or for hire engages in the
15 business of applying pesticides for compensation.
- 16 5. "Defoliant" means any substance or mixture of substances intended to cause the
17 leaves or foliage to drop from a plant, with or without causing abscission.
- 18 6. "Desiccant" means any substance or mixture of substances intended to artificially
19 accelerate the drying of plant tissue.
- 20 7. "Device" means any instrument or contrivance, other than a firearm, which is intended
21 for trapping, destroying, repelling, or mitigating any pest or any other form of plant or
22 animal life, other than human and other than bacteria, virus, or other micro-organism
23 on or in living humans or other living animals, but not including equipment used for the
24 application of pesticides when sold separately ~~therefrom~~ from pesticide.
- 25 8. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply
26 pesticides in this state.
- 27 9. "Environment" includes water, air, land, and all plants and humans and other animals
28 living therein, and the interrelationships ~~which~~ that exist among ~~these~~ them.
- 29 10. "Equipment" means any type of ground, water, or aerial equipment or contrivance
30 using motorized, mechanical, or pressurized power and used to apply any pesticide on
31 land and anything that may be growing, ~~habitating~~ inhabiting, or stored on or in

1 ~~such~~that land. The term does not include any pressurized ~~hand-sized~~hand-held
2 household apparatus used to apply any pesticide, or any equipment or contrivance of
3 which the ~~person~~individual who is applying the pesticide is the source of power or
4 energy ~~in making such~~to make the pesticide application.

5 11. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any
6 non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for
7 example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living
8 humans or other living animals, and except those on or in processed food, beverages,
9 or pharmaceuticals.

10 12. "Insect" means any of the numerous small invertebrate animals generally having the
11 body more or less obviously segmented, for the most part belonging to the class of
12 insecta, comprising six-legged, usually winged forms, and to other allied classes of
13 arthropods whose members are wingless and usually have more than six legs.

14 13. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide
15 or device or any of its containers or wrappers.

16 14. "Labeling" means the label and all other written, printed, or graphic matter:
17 a. Accompanying the pesticide or device; and
18 b. To which reference is made on the label or in literature accompanying or referring
19 to the pesticide, except when accurate nonmisleading references are made to
20 current official publications of the board; the United States environmental
21 protection agency; the United States departments of agriculture and interior; the
22 United States department of health and human services; state agricultural
23 colleges; and other similar federal or state institutions or agencies authorized by
24 law to conduct research in the field of pesticides.

25 15. "Land" means all land and water areas, including airspace, and all plants, animals,
26 structures, buildings, contrivances, and machinery, appurtenant ~~thereto~~to or situated
27 ~~thereon~~on land, fixed or mobile, including any used for transportation.

28 16. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class
29 nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies
30 covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be
31 called nemas or eelworms.

- 1 17. "Pest" means any insect, rodent, nematode, fungus, or weed; or any other form of
2 terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organism,
3 except viruses, bacteria, or other micro-organisms on or in living humans or other
4 living animals.
- 5 18. "Pesticide" means:
6 a. Any substance or mixture of substances intended for preventing, destroying,
7 repelling, or mitigating any pest; and
8 b. Any substance or mixture of substances intended for use as a plant regulator,
9 defoliant, or desiccant.
- 10 19. "Pesticide dealer" means any person, other than a pesticide wholesaler, distributing
11 pesticides.
- 12 20. "Plant regulator" means any substance or mixture of substances intended, through
13 physiological action, to accelerate or retard the rate of growth or rate of maturation, or
14 to otherwise alter the behavior of plants or the produce thereof, but does not include
15 substances to the extent that they are intended as plant nutrients, trace elements,
16 nutritional chemicals, plant inoculants, ~~and~~or soil amendments.
- 17 21. "Private applicator" means an individual who is required to be a certified applicator to
18 buy or use a restricted use pesticide on property owned or rented by the applicator or
19 the applicator's employer or, if applied without compensation other than trading of
20 personal services between producers of agricultural commodities, on the property of
21 another person.
- 22 22. "Public applicator" means an applicator who applies pesticides, other than
23 ready-to-use pesticides, as an employee of:
24 a. A governmental agency, municipal corporation, or public utility; or
25 b. A hospital, privately owned golf course, nursery, or greenhouse.
- 26 23. "Ready-to-use pesticide" means a pesticide other than a restricted use pesticide which
27 is applied directly from its original container consistent with label directions, and
28 includes aerosol spray cans, ready-to-use spray containers, bait packs, and other
29 types of containers that do not require mixing or loading before application.

- 1 24. "Restricted use pesticide" means any pesticide formulation that is classified as
2 restricted use by the United States environmental protection agency or the agriculture
3 commissioner under section ~~19-18-054~~ 1-35-06.
- 4 25. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing or pressure
5 rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- 6 26. "Tank mix" means any pesticidal formulation used alone or in combination with another
7 pesticide and mixed with a liquid carrier prior to application.
- 8 27. "Unreasonable adverse effects on the environment" means any unreasonable risk to
9 humans or the environment, taking into account the economic, social, and
10 environmental costs and benefits of the use of any pesticide.
- 11 28. "Weed" means any plant ~~which~~ that grows where not wanted.
- 12 29. "Wildlife" means all living things that are neither human, domesticated, nor, as defined
13 in this chapter, pests, including mammals, birds, and aquatic life.

14 **SECTION 5. AMENDMENT.** Section 4-35-02 of the North Dakota Century Code is amended
15 and reenacted as follows:

16 ~~4-35-024.1-34-02. Creation of pesticide~~ **Pesticide control board - Enforcement by**
17 **agriculture commissioner.**

18 ~~There is hereby created the~~ The pesticide control board, ~~hereinafter also called the "board",~~
19 ~~consisting~~ consists of the agriculture commissioner, the director of the cooperative extension
20 division of the North Dakota state university of agriculture and applied science, and the director
21 of the agricultural experiment station at North Dakota state university of agriculture and applied
22 science. The agriculture commissioner ~~must be~~ is chairman of the board and ~~is responsible for~~
23 ~~the enforcement of this chapter.~~ The board shall meet at the call of the chair.

24 The agriculture commissioner is responsible for the enforcement of this chapter. Any
25 authority of the commissioner under this chapter may be executed by such employees or
26 agents designated by the commissioner.

27 The members of the board must be compensated for their expenses in performing their
28 duties under this chapter at the same rate as other state officials and the board's expenses
29 must be paid from funds provided to the agriculture commissioner for the administration of this
30 chapter ~~to the agriculture commissioner.~~ The board may act through the office of the agriculture
31 commissioner; and ~~one person on the commissioner's staff may be specifically responsible to,~~

1 or act as the state-level agent of, shall provide staff services for the board as directed by the
2 commissioner.

NOTE: Authority of employees or agents to act on the Commissioner's behalf is moved here to eliminate the need for Section 4-35-26.

3 **SECTION 6. AMENDMENT.** Section 4-35-06 of the North Dakota Century Code is amended
4 and reenacted as follows:

5 **~~4-35-064.1-34-03.~~ Pesticide control board to administer chapter and adopt**
6 **regulations~~rules.~~**

7 1. a. The pesticide control board shall administer this chapter and may adopt rules in
8 accordance with chapter 28-32 to implement this chapter. The rules may
9 prescribe methods to be used in the application of pesticides. The rules may
10 relate to the time, place, manner, methods, materials, and amounts and
11 concentrations, in connection with the application of the pesticide, and may
12 restrict or prohibit use of pesticides in designated areas during specified periods
13 of time and shall encompass all reasonable factors which the board deems
14 necessary to prevent damage or injury by drift or misapplication to:

15 (1) Plants, including forage plants, on adjacent or nearby lands.

16 (2) Wildlife in the adjoining or nearby areas.

17 (3) Fish and other aquatic life in waters in proximity to the area to be treated.

18 (4) Persons, animals, or beneficial insects.

19 b. In adopting rules, the board shall give consideration to pertinent research findings
20 and recommendations of other agencies of this state, the federal government, or
21 other reliable sources.

22 2. ~~The board, in~~In adopting rules under this chapter, the board shall prescribe standards
23 and requirements for the certification of applicators of pesticides. These standards and
24 requirements must relate to the use and handling of pesticides. In determining these
25 standards and requirements, the board shall take into consideration standards and
26 requirements prescribed by the environmental protection agency.

27 3. Rules adopted under this chapter may not permit any pesticide use ~~which~~that is
28 prohibited by the ~~federal~~Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C.
29 136 et seq.] or regulations or orders issued thereunder.

4. ~~In order to~~To comply with section 4 of the federal ~~Federal~~ Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the board may make such reports to the United States environmental protection agency in such form and containing such information as that agency may from time to time require.

5. Rules to implement this chapter may provide for:

- a. The collection, examination, and reporting of samples of pesticides.
- b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
- c. The identification of pests under this chapter when the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

SECTION 7. AMENDMENT. Section 4-35-06.1 of the North Dakota Century Code is amended and reenacted as follows:

~~4-35-06.14.1-34-04.~~ Limitation on authority of political subdivisions regarding pesticides.

~~No~~A political subdivision, including a home rule city or county, may not adopt or continue in effect any ordinance, resolution, or home rule charter provision regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides. This section does not apply to city zoning ordinances.

NOTE: It appears this section was not intended to invalidate an entire home rule charter or ordinance, but only such parts as relate to pesticides.

SECTION 8. AMENDMENT. Section 4-35-13 of the North Dakota Century Code is amended and reenacted as follows:

~~4-35-134.1-34-05.~~ Application of act to governmental entities and public utilities.

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

SECTION 9. AMENDMENT. Section 4-35-08 of the North Dakota Century Code is amended and reenacted as follows:

~~4-35-084.1-34-06.~~ Classification of commercial certificates.

The board may classify commercial certificates to be issued under this chapter. The classifications may include pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be

1 specified as to ground, aerial, or manual methods used by any applicator to apply pesticides or
2 to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each
3 classification of certification may be subject to separate testing procedures and training
4 requirements; ~~provided that a.~~ A person may be required to pay an additional fee if the person
5 desires to be certified in one or more of the classifications provided for by the board under this
6 section.

7 **SECTION 10. AMENDMENT.** Section 4-35-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **4-35-094.1-34-07. Commercial and public applicator's certification.**

- 10 1. A commercial or public applicator may not purchase, use, or supervise the use of a
11 pesticide without first complying with the certification standards and requirements of
12 this chapter, or other restrictions as may be determined by the board.
- 13 2. An individual may be certified as a commercial or public applicator within a
14 classification if the individual successfully completes an examination for the
15 classification as prescribed by the board and administered by the North Dakota state
16 university extension service or the service's designee. An application for certification
17 must be on a form prescribed by the board and accompanied by a reasonable
18 examination fee set by the board.
- 19 3. If the North Dakota state university extension service, or its designee, finds after
20 examination as the board requires, the applicant qualified to apply pesticides in the
21 classifications for which the applicant has applied, ~~after examination as the board~~
22 ~~requires~~, and the applicant meets all other requirements of this chapter, the North
23 Dakota state university extension service shall issue a commercial or a public
24 applicator's certificate limited to the classifications in which the applicant is qualified.
- 25 4. If certification is not to be issued as applied for, the North Dakota state university
26 extension service, or its designee, shall inform the applicant in writing of the reasons
27 for not issuing the certification.

28 **SECTION 11. AMENDMENT.** Section 4-35-10 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **~~4-35-104.1-34-08.~~ Expiration of certification - Renewal.**

2 A certificate issued under section ~~4-35-094.1-34-07~~ expires as of the first day of April
3 following two years from the date of issuance. A certificate is renewable every three years on
4 April first. A certificate may be renewed upon completion of a seminar approved by the board or
5 upon successfully completing an examination required by the board, or both, if required by the
6 board. The board shall require a person holding a current valid certificate to take an
7 examination within the three-year period if the board determines additional knowledge related to
8 classifications for which the applicant has applied makes a new examination necessary or that a
9 new evaluation is necessary to assure a continuing level of competence and ability to safely
10 and properly use pesticides ~~safely and properly~~.

11 **SECTION 12. AMENDMENT.** Section 4-35-11 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **~~4-35-114.1-34-09.~~ Nonresident application - Designation of agent for service of**
14 **process.**

15 ~~Any~~A nonresident applying for certification as an applicator or dealer under this chapter to
16 ~~operate in this state~~ shall file a written power of attorney in such form as to render effective the
17 jurisdiction of the courts of this state over the nonresident applicant designating the either:

18 1. North Dakota state university extension service or its designee as the nonresident's
19 agent ~~of such nonresident~~ upon whom service of process may be had in the event of
20 any suit against ~~said that~~ nonresident person, ~~and the power of attorney must be so~~
21 ~~prepared and in such form as to render effective the jurisdiction of the courts of this~~
22 ~~state over the nonresident applicant; provided, however, that any nonresident who has~~
23 a; or

24 2. The duly appointed nonresident person's resident agent upon whom process may be
25 served as provided by law ~~is not required to designate the extension service as such~~
26 ~~agent~~.

27 The extension service is allowed such fees ~~therefor~~ for service as a registered agent as provided
28 by law for designating resident agents. The nonresident must be furnished with a copy of the
29 designation of the extension service or of a resident agent. The copy ~~will~~must be duly certified
30 by the extension service.

1 **SECTION 13. AMENDMENT.** Section 4-35-09.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~4-35-09.14.1-34-10.~~ **Proof of financial responsibility - Exceptions.**

- 4 1. A commercial applicator certificate may not be issued unless the applicant furnishes
5 proof of financial responsibility. Financial responsibility must be maintained in the
6 amount of one hundred thousand dollars, ~~and. Financial responsibility~~ may be
7 demonstrated by a notarized letter from an officer of a financial institution or from a
8 certified public accountant attesting to the existence of net assets equal to at least one
9 hundred thousand dollars, a performance bond, or a general liability insurance policy.
10 The performance bond or insurance policy must contain a provision requiring the
11 issuing company to notify the agriculture commissioner at least ten days before the
12 effective date of cancellation, termination, or other modification of the bond or
13 insurance policy. When requested by the agriculture commissioner, a commercial
14 applicator immediately shall furnish proof of compliance with this section. If the
15 applicator is unable to furnish the required proof, the commissioner may stop a
16 pesticide application and not allow resumption until the applicator furnishes proof of
17 compliance. The agriculture commissioner shall immediately suspend the certification
18 of a commercial applicator who fails to maintain the financial responsibility standards
19 of this section. If there is any recovery against the commercial applicator, the
20 applicator shall demonstrate continued compliance with the requirements of this
21 section. An application for reinstatement of a certificate suspended under this section
22 must be accompanied by proof that any judgment previously rendered against the
23 applicant has been satisfied.
- 24 2. This section does not apply to:
- 25 a. A rancher who must obtain a commercial applicator certificate for controlling
26 noxious weeds on the leased federal acreage as a condition of a federal
27 grasslands lease.
- 28 b. A grazing association and its members if either the association or any member
29 must obtain a commercial applicator certificate for controlling noxious weeds on
30 the leased federal acreage as a condition of a federal grasslands lease.
- 31 c. A person who must be certified in the right-of-way category.

d. A commercial applicator who controls noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.

e. An employee of a commercial applicator if the commercial applicator complies with this section.

SECTION 14. AMENDMENT. Section 4-35-12 of the North Dakota Century Code is amended and reenacted as follows:

4-35-124.1-34-11. Pesticide dealer certification - Employees - Requirements for purchase.

1. ~~It is unlawful for a~~ pesticide dealer ~~to~~may not distribute restricted use pesticides or act as a restricted use pesticide dealer, without first having obtained certification from the North Dakota state university extension service, or the service's designee. ~~ADuring business hours, a certified person is required to~~must be at any location or outlet from which restricted use pesticides are distributed. Any manufacturer or distributor that has no pesticide dealer outlet within this state and which distributes such pesticides directly into this state shall obtain a pesticide dealer certificate for its principal out-of-state location or outlet.
2. Application for a certificate must be on a form prescribed by the board accompanied by an examination fee set by the board ~~and must be on a form prescribed by the board~~. The application must ~~also state~~include the address of each outlet, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board.
3. The board shall require each pesticide dealer to demonstrate to the North Dakota state university extension service or the service's designee knowledge of pesticide laws and regulations; pesticide hazards to humans, animals, and the environment; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination or meeting other requirements as prescribed by the board within each classification for which certification is sought ~~as prescribed by the board~~.
4. Each pesticide dealer is responsible for the acts of each ~~person~~individual employed by the dealer in the solicitation and sale of restricted use pesticides and all claims and

recommendations for use of such pesticides. The dealer's certification is subject to suspension or revocation, after a hearing, for any violation of this chapter, ~~whether~~ committed by the dealer, or by the dealer's officer, agent, or employee.

5. A certificate issued under this section expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. ~~A~~The board may condition renewal of a certificate ~~may be renewed~~ upon completion of a seminar approved by the board or ~~upon successfully~~ completing successful completion of an examination required by the board, or both, ~~if required by the board~~. The board may require any person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to pesticides makes an additional examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to safely and properly distribute pesticides ~~safely and properly~~.

6. Restricted use pesticides may be sold only to:

- a. Persons certified as applicators by this state; and
- b. Persons certified to use restricted use pesticides by another state, provided the pesticide control board determines that the certifying state's requirements are substantially similar to those of this state and ~~further provided~~ that the person does not use the restricted use pesticide in this state.

SECTION 15. AMENDMENT. Section 4-35-14 of the North Dakota Century Code is amended and reenacted as follows:

4-35-144.1-34-12. Private applicators - Certification.

1. a. An individual who would be a private applicator, if certified, may not buy any restricted use pesticide unless the individual first complies with the certification requirements established by the board.
- b. An individual who would be a private applicator, if certified, may not use any restricted use pesticide unless the individual:
 - (1) Complies with the certification requirements established by the board; or
 - (2) Is under the direct supervision of a certified applicator.
2. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be

certified to use must be determined by the board. In determining these standards, the board shall ~~take into consideration~~consider similar standards of the environmental protection agency. The North Dakota state university extension service, or its designee, shall issue a certificate to any private applicator who has qualified as prescribed by the board. The North Dakota state university extension service, or its designee, may require any applicant required to be certified under this section to pay a reasonable fee, not greater than the cost to the North Dakota state university extension service, for materials provided to the applicant for training and education.

SECTION 16. AMENDMENT. Section 4-35-15 of the North Dakota Century Code is amended and reenacted as follows:

4-35-154.1-34-13. Unlawful acts - Grounds for denial, suspension, or revocation of a certification.

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

1. Make false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or ~~advertised~~advertise a pesticide without reference to its classification.
2. Make a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Apply materials known by that person to be ineffective or improper.
4. Operate faulty or unsafe equipment.
5. Operate in a faulty, careless, or negligent manner.
6. Neglect, or, after notice, refuse to comply with this chapter, the rules adopted to implement this chapter, or any lawful order of the commissioner.
7. Refuse or neglect to keep and maintain the records required by this chapter or to make reports when and as required.
8. Make false or fraudulent records, invoices, or reports.
9. Apply pesticide to the property of another, without the permission of the owner or lessee, unless the application is made under the direction of a governmental entity.
10. Use fraud or misrepresentation in making an application for, or for renewal of, certification.

- 1 11. Refuse or neglect to comply with any limitations or restrictions on or in a duly issued
- 2 certification.
- 3 12. Aid or abet a person to evade this chapter, conspire with a person to evade this
- 4 chapter, or allow the person's certification to be used by another person.
- 5 13. Knowingly make false statements during or after an inspection or an investigation.
- 6 14. Impersonate a federal, state, county, or city inspector or official.
- 7 15. Distribute any restricted use pesticide to any person who is not properly certified to
- 8 use or purchase the pesticide.
- 9 16. Buy, use, or supervise the use of any pesticide without first complying with the
- 10 certification requirements of this chapter, unless otherwise exempted.
- 11 17. Apply any pesticide that is not registered ~~pursuant to~~ chapter 49-184.1-35.

12 **SECTION 17. AMENDMENT.** Section 4-35-16 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **~~4-35-164.1-34-14.~~ 4-35-164.1-34-14. Records - Retention - Submission to commissioner.**

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

22 **SECTION 18. AMENDMENT.** Section 4-35-18 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **~~4-35-184.1-34-15.~~ 4-35-184.1-34-15. Reciprocal agreement.**

25 The North Dakota state university extension service, or its designee, may issue a
26 certification on a reciprocal basis, without examination, to a nonresident who is certified to buy,
27 distribute, or use restricted use pesticides under a plan substantially similar to this chapter and
28 after the applicant has paid a fee, set by the board, not greater than the fee or charge
29 authorized under section ~~4-35-094.1-34-07~~, ~~4-35-124.1-34-11~~, or ~~4-35-144.1-34-12~~ if the
30 applicant would have taken the appropriate examination. Such a certification may be
31 suspended or revoked in the same manner and on the same grounds as certifications pursuant

to this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

SECTION 19. AMENDMENT. Section 4-35-19 of the North Dakota Century Code is amended and reenacted as follows:

~~4-35-19~~4-35-16. Certification requirements -- ~~Exemption~~exemptions.

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

SECTION 20. AMENDMENT. Section 4-35-20 of the North Dakota Century Code is amended and reenacted as follows:

~~4-35-20~~4-35-17. Discarding and storing of pesticides, pesticide containers, and rinsate.

~~No~~A person may not discard, store, display, or permit the disposal of surplus pesticides, empty pesticide containers and devices, or rinsate in such a manner as to endanger the

environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. The board shall ~~promulgate regulations~~adopt rules governing the discarding, storage, display, or disposal of any pesticide, rinsate, pesticide containers, or devices.

SECTION 21. AMENDMENT. Section 4-35-21.3 of the North Dakota Century Code is amended and reenacted as follows:

~~4-35-21.34.1-34-18.~~ Pesticide application - Alleged property damage - Notification of applicator.

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

SECTION 22. AMENDMENT. Section 4-35-22 of the North Dakota Century Code is amended and reenacted as follows:

~~4-35-224.1-34-19.~~ Subpoenas.

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

1 **SECTION 23. AMENDMENT.** Section 4-35-23 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~4-35-234.1-34-20.~~ **Penalties.**

- 4 1. Any person other than a private applicator who knowingly violates this chapter is guilty
5 of a class A misdemeanor.
- 6 2. Any private applicator who knowingly violates this chapter is guilty of a class B
7 misdemeanor.
- 8 3. When construing and enforcing the provisions of this chapter, the act, omission, or
9 failure of any officer, agent, or other person acting for or employed by any person must
10 in every case be also deemed to be the act, omission, or failure of such person as well
11 as that of the person employed.
- 12 4. A person who violates this chapter or the rules adopted under this chapter is subject to
13 a civil penalty not to exceed five thousand dollars for each violation. The civil penalty
14 may be imposed by a court in a civil proceeding or by the agriculture commissioner
15 through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a
16 civil penalty does not preclude the imposition of other sanctions authorized by law, this
17 chapter, or rules adopted under this chapter.
- 18 5. After providing an opportunity for a hearing, the commissioner may deny, suspend,
19 revoke, or modify the provision of any certification issued under this chapter, if the
20 commissioner determines that the applicant for certification or the holder of a
21 certificate has violated this chapter or any rules adopted under this chapter.

22 **SECTION 24. AMENDMENT.** Section 4-35-24 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 ~~4-35-244.1-34-21.~~ **Enforcement.**

- 25 1. The commissioner shall enforce the requirements of this chapter and any rules
26 adopted under this chapter.
- 27 2. The commissioner may bring an action to enjoin the violation or threatened violation of
28 this chapter, or any rule adopted under this chapter, in the district court of the county in
29 which such violation occurs or is about to occur.

- 1 3. If any person violates this chapter, the commissioner may issue an order requiring the
2 person to cease and desist from the unlawful activity. If the violator fails to obey, the
3 commissioner ~~will~~shall cause the appropriate criminal complaint to be filed.
- 4 4. The commissioner may enter upon any public or private premises at reasonable times,
5 ~~in order to:~~
- 6 a. Inspect any equipment subject to this chapter and the premises on which the
7 equipment is stored or used.
- 8 b. Inspect or sample lands actually or reported to be exposed to pesticides.
- 9 c. Inspect storage or disposal areas.
- 10 d. Inspect or investigate complaints of injury to humans or ~~land~~property.
- 11 e. Draw samples of a reasonable amount of tank mix pesticides and tank mixes
12 without compensation to the owner for values less than three dollars.
- 13 f. Observe the use and application of a pesticide.
- 14 g. Inspect any place where pesticides or devices are stored or held for distribution,
15 sale, or use, and obtain samples of any pesticides packaged, labeled, and
16 released for shipment and samples of any containers or labeling for the
17 pesticides.
- 18 5. a. ~~The~~At any reasonable time, the commissioner, ~~at any reasonable time,~~ has
19 access to records pertaining to the pesticide application, sales, purchases, and
20 repackaging by any person. The commissioner may copy or make copies of the
21 records for the purpose of this chapter. These records are confidential. However,
22 the commissioner may use these records in any way to enforce this chapter. Any
23 record that the commissioner uses as an exhibit in an enforcement action is no
24 longer a confidential record.
- 25 b. If an individual alleges exposure to pesticides and if the individual's medical
26 provider requests that the commissioner reveal the name of the pesticide, the
27 commissioner may reveal the name of the pesticide to the individual making the
28 request, together with the registration number assigned by the United States
29 environmental protection agency. The commissioner may require that a request
30 under this section be made in writing.

1 6. If access is refused or if the commissioner determines that critical enforcement
2 documentation may be lost, the commissioner may apply to any court for a search
3 warrant authorizing access to land or records. ~~The~~Upon compliance with chapter
4 29-29.1, the court may, upon compliance with chapter 29-29.1, issue the search
5 warrant for the purposes requested.

6 7. The commissioner may suspend or revoke a certification issued ~~pursuant to~~under this
7 chapter for failure to pay a civil penalty within thirty days after a final determination is
8 made that the civil penalty is owed.

9 **SECTION 25. AMENDMENT.** Section 4-35-12.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 ~~4-35-12.1-14.1-34-22.~~ **Stop-sale orders.**

12 ~~Whenever~~If the commissioner has reason to believe on the basis of inspection or tests that
13 any pesticide or device is found by the commissioner and there is reason to believe on the
14 basis of inspection or tests that the pesticide or device is in violation of any of the
15 ~~provisions~~provision of this chapter, or ~~when~~if the registration of the pesticide has been canceled
16 or ~~suspended~~suspended by the state or United States environmental protection agency or ~~has been~~
17 suspended, the commissioner may issue a written or printed "stop-sale, use, or removal" order
18 to any person who owns, controls, or has custody of the pesticide or device, ~~and after.~~ After
19 receipt of the order, ~~no~~a person may not sell, use, or remove the pesticide or device described
20 in the order except in accordance with the provisions of the order.

NOTE: Question whether this section is necessary given the Commissioner's authority for
a cease and desist order under subsection 3 of the previous section.

21 **SECTION 26. AMENDMENT.** Section 4-35-25 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 ~~4-35-25.1-34-23.~~ **Information and instruction.**

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

27 **SECTION 27. AMENDMENT.** Section 4-35-27 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **4-35-274.1-34-24. Cooperation by the board with other entities.**

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

5 1. Secure uniformity of regulations.

6 2. Enter into cooperative agreements with and submit plans to the environmental
7 protection agency for approval to issue experimental use permits under the authority
8 of this chapter and the ~~federal~~Federal Insecticide, Fungicide, and Rodenticide Act
9 [7 U.S.C. 136 et seq.].

10 3. Cooperate in the enforcement of the federal pesticide control laws and state laws
11 through the use of state or federal personnel and facilities and to implement
12 cooperative enforcement programs.

13 4. Enter into contracts with other agencies, including federal agencies, for the purpose of
14 training pesticide applicators, managers, dealers, and pesticide consultants.

15 5. Gain assistance in implementation of this chapter.

16 6. Regulate certified applicators.

17 7. Comply with other purposes prescribed by ~~regulation~~rules of the commissioner.

18 **SECTION 28. AMENDMENT.** Section 4-35-28 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-35-284.1-34-25. Disposition of funds - Certification and training fund.**

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

NOTE: Because the following sections of this chapter established the Crop Protection
 Product Harmonization and Registration Board, it is necessary to specify that this section
 refers to the Pesticide Control Board.

23 **SECTION 29. AMENDMENT.** Section 4-35-30 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **4-35-304.1-34-26. Crop protection product harmonization and registration board -**
26 **Duties - Grants.**

27 1. The crop protection product harmonization and registration board consists of:

28 a. The governor or the governor's designee;

29 b. The agriculture commissioner or the commissioner's designee;

- 1 c. The chairman of the house agriculture committee or the chairman's designee;
- 2 d. The chairman of the senate agriculture committee or the chairman's designee;
- 3 e. A member of the house or senate agriculture committee who is not a member of
- 4 the faction in which the committee chairman is a member, appointed by the
- 5 legislative management chairman;
- 6 f. A crop protection product dealer in the state appointed by the governor from a list
- 7 of three nominees submitted by the North Dakota agricultural association;
- 8 g. A consumer of crop protection products appointed by the governor from a list of
- 9 three nominees submitted by the North Dakota grain growers association;
- 10 h. A consumer of crop protection products appointed by the governor from a list of
- 11 three nominees submitted by the North Dakota oilseed council;
- 12 i. A representative of the crop protection product manufacturing industry appointed
- 13 by the chairman of the legislative management; and
- 14 j. The director of the North Dakota state university agricultural experiment station.
- 15 2. The representative of the crop protection product manufacturing industry and the
- 16 director of the agricultural experiment station shall serve as nonvoting members. The
- 17 governor or the governor's designee shall serve as chairman of the board.
- 18 3. The board shall:
- 19 a. Identify and prioritize crop protection product labeling needs;
- 20 b. Explore the extent of authority given to this state under the ~~federal~~Federal
- 21 Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a et seq.];
- 22 c. Identify the data necessary to enable registration of a use to occur in a timely
- 23 manner;
- 24 d. Determine what research, ~~if any,~~ is necessary to fulfill data requirements for
- 25 activities listed in this section;
- 26 e. Request the agriculture commissioner to pursue specific research funding
- 27 options from public and private sources;
- 28 f. Request the North Dakota state university agricultural experiment station to
- 29 pursue specific research to coordinate registration efforts; and

1 g. Pursue any opportunities to make more crop protection product options available
2 to agricultural producers in this state through any means the board determines
3 advisable.

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

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

16 6. The board may use not more than fifteen percent of the funds under its supervision for
17 administrative purposes, including the cost of contracting for administrative services
18 and reimbursement of board member expenses. The members of the board who are
19 members of the legislative assembly are entitled to compensation from the legislative
20 council for attendance at board meetings at the rate provided for members of the
21 legislative assembly for attendance at interim committee meetings and are entitled to
22 reimbursement for expenses incurred in attending the meetings in the amounts
23 provided by law for other state officers.

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

25 **SECTION 30. AMENDMENT.** Section 4-35-06.2 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 ~~4-35-06.24.1-34-27.~~ **Crop protection product harmonization and registration board -**
28 **Recovery of funds.**

29 The crop protection product harmonization and registration board may accept funds
30 received for expenses paid relating to the registration of pesticides or donations offered to or for
31 the benefit of the board. All moneys received under this section must be deposited in the minor

1 use pesticide fund to pay expenses relating to the registration of pesticides or for the specific
2 purpose for which they are given. The board shall attempt, whenever possible, to recover funds
3 expended relating to the registration of pesticides and shall adopt rules to administer this
4 section.

5 **SECTION 31. AMENDMENT.** Section 4-35-06.3 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **~~4-35-06.34.1-34-28.~~ Minor use pesticide fund - Continuing appropriation.**

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

13 **SECTION 32. AMENDMENT.** Section 19-18-02.1 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **~~19-18-02.14.1-34-29.~~ Environment and rangeland protection fund.**

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

NOTE: This section was originally codified in Chapter 19-18 but it appears it is more
appropriately placed with the provisions on the Crop Protection Product Harmonization and
Registration Board.

22 **SECTION 33. AMENDMENT.** Section 19-18-02 of the North Dakota Century Code is
23 amended and reenacted as follows:

NOTE: The following sections will become a new Chapter 4.1-35, relating to pesticide
registration.

24 **~~19-18-024.1-35-01.~~ Definitions.**

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

26 1. "Active ingredient" means:

27 a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, any
28 ingredient that will prevent, destroy, repel, or mitigate pests.

- 1 b. In the case of a plant regulator, any ingredient that, through physiological action,
2 will accelerate or retard the rate of growth or rate of maturation or otherwise alter
3 the behavior of ornamental or crop plants or the product thereof.
- 4 c. In the case of a defoliant, any ingredient that will cause the leaves or foliage to
5 drop from a plant.
- 6 d. In the case of a desiccant, any ingredient that will artificially accelerate the drying
7 of plant tissue.
- 8 2. "Adulterated" applies to any pesticide if its strength or purity falls below the professed
9 standard or quality as expressed on labeling or under which it is sold, or if any
10 substance has been substituted wholly or in part for the pesticide, or if any valuable
11 constituent of the pesticide has been wholly or in part abstracted.
- 12 3. "Antidote" means the most practical immediate treatment in case of poisoning and
13 includes first-aid treatment.
- 14 4. "Commissioner" means the agriculture commissioner and includes any employee or
15 agent designated by the commissioner.
- 16 5. "Defoliant" means any substance or mixture of substances intended to cause the
17 leaves or foliage to drop from a plant with or without causing abscission.
- 18 6. "Desiccant" means any substance or mixture of substances intended to artificially
19 accelerate the drying of plant tissues.
- 20 7. "Device" means any instrument or contrivance intended for trapping, destroying,
21 repelling, or mitigating pests but does not include equipment used for the application
22 of pesticides when sold separately therefrom, or rodent traps.
- 23 8. "Environment" means air, water, land, and all plants and man and other animals living
24 therein and the interrelationships that exist among these.
- 25 9. "Federal Act" means the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C.
26 136 et seq.].
- 27 10. "Fungi" means all non-chlorophyll-bearing thallophytes, that is, all
28 non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for
29 example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in
30 living man or other animals, and those on or in processed food, beverages, or
31 pharmaceuticals.

- 1 11. "Fungicide" means any substance or mixture of substances intended for preventing,
2 destroying, repelling, or mitigating any fungi.
- 3 12. "Herbicide" means any substance or mixture of substances intended for preventing,
4 destroying, repelling, or mitigating any weed.
- 5 13. "Inert ingredient" means an ingredient that is not an active ingredient.
- 6 14. "Ingredient statement" means:
- 7 a. A statement of the name and percentage of each active ingredient, together with
8 the total percentage of the inert ingredients, in the pesticide; or
- 9 b. A statement of the name of all active ingredients in the order of their
10 predominance in the product, together with the name of each and total
11 percentage of ~~the~~any inert ingredients, ~~if any,~~ in the pesticide, except
12 subdivision a applies if the preparation is highly toxic to ~~man~~humans, determined
13 as provided in section ~~19-18-054.1-35-06~~, and in addition to subsections 1 and 2
14 of section ~~19-18-054.1-35-06~~. ~~In case~~if the pesticide contains arsenic in any
15 form, a statement must contain the percentages of total and water-soluble
16 arsenic, each calculated as elemental arsenic.
- 17 15. "Insect" means any of the numerous small invertebrate animals generally having the
18 body more or less obviously segmented, for the most part belonging to the class
19 Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs,
20 bees, flies, and to other allied classes of arthropods whose members are wingless and
21 usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and
22 wood lice.
- 23 16. "Insecticide" means any substance or mixture of substances intended for preventing,
24 destroying, repelling, or mitigating any insects that may be present in any environment
25 whatsoever.
- 26 17. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide
27 or device, or any of its containers or wrappers.
- 28 18. "Labeling" means all labels and other written, printed, or graphic matter:
- 29 a. Upon the pesticide or device or any of its containers or wrappers;
- 30 b. Accompanying the pesticide or device at any time; or

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

5 19. "Misbranded" applies:

- 6 a. To any pesticide or device if its labeling bears any statement, design, or graphic
7 representation relative thereto or to its ingredients which is false or misleading in
8 any particular; and
9 b. To any pesticide:
10 (1) If it is an imitation of or is offered for sale under the name of another
11 pesticide;
12 (2) If its labeling bears any reference to registration under this chapter;
13 (3) If the labeling accompanying it does not contain directions for use which are
14 necessary and, if complied with, adequate to protect health and the
15 environment;
16 (4) If the label does not contain a warning or caution statement ~~which~~that may
17 be necessary and, if complied with, adequate to protect health and the
18 environment;
19 (5) If the label does not bear an ingredient statement on that part of the
20 immediate container and ~~on the~~, if there is an outside container or wrapper,
21 ~~if there be one, the outside container or wrapper does not have affixed a~~
22 correct copy of the required labeling information from the immediate
23 container or does not contain an opening through which the ingredient
24 statement on the immediate container ~~cannot~~can be clearly read, of the
25 retail package that is presented or displayed under customary conditions of
26 purchase; except that a pesticide is not misbranded under this subsection if:
27 (a) The size or form of the immediate container, or the outside container
28 or wrapper of the retail package, makes it impracticable to place the
29 ingredient statement on the part that is presented or displayed under
30 customary conditions of purchase; and

- (b) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the commissioner;
- (6) The labeling does not contain a statement of the use classification under which the product is registered if the product is a restricted use pesticide;
- (7) There is ~~no~~no label information affixed to its container, and ~~to the~~, if there is an outside container or wrapper of the retail package, ~~if there is one, there is~~ no label information affixed to the outside container or wrapper and the outside container or wrapper does not contain an opening through which the required~~label~~ information on the immediate container ~~cannot~~can be clearly read, ~~a label bearing~~. The label information must include:
- (a) The name and address of the producer, registrant, or person for whom produced;
- (b) The name, brand, or trademark under which the pesticide is sold; and
- (c) The net weight or measure of the content;
- (8) The pesticide contains any substance or substances in quantities highly toxic to ~~man~~humans, unless the label bears, in addition to any other matter required by this chapter:
- (a) The skull and crossbones;
- (b) The word "poison" prominently in red on a background of distinctly contrasting color; and
- (c) A statement of a first aid or other practical treatment (~~first aid or otherwise~~) in case of poisoning by the pesticide;
- (9) If any word, statement, or other information required ~~by or under the~~ authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is

injurious to living ~~man~~humans or other vertebrate animals or vegetation,
except weeds; to which it is applied, or to the ~~person~~individual applying the
pesticide; or

(11) If a plant regulator, defoliant, or desiccant when used as directed is injurious
to ~~man~~humans or other vertebrate animals, or the vegetation to which it is
applied; ~~provided, that the~~ The physical or physiological effect on plants or
~~parts thereof~~ may not be deemed injurious when this is the purpose for
which the plant regulator, defoliant, or desiccant is applied in accordance
with label claims and recommendations.

20. "Nematocide" means any substance intended to prevent, destroy, repel, or mitigate
nematodes.

21. "Nematode" means any of the nonsegmented roundworms harmful to agricultural
plants.

22. "Person" means any individual, partnership, association, corporation, limited liability
company, or organized group of persons whether incorporated or not.

23. "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of
terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms
except viruses, bacteria, or other micro-organisms on or in living ~~man~~humans or other
living animals.

24. "Pesticide" means any substance or mixture of substances intended for preventing,
destroying, repelling, or mitigating any pests and any substance or mixture of
substances intended for use as a plant regulator, defoliant, or desiccant.

25. "Plant regulator" means any substance or mixture of substances intended, through
physiological action, to accelerate or retard the rate of growth or maturation, or to
otherwise alter the behavior of ornamental or crop plants or the produce thereof, but
does not include substances insofar as they are intended to be used as plant
nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.
The term "plant regulator" does not include any of such of those nutrient mixtures or
soil amendments as are commonly known as vitamin-hormone horticultural products,
intended for improvement, maintenance, survival, health, and propagation of plants,

1 and as are not for pest destruction and are nontoxic and nonpoisonous in the
2 undiluted packaged concentration.

3 26. "Protect health and environment" means protection against any unreasonable adverse
4 effects on the environment.

5 27. "Registrant" means the person registering any pesticide pursuant to this chapter.

6 28. "Restricted use pesticides" means any pesticide formulation that is classified for
7 restricted use by the United States environmental protection agency. The term also
8 includes a pesticide formulation classified for restricted use by the commissioner
9 pursuant to section ~~19-18-054.1~~35-06.

10 29. "Rodenticide" means any substance or mixture of substances intended for preventing,
11 destroying, repelling, or mitigating rodents or any other vertebrate animal that the
12 commissioner declares to be a pest.

13 30. "Snails or slugs" ~~include~~includes all harmful agricultural mollusks.

14 31. "Unreasonable adverse effects on the environment" means any unreasonable risk to
15 ~~man~~humans or the environment, taking into account the economic, social, and
16 environmental costs and benefits of the use of any pesticide.

17 32. "Weed" means any plant that grows where not wanted.

18 **SECTION 34. AMENDMENT.** Section 19-18-02.1 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 ~~**19-18-02.1. Environment and rangeland protection fund.**~~

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

NOTE: This section was originally codified in Chapter 19-18 but it appears it is more
appropriately placed with the provisions on the Crop Protection Product Harmonization and
Registration Board. The section has been moved in this bill draft to Section 4.1-34-29.

27 **SECTION 35. AMENDMENT.** Section 19-18-03 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **~~19-18-034.1-35-02. Prohibited acts.~~**

2 ~~No~~A person may not distribute, sell, or offer for sale within this state or deliver for
3 transportation or transport in intrastate commerce or between points within this state through
4 any point outside this state any of the following:

- 5 1. Any pesticide that has not been registered ~~pursuant to the provisions of~~under section
6 ~~19-18-044.1-35-03~~, or any pesticide if any of the claims made for it or any of the
7 directions for its use differ in substance from the representations made in connection
8 with its registration, or if the composition of a pesticide differs from its composition as
9 represented in connection with its registration; ~~provided, that in the discretion of the,~~
10 The commissioner, may allow a change in the labeling or formula of a pesticide ~~may to~~
11 be made within a registration period without requiring reregistration of the product.
- 12 2. Any pesticide unless it is in the:
- 13 a. The registrant's or the manufacturer's unbroken immediate container, ~~or in a~~
14 b. A container repackaged by a facility or person with a federal environmental
15 protection agency issued establishment number, and there is affixed to such
16 container, and to theany outside container or wrapper of the retail package, if
17 ~~there be one,~~a correct copy of the required labeling information from the
18 immediate container or there is in the outside container or wrapper an opening
19 through which the required labeling information on the immediate container
20 ~~cannot~~can be clearly read.

NOTE: This subsection is rewritten in part because it appears it was incorrectly worded to allow access to the required labeling information if there is an outside container or wrapper.

- 21 3. The pesticide commonly known as standard lead arsenate, basic lead arsenate,
22 calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride,
23 sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or
24 discolored as provided by ~~regulations~~rules issued in accordance with this chapter, or
25 any other white powder pesticide that the commissioner, after investigation of and after
26 public hearing on the necessity for the action for the protection of the public health and
27 the feasibility of the coloration or discoloration, by ~~regulation~~rule, requires to be
28 distinctly colored or discolored; unless it has been so colored or discolored. The
29 commissioner may exempt any pesticide to the extent that it is intended for a particular
30 use or uses from the coloring or discoloring required or authorized by this section if the

commissioner determines that the coloring or discoloring for the use or uses is not necessary for the protection of the public health.

4. Any pesticide ~~which~~that is adulterated or misbranded, or any device ~~which~~that is misbranded.

5. ~~No~~A person may not detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or ~~regulations promulgated hereunder~~rules adopted under this chapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter.

6. ~~No~~A person may not use for the person's own advantage or reveal other than in response to a proper subpoena, except to a physician or other qualified person for use in the preparation of an antidote, any information relative to the formula of any product acquired by authority of this chapter.

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

19-18-044.1-35-03. Registration - Fees - Deposit of collections.

1. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:

- a. Give the name and address of each manufacturer or distributor.
- b. Give the name and brand of each product to be registered.
- c. Be accompanied by a current label of each product to be registered.
- d. Be accompanied by a registration fee of three hundred fifty dollars for each product to be registered. ~~At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit the registration fee for each registered product to the environment and rangeland protection fund.~~
- e. Be accompanied by a material safety data sheet for each product to be registered.

NOTE: This subsection relates to contents of applications. Provisions for deposit of fees are moved to a new subsection 5 and noted in the caption.

2. The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its

intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product.

3. Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to ~~whom~~which it is issued to another ownership. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

4. This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

5. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations under this section. The state treasurer shall credit the registration fees to the environment and rangeland protection fund.

SECTION 37. AMENDMENT. Section 19-18-04.1 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04.1-35-04. Reporting requirements.

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

NOTE: This section does not provide the time period to be covered by the report.

SECTION 38. AMENDMENT. Section 19-18-04.2 of the North Dakota Century Code is amended and reenacted as follows:

1 **~~19-18-04.24.1-35-05.~~ Protection of trade secrets.**

- 2 1. ~~Requirements.~~ In submitting data required by this chapter, the applicant may:
- 3 a. ~~Clearly mark any portions that in the applicant's opinion are~~the applicant requests
- 4 the commissioner to determine to be trade secrets or commercial or financial
- 5 information; and
- 6 b. Submit the marked material separately from other material.

NOTE: Subsection 2 says this is a request. Suggest language added to make the submission under subsection 1 be a "request."

- 7 2. ~~Information revealed.~~ After consideration of the applicant's request submitted under
- 8 subsection 1, the commissioner may not make any information public which in the
- 9 commissioner's judgment contains or relates to trade secrets or to commercial or
- 10 financial information obtained from an applicant. When necessary, information relating
- 11 to formulas of products may be revealed to any state or federal agency consulted with
- 12 similar protection of trade secret authority and may be revealed at a public hearing or
- 13 in findings of facts issued by the commissioner.
- 14 3. ~~Notification.~~ If the commissioner proposes to release information that the applicant or
- 15 registrant believes to be protected from disclosure under this section, the
- 16 commissioner shall notify the applicant or registrant by certified mail. The
- 17 commissioner may not make the information available for inspection until thirty days
- 18 after receipt of the notice by the applicant or registrant. During this period, the
- 19 applicant or registrant may institute an action in an appropriate court for a declaratory
- 20 judgment as to whether the information is subject to protection under this section.

21 **SECTION 39. AMENDMENT.** Section 19-18-05 of the North Dakota Century Code is

22 amended and reenacted as follows:

23 **~~19-18-054.1-35-06.~~ Determinations - Rules - Uniformity.**

24 ~~The~~After providing an opportunity for a hearing, the commissioner, ~~after opportunity for a~~

25 ~~hearing,~~ may:

- 26 1. Declare as a pest any form of plant or animal life or virus which is injurious to plants,
- 27 ~~man~~humans, domestic animals, articles, or substances.
- 28 2. Determine whether pesticides are highly toxic to ~~man~~humans and whether ~~the~~their use
- 29 thereof should be restricted.

1 3. Determine standards of coloring or discoloring for pesticides and to subject pesticides
2 to the requirements of subsection 3 of section ~~19-18-034~~. 1-35-02.

3 The commissioner may adopt appropriate rules for carrying out this chapter, including rules
4 providing for the collection and examination of samples of pesticides or devices, ~~and. The~~
5 commissioner also may adopt such rules, applicable to and in conformity with the primary
6 standards established by this chapter, ~~as have been or may be~~ prescribed by the United States
7 environmental protection agency with respect to pesticides ~~in order that there may be to provide~~
8 uniformity ~~between~~ among the requirements of the several states and the federal government.

NOTE: The kind of hearing is not stated. Presumably, the hearing is subject to Section
28-32-21(3).

9 **SECTION 40. AMENDMENT.** Section 19-18-06 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 ~~19-18-064~~. 1-35-07. Enforcement.

12 ~~The examination of pesticides or devices must be made under the direction of the~~
13 ~~commissioner for the purpose of determining whether the~~ shall examine pesticides or devices
14 ~~comply with the requirements or for compliance with~~ this chapter. If it ~~appears from the~~ after
15 examination that a pesticide or device fails to comply with the provisions of this chapter and the
16 commissioner ~~contemplates instituting~~ intends to initiate criminal proceedings against any
17 person, the commissioner shall cause appropriate notice to be given to the person. Any person
18 so notified must be given an opportunity to present the person's views, either orally or in writing,
19 with regard to the contemplated proceedings and if thereafter in the opinion of the
20 commissioner it appears that the chapter has been violated by the person, then the
21 commissioner shall refer the facts to the state's attorney for the county in which the violation has
22 occurred with a copy of the results of the analysis or the examination of the article. ~~This chapter~~
23 ~~does not require the~~ The commissioner is not required to report for prosecution or for the
24 institution of libel proceedings minor violations of ~~the~~ this chapter ~~whenever~~ if the commissioner
25 believes that the public interests will be best served by a suitable written notice of warning ~~in~~
26 writing. ~~Each~~ A state's attorney to whom any violation is reported under this section shall without
27 delay cause appropriate proceedings to be instituted and prosecuted in the proper court of
28 jurisdiction ~~without delay~~. The commissioner, by publication in the manner the commissioner
29 prescribes, shall give notice of all judgments entered in actions instituted under the authority of
30 this chapter.

1 **SECTION 41. AMENDMENT.** Section 19-18-06.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~19-18-06.14.1-35-08.~~ **Stop-sale orders.**

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

10 **SECTION 42. AMENDMENT.** Section 19-18-07 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 ~~19-18-074.1-35-09.~~ **Exemptions.**

13 The penalties provided for violations of section ~~19-18-034.1-35-02~~ do not apply to:

- 14 1. ~~Any~~A carrier while lawfully engaged in transporting a pesticide within this state, if the
15 carrier, upon request, permits the commissioner to copy all records showing the
16 transactions in and movement of the articles.
 - 17 2. ~~Public officials~~A public official of this state ~~and/or~~ the federal government engaged in
18 the performance of ~~their~~ official duties.
 - 19 3. The manufacturer or shipper of a pesticide for experimental use only:
 - 20 a. By or under the supervision of an agency of this state or of the federal
21 government authorized by law to conduct research in the field of pesticides; or
 - 22 b. By others if the pesticide is not sold and if the pesticide container ~~thereof~~ is
23 plainly and conspicuously marked "For experimental use only - not to be sold",
24 together with the manufacturer's name and address.
 - 25 4. A person using, distributing, selling, or offering for sale an unregistered pesticide for
26 which the United States environmental protection agency has granted an emergency
27 exemption for at least one use in North Dakota under section 18 of the federal Act.
- 28 ~~No~~An article may not be deemed in violation of this chapter when intended solely for export to a
29 foreign country and when prepared or packed according to the specifications or directions of the
30 purchaser. If not so exported, all the provisions of this chapter apply.

1 **SECTION 43. AMENDMENT.** Section 19-18-13 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~19-18-134.1-35-10. Minimum-risk pesticide –Certificate of exemption.~~

- 4 1. Section ~~19-18-034.1-35-02~~ does not apply to any person who distributes, sells, or
5 offers for sale within this state or delivers for transportation or transports in intrastate
6 commerce or between points within this state through any point outside this state a
7 minimum-risk pesticide exempt from registration under the Federal Insecticide,
8 Fungicide, and Rodenticide Act [Pub. L. 100-532; 102 Stat. 2654; 7 U.S.C. 136
9 et seq.], provided the person has obtained a certificate of exemption from the
10 commissioner.
- 11 2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an
12 application with the commissioner. The application must include:
- 13 a. The name and address of the product's manufacturer or distributor;
14 b. The name and brand name of the product;
15 c. A current label for the product; and
16 d. A fee equal in amount to the fee set under section ~~19-18-044.1-35-03~~ for the
17 registration of a pesticide.
- 18 3. The commissioner shall remit any fees collected under this section to the state
19 treasurer for deposit in the environment and rangeland protection fund.
- 20 4. Each exemption from registration covers a designated two-year period beginning
21 January first of each even-numbered year and expiring December thirty-first of the
22 following year.

23 **SECTION 44. AMENDMENT.** Section 19-18-08 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 ~~19-18-084.1-35-11. Penalties.~~

26 Any person violating this chapter is guilty of an infraction. ~~In any case in which~~ If a registrant
27 was issued a warning by the commissioner pursuant to ~~under~~ this chapter, the registrant is, upon
28 violating this chapter, other than subsection 1 of section ~~19-18-034.1-35-02~~, that registrant is
29 guilty of a class A misdemeanor; and the registration of the article with reference to which the
30 violation occurred ~~terminates~~ automatically terminates. A pesticide, for which the registration of
31 ~~which~~ has been terminated, may not again be registered unless the pesticide, its labeling, and

1 other material required to be submitted appear to the commissioner to comply with all the
2 requirements of this chapter. In addition to ~~the any~~ criminal sanctions that may be
3 ~~imposed~~ penalty, a person found guilty of violating this chapter or the rules adopted under this
4 chapter is subject to a civil penalty not to exceed one thousand dollars for each violation. The
5 civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an
6 administrative hearing ~~pursuant to~~ under chapter 28-32.

7 **SECTION 45. AMENDMENT.** Section 19-18-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **19-18-094.1-35-12. Seizures.**

10 Any pesticide or device that is distributed, sold, or offered for sale within this state or
11 delivered for transportation or transported in intrastate commerce or between points within this
12 state through any point outside this state is liable to be proceeded against in any proper court of
13 jurisdiction in any county of the state where it may be found and seized for confiscation by
14 process of libel for condemnation:

15 1. In the case of a pesticide:

- 16 a. If it is adulterated or misbranded;
17 b. If it has not been registered under ~~the provisions of section 19-18-044.1-35-03;~~
18 c. If it fails to bear on its label the information required by this chapter; or
19 d. If it is a white powder pesticide and is not colored as required under this chapter.

20 2. In the case of a device, if it is misbranded.

21 If the pesticide is condemned, it ~~must~~, after entry of decree, it must be disposed of by
22 destruction or sale as the court may direct and ~~the any~~ proceeds, ~~if such pesticide is sold~~, less
23 legal costs, must be paid to the state treasurer. The pesticide may not be sold contrary to the
24 provisions of this chapter. Upon payment of cost and execution and delivery of a good and
25 sufficient bond conditioned that the pesticide shall not be disposed of unlawfully, the court may
26 direct that said pesticide be delivered to ~~the its~~ owner thereof for relabeling or reprocessing as
27 ~~the case may be~~. When a decree of condemnation is entered against the pesticide, court costs
28 and fees and storage and other proper expenses must be awarded against ~~the any~~ person, ~~if~~
29 ~~any~~, intervening as claimant of the pesticide.

30 **SECTION 46. AMENDMENT.** Section 19-18-10 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **~~19-18-10. Delegation of duties.~~**

2 ~~All authority vested in the commissioner by virtue of this chapter may with like force and~~
3 ~~effect be executed by the employees of the commissioner as the commissioner may from time~~
4 ~~to time designate for this purpose.~~

NOTE: Defining commissioner in section 4.1-35-01 to include an employee or agent designated by the commissioner eliminates the need for this section.

5 **SECTION 47. AMENDMENT.** Section 19-18-11 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **~~19-18-114.1-35-13. Cooperation.~~**

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

11 **SECTION 48. AMENDMENT.** Section 19-18-12 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **~~19-18-124.1-35-14. Experimental use permits.~~**

14 ~~Provided~~If the state is authorized by the administrator of the environmental protection
15 agency to issue experimental use permits, the commissioner may:

- 16 1. Issue an experimental use permit to ~~a person applying for a permit~~ an applicant if the
17 commissioner determines that the applicant requires the permit to accumulate
18 information necessary to register a pesticide use. An application for an experimental
19 use permit may be filed ~~at the time of or before or after~~ when an application for
20 registration is filed or before or after filing the application.
- 21 2. Prescribe terms, conditions, and the period of time for use under the experimental use
22 permit.
- 23 3. Revoke an experimental use permit, ~~at any time,~~ if the commissioner finds that its
24 terms or conditions are being violated or that its terms and conditions are inadequate
25 to avoid unreasonable adverse effects to human health or the environment.

26 **SECTION 49. AMENDMENT.** Section 19-18-13 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **~~19-18-134.1-35-15. Minimum-risk pesticide - Certificate of exemption.~~**

- 29 1. Section ~~19-18-034.1-35-02~~ does not apply to any person who distributes, sells, or
30 offers for sale within this state or delivers for transportation or transports in intrastate

commerce or between points within this state through any point outside this state a minimum-risk pesticide exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act [Pub. L. 100-532; 102 Stat. 2654; 7 U.S.C. 136 et seq.], provided the person has obtained a certificate of exemption from the commissioner.

2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an application with the commissioner. The application must include:
 - a. The name and address of the product's manufacturer or distributor;
 - b. The name and brand name of the product;
 - c. A current label for the product; and
 - d. A fee equal in amount to the fee set under section 19-18-04 for the registration of a pesticide.
3. The commissioner shall remit any fees collected under this section to the state treasurer for deposit in the environment and rangeland protection fund.
4. Each exemption from registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year.

NOTE: The following sections will become a new Chapter 4.1-36, relating to chemigation.

SECTION 50. AMENDMENT. Section 4-35.1-01 of the North Dakota Century Code is amended and reenacted as follows:

~~4-35.1-01~~4.1-36-01. Definitions.

As used in this chapter:

1. "Chemigation" means any process by which chemicals, including pesticides and fertilizers, are applied to land or crops through an irrigation system.
2. "Commissioner" means the agriculture commissioner and includes any employee or agent designated by the commissioner.
3. "Fertilizer" means any fertilizer as defined by section ~~19-20.1-024~~4.1-40-01.
4. "Pesticide" means that term defined in section ~~4-35-054~~4.1-34-01.
5. "State engineer" means the state engineer appointed by the state water commission under section 61-03-01.

SECTION 51. AMENDMENT. Section 4-35.1-02 of the North Dakota Century Code is amended and reenacted as follows:

1 **~~4-35.1-024.1-36-02. Statement of compliance~~Compliance with rules.**

2 For the purposes of this chapter, ~~farm~~Farm irrigation systems used for chemigation which
3 are designed, constructed, and operated as ~~specified in the administrative~~in compliance with
4 rules adopted under this chapter ~~so as to minimize the possibility of ground or surface water~~
5 ~~contamination~~, are considered to be in compliance with this chapter.

6 **SECTION 52. AMENDMENT.** Section 4-35.1-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **~~4-35.1-034.1-36-03. Rules - Standards for application through irrigation-~~**
9 **system chemigation, installation, maintenance, and modifications.**

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

19 **SECTION 53. AMENDMENT.** Section 4-35.1-04 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **~~4-35.1-044.1-36-04. Inspections - Assistance of state engineer.~~**

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

26 **SECTION 54. AMENDMENT.** Section 4-35.1-05 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **~~4-35.1-054.1-36-05. Enforcement.~~**

29 1. The commissioner shall enforce this chapter and any rules adopted under this chapter.

2. The commissioner may seek an injunction in the district court in the county in which the violation occurs or may issue a cease and desist order to any person for any alleged violation of this chapter or any rules adopted under this chapter.
3. For the purpose of carrying out the provisions of this chapter, the commissioner and the state engineer may enter upon any public or private premises at reasonable times in order to:
 - a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which the equipment is stored or used.
 - b. Inspect or sample lands actually, or reported to be, exposed to pesticides or fertilizers through chemigation.
 - c. Inspect storage or disposal areas.
 - d. Inspect or investigate complaints of injury to humans or animals.
 - e. Sample pesticides and fertilizers and pesticide or fertilizer mixes being applied or to be applied.
 - f. Observe the use and application of a pesticide or fertilizer through chemigation.
 - g. Have access for the purpose of inspecting a premise or other place where equipment or devices used for chemigation are held for distribution, sale, or for use.

SECTION 55. AMENDMENT. Section 4-35.1-06 of the North Dakota Century Code is amended and reenacted as follows:

4-35.1-064.1-36-06. Penalties.

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

1 proceeding or by the commissioner through an administrative hearing under chapter
2 28-32.

NOTE: The following sections will become a new Chapter 4.1-37, relating to the pesticide and pesticide container disposal program.

3 **SECTION 56. AMENDMENT.** Section 4-35.2-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **~~4-35.2-01~~4.1-37-01. Pesticide and pesticide container disposal program - Pesticide**
6 **container management - Compensation.**

- 7 1. The definitions contained in section ~~4-35-05~~4.1-34-01 apply to this ~~section~~chapter.
- 8 2. In consultation with an advisory board consisting of the state health officer, and
9 director of the North Dakota state university extension service, two individuals selected
10 by the agriculture commissioner representing agribusiness organizations, and two
11 individuals selected by the agriculture commissioner representing farm organizations,
12 ~~all of whom must be selected by the agriculture commissioner~~, the commissioner shall
13 continue to implement ~~the project authorized by section 1 of chapter 77 of the 2001~~
14 ~~Session Laws, which is known as project safe send~~. The purpose of the project is to:
- 15 a. Collect and either recycle or dispose of unusable pesticides and unusable
16 pesticide containers. The commissioner shall provide for the establishment and
17 operation of temporary collection sites for the pesticides and pesticide containers.
18 The commissioner may limit the type and quantity of pesticides and pesticide
19 containers acceptable for collection.
- 20 b. Promote proper pesticide container management. In consultation with the director
21 of the North Dakota state university extension service, the commissioner shall
22 evaluate and promote proper methods of pesticide container management,
23 including information on the variety of pesticide containers available.
- 24 3. Any entity collecting pesticide containers or unusable pesticides shall manage and
25 dispose of the containers and pesticides in compliance with applicable federal and
26 state requirements. When called upon, any state agency shall assist the commissioner
27 in implementing the project.
- 28 4. For services rendered in connection with the design and implementation of this
29 project, the advisory board members selected by the commissioner are entitled to
30 reimbursement for mileage and travel expenses in the same manner and for the same

1 amounts provided for state employees and officials. Compensation and expense
2 reimbursement must be paid from the environment and rangeland protection fund.

3 **SECTION 57. AMENDMENT.** Section 4-35.2-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **4-35.2-024.1-37-02. Project scope and evaluation.**

6 The project described in section ~~4-35.2-014.1-37-01~~ must occur in areas to be determined
7 by the agriculture commissioner in consultation with the advisory board ~~under subsection 2-~~
8 ~~of described in~~ section ~~4-35.2-014.1-37-01~~.

9 **SECTION 58. AMENDMENT.** Section 4-35.2-03 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-35.2-034.1-37-03. Project safe send pesticide and pesticide container collection -**
12 **User fees.**

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

18 **SECTION 59. AMENDMENT.** Section 4-35.2-04 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-35.2-044.1-37-04. Report on pesticide container disposal program.**

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

Introduced by

1 A BILL for an Act

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

3 **SECTION 1. AMENDMENT.** Section 19-20.2-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **~~19-20.2-014.1-38-01.~~ Anhydrous ammonia safety rules.**

6 The agriculture commissioner shall adopt rules necessary to implement this chapter and
7 adopt the 1989 American national standard safety requirements for the storage and handling of
8 anhydrous ammonia, except sections 2.5, 5.2.1, 5.2.2.1, and 5.2.2.2. Sections 2.5, 5.2.1,
9 5.2.2.1, and 5.2.2.2 of the 1989 American national standard safety requirements are adopted as
10 follows:

11 1. (2.5) Refers to paragraphs U-68, U-69, U-200, or U-201 of section VIII of the boiler
12 and pressure vessel code of the American society of mechanical engineers, 1949
13 edition, or to section VIII division I of the boiler and pressure vessel code of the
14 American society of mechanical engineers, 1950 edition, through the current edition
15 including addenda and applicable code case interpretations.

16 Where referenced in this standard only section VIII division I of the American
17 society of mechanical engineers code applies except that paragraphs UG-125 through
18 UG-135 and paragraph UW-2 do not apply.

19 2. (5.2.1) Containers used with systems covered in sections 6, 9, 11, and 12 must be
20 made of steel or other material compatible with ammonia and tested in accordance
21 with the current American society of mechanical engineers code. An exception to the
22 American society of mechanical engineers code requirements is that construction
23 under table UW-12 at a basic joint efficiency of under eighty percent is not authorized.

- 1 3. (5.2.2.1) For new containers installed or purchased after January 1, 1996, the entire
2 container must be post-weld heat treated after completion of all welds in or to the
3 shells and heads. The method employed must be as prescribed in the American
4 society of mechanical engineers code. It is recommended that post-weld heat
5 treatment be performed in a furnace of a size sufficient to accommodate the entire
6 container. Welded attachments to pads may be made after post-weld heat treatment.
7 An implement of husbandry does not require post-weld heat treatment if the implement
8 is fabricated with hot formed heads or with cold formed heads that have been stress
9 relieved.
- 10 4. (5.2.2.2) Steels used in fabricating pressure containing parts of a container may not
11 exceed a specified tensile strength of seventy thousand pounds per square inch
12 [482636 kilopascals], as noted in the American society of mechanical engineers code,
13 section II, part D, except that this does not apply to sections 8, 9, and 10. An
14 implement of husbandry may be fabricated from steel having a specified tensile
15 strength of seventy-five thousand pounds per square inch [517110 kilopascals].

NOTE: It appears that the American National Standards Institute updated their safety requirements for the storage and handling of anhydrous ammonia in 1999. The Agriculture Commissioner has adopted updated references to national standards in the anhydrous rules in North Dakota Administrative Code Chapter 7-12-01. However, it would be appreciated if the Agriculture Department would review the references in this section for correctness and matching references to the most current version of the boiler and pressure vessel code of the American Society of Mechanical Engineers.

Except for future amendments to federal income tax laws, a statute may **not** adopt future amendments to standards adopted by reference (Article X, Section 3, of the Constitution of North Dakota). It appears this section attempts to adopt ongoing changes to codes, which is not valid.

16 **SECTION 2. AMENDMENT.** Section 19-20.2-01.1 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **~~19-20.2-01.14.1-38-02.~~ Definition.**

19 "~~Anhydrous~~As used in this chapter, "anhydrous ammonia storage facility" means a bulk
20 anhydrous ammonia storage facility with a capacity exceeding six thousand gallons
21 [22712.47 liters] which is owned or operated by a user or vendor of anhydrous ammonia.

22 **SECTION 3. AMENDMENT.** Section 19-20.2-02 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **~~19-20.2-02. License required -- Existing anhydrous ammonia storage facilities.~~**

2 ~~Any user or vendor of anhydrous ammonia owning or operating an anhydrous ammonia~~
3 ~~storage facility shall apply for an operator's license to the agriculture commissioner and the~~
4 ~~board of county commissioners of the county in which the facility is located. Any permanent~~
5 ~~anhydrous ammonia storage facility constructed before July 1, 1985, is exempt from the siting~~
6 ~~requirements of this chapter and may receive a license under this chapter regardless of~~
7 ~~noncompliance with the siting requirements. The commissioner may deny a license for failure to~~
8 ~~remit the proper fee with the application or failure to comply with the rules adopted pursuant to~~
9 ~~this chapter. The license is valid indefinitely but may not be transferred.~~

NOTE: This section is eliminated but language is moved to Section 4 of this draft regarding applications and the siting exemption for facilities constructed before July 1, 1985. Language regarding indefinite duration and nontransfer of licenses is moved to Section 5 of this draft.

10 **SECTION 4. AMENDMENT.** Section 19-20.2-03 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **~~19-20.2-034.1-38-03. License required - Anhydrous ammonia facilities constructed~~**
13 **~~after June 30, 1985.~~**

14 ~~No~~The owner or operator of an anhydrous ammonia storage facility shall apply to the
15 agriculture commissioner and to the board of county commissioners for a license to site and
16 operate the facility. An anhydrous ammonia storage facility may not be operated without a
17 license issued by the agriculture commissioner and the board of county commissioners of the
18 county in which the facility is constructed~~located~~. An application for a license to site and operate
19 an anhydrous ammonia storage facility must be made to the agriculture commissioner and to
20 the board of county commissioners~~Any permanent anhydrous ammonia storage facility~~
21 constructed before July 1, 1985, is exempt from the siting requirements of this chapter and may
22 receive a license under this chapter regardless of noncompliance with the siting requirements.
23 ~~The commissioner or the board may deny a license for failure to remit the proper fee to the~~
24 ~~agriculture commissioner, for failure to comply with the siting requirements of this chapter and~~
25 ~~rules adopted pursuant to~~under ~~this chapter if constructed after June 30, 1985, or for failure to~~
26 ~~comply with local siting requirements. The agriculture commissioner also may deny a license if~~
27 ~~the facility does not meet the initial inspection standards required by this chapter and by any~~
28 ~~rules adopted pursuant to~~under ~~this chapter. In order to~~To ~~obtain a license, an~~
29 ~~individual applicant shall submit~~ with the application ~~two sets of drawings or photographs and~~

signed affidavits stating and showing, and two signed affidavits stating, the facility has been measured and meets the siting requirements along with the application for license. The drawings or photographs must show the proposed location of the tank, the locations, and the surroundings in all directions. ~~One~~A set of drawings or photographs is for~~must be provided to~~ the agriculture commissioner and ~~the other is for~~a set must be provided to the board of county commissioners.

NOTE: "Constructed" was replaced with "located" to maintain consistency with the language of the chapter.

SECTION 5. AMENDMENT. Section 19-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

~~19-20.2-04~~1-38-04. State license fee.

The agriculture commissioner shall charge a one-time twenty-five dollar fee for a license for each anhydrous ammonia storage facility. ~~The licensing fee is twenty-five dollars for an anhydrous ammonia storage facility and an additional one hundred dollars for each retail and storage site. Expansion of an existing anhydrous ammonia storage facility, including the expansion of a facility constructed before July 1, 1985, does not require reapplication for licensing, but all siting requirements must be met. When~~The license is valid indefinitely but may not be transferred. A new license is required when an anhydrous ammonia storage facility changes ownership, ~~the new owner shall obtain a license.~~

SECTION 6. AMENDMENT. Section 19-20.2-05 of the North Dakota Century Code is amended and reenacted as follows:

~~19-20.2-05~~1-38-05. State siting requirements - Anhydrous ammonia storage facilities constructed after June 30, 1985.

For facilities constructed after June 30, 1985:

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

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

SECTION 7. AMENDMENT. Section 19-20.2-06 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-064.1-38-06. Transfer hose requirements.

~~The following requirements apply to any~~Any transfer hose utilized at an anhydrous ammonia storage facility:

1. ~~Any liquid transfer hose that~~Which is a liquid transfer hose and is not drained of liquid upon completion of transfer operations must be equipped with an approved shutoff valve at the discharge end.
2. ~~A~~Must have a hydrostatic relief valve or equivalent ~~must be~~ installed in each section of hose or pipe in which liquid ammonia can be isolated between shutoff valves to relieve the pressure that could develop from the trapped liquid. If an equivalent pressure relief device is used, the maximum accumulated pressure possible within the system may not exceed the limits of the system. A hydrostatic relief valve must be installed

between each pair of valves in which liquid is trapped. The start-to-discharge pressure setting of the relief valve must not be less than three hundred fifty pounds per square inch [2413.18 kilopascals] gauge nor more than four hundred pounds per square inch [2757.92 kilopascals] gauge.

3. ~~A transfer hose must~~Must have etched, cast, or impressed on the outer coating all of the following:

- a. The words "ANHYDROUS AMMONIA".
- b. The maximum working pressure of the transfer hose.
- c. The name of the manufacturer of the hose.
- d. The date of manufacture or the expiration date of the hose.

4. ~~A transfer hose~~Which is cut, scraped, cracked, or weathered so that the inner white cord is visible must be replaced. A transfer hose with an expiration date printed on the hose must be replaced prior to that date. Transfer hoses without an expiration date must be replaced as follows:

- a. Rayon hoses must be replaced within two years of the date of manufacture.
- b. Nylon hoses must be replaced within four years of the date of manufacture.
- c. Steel-reinforced hoses must be replaced within six years of the date of manufacture.

Notwithstanding the replacement dates determined under this subsection for transfer hoses with or without an expiration date, an additional year must be allowed for replacement of transfer hoses in order to take into account delays in the original installation of transfer hoses.

SECTION 8. AMENDMENT. Section 19-20.2-06.1 of the North Dakota Century Code is amended and reenacted as follows:

~~19-20.2-06.14.1-38-07.~~ Pressure relief devices.

Bulk storage containers constructed according to the American society of mechanical engineers code, and all nurse tanks, must be equipped with pressure relief valves constructed according to the American society of mechanical engineers code and capacity certified by the national board of boiler and pressure vessel inspectors. A pressure relief valve using nonmetallic seats must be replaced every five years with a new valve meeting the standards ~~referenced~~specified in this section. A pressure relief valve using metallic seats must be tested,

1 ~~and repaired if deemed necessary,~~ every five years in lieu of replacement, ~~and repairs, if-~~
2 ~~deemed necessary.~~ Repairs deemed necessary must be made by the valve manufacturer or by
3 a safety valve repair organization having a valid "VR" certificate of authorization for the repairs
4 from the national board of boiler and pressure vessel inspectors.

5 **SECTION 9. AMENDMENT.** Section 19-20.2-07 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **~~19-20.2-07.1-38-08.~~ Inspection.**

- 8 1. The agriculture commissioner shall develop and implement an initial and periodic
9 inspection program for anhydrous ammonia storage facilities.
- 10 2. The agriculture commissioner shall inspect each anhydrous ammonia storage facility
11 at least once every five years and may inspect any ~~farm transportation wagon or~~
12 ~~vehicle~~conveyance designed to apply anhydrous ammonia which is in the vicinity of an
13 anhydrous ammonia storage facility.
- 14 3. The agriculture commissioner may inspect any anhydrous ammonia storage facility
15 where the commissioner has reason to believe violations of the safety standards ~~under~~
16 ~~this chapter~~ exist.
- 17 4. The agriculture commissioner may revoke or suspend the license of any anhydrous
18 ammonia storage facility ~~violating~~for a violation of a provision of this chapter or the
19 rules adopted under this chapter. The commissioner may order the discontinuance of
20 use of any ~~farm transportation wagon or implement of husbandry~~conveyance designed
21 to apply anhydrous ammonia which is found unsafe or hazardous.

22 **SECTION 10. AMENDMENT.** Section 19-20.2-07.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **~~19-20.2-07.14.1-38-09.~~ Reinstalled and secondhand anhydrous ammonia storage**
25 **containers - Requirement.**

- 26 1. ~~Before anhydrous ammonia may be stored in a reinstalled or secondhand container,~~
27 ~~including a nurse tank, the~~A person intending to store the anhydrous ammonia in a
28 reinstalled or secondhand container, including a nurse tank, shall furnish the
29 agriculture commissioner with:
 - 30 a. Evidence that the container is registered with the national board of boiler and
31 pressure vessel inspectors; or

1 b. The manufacturer's data report for the container.

2 2. Subsection 1 is ~~not~~only applicable to the owner of an anhydrous ammonia storage
3 container installed in this state before November 1, 1987, ~~unless~~if the storage
4 container is reinstalled at another location.

NOTE: The 1987 date was put in place in 1997. Consideration should be given to whether this is still appropriate.

5 **SECTION 11. AMENDMENT.** Section 19-20.2-08 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 ~~19-20.2-08.1-38-10. Promotion of safety- Use of excess fees - Safety promotion -~~
8 Administration - Inspections.

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

NOTE: There is usually a reference to deposit of fees in a fund. Is there a fund where the fees are held for use?

12 **SECTION 12. AMENDMENT.** Section 19-20.2-08.2 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 ~~19-20.2-08.24.1-38-11. Prohibitions.~~

15 The following ~~action is~~actions are prohibited:

- 16 1. Filling a nurse tank directly from a railcar;
17 2. Filling or using a nurse tank that has an outdated hose;
18 3. Filling or using a nurse tank that has outdated relief valves;
19 4. Towing more than two nurse tanks on a public road;
20 5. Filling department of transportation transport containers not meeting the requirements
21 of the department of transportation; or
22 6. Filling anhydrous ammonia storage containers not meeting the requirements of this
23 chapter.

24 **SECTION 13. AMENDMENT.** Section 19-20.2-08.3 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 ~~19-20.2-08.34.1-38-12. Anhydrous ammonia - Bulk delivery.~~

27 Upon obtaining a commercial driver's license with an endorsement for hazardous materials,
28 ~~a person~~an individual may transport anhydrous ammonia in a bulk delivery vehicle and ~~may fill,~~

1 ~~from the bulk delivery vehicle,~~ nurse tanks with anhydrous ammonia from the bulk delivery
2 vehicle.

3 **SECTION 14. AMENDMENT.** Section 19-20.2-08.4 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **~~19-20.2-08.44.1-38-13.~~ Hydrostatic test procedures.**

6 Any hydrostatic test conducted under section ~~19-20.2-054.1-38-05~~ must comply with the
7 requirements of the national board inspection code (ANSI-NB 23) and be conducted in a
8 manner approved by the agriculture commissioner.

9 **SECTION 15. AMENDMENT.** Section 19-20.2-08.5 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **~~19-20.2-08.54.1-38-14.~~ Wet fluorescent magnetic particle test procedures.**

12 Any wet fluorescent magnetic particle test of a pressure vessel weld conducted under
13 section ~~19-20.2-054.1-38-05~~ must comply with the requirements of the society for
14 nondestructive testing SNT-TC-1A standard and must be conducted by a person certified as a
15 level II technician by the society.

16 **SECTION 16. AMENDMENT.** Section 19-20.2-09 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **~~19-20.2-094.1-38-15.~~ Enforcement.**

- 19 1. The agriculture commissioner shall enforce the requirements of this chapter and any
20 rules issued under it.
- 21 2. The commissioner may bring an action to enjoin the violation or threatened violation of
22 this chapter, or any rule issued pursuant to this chapter, in the district court of the
23 county in which the violation occurs or ~~is about to~~ may occur.
- 24 3. The agriculture commissioner may issue a cease and desist order to any person
25 allegedly violating this chapter. If any person violates the cease and desist order, the
26 commissioner shall file the appropriate criminal complaint.
- 27 4. ~~For the purpose of carrying out this chapter, the~~ The agriculture commissioner may
28 enter upon any public or private premises at reasonable times to:
 - 29 a. Inspect any equipment subject to this chapter and the premises on which the
30 equipment is stored or used.;
 - 31 b. Inspect or investigate complaints.;or

c. Inspect any premises or other place where anhydrous ammonia or related devices are held for distribution, sale, or use.

5. If a civil penalty ~~pursuant to section 19-20.2-10~~ is imposed under section 4.1-38-16 by the agriculture commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may ~~collect the civil penalty by~~ initiate a civil action in any appropriate court. Additionally, the commissioner may suspend or revoke a license issued ~~pursuant to~~ under this chapter for failure to pay a civil penalty within thirty days after a final determination is made.

SECTION 17. AMENDMENT. Section 19-20.2-10 of the North Dakota Century Code is amended and reenacted as follows:

~~19-20.2-10~~ 4.1-38-16. Penalty.

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

SECTION 18. AMENDMENT. Section 19-20.3-01 of the North Dakota Century Code is amended and reenacted as follows:

NOTE: The following 3 sections would move a contingent Chapter 19-20.3 into this new chapter but retain the contingent effective date.

~~19-20.3-01~~ 4.1-38-17. (Contingent effective date - See note.) Risk management program - Anhydrous ammonia.

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

1. Request information from any person that:
 - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
 - b. Is required to comply with the risk management program requirements;

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

9 **SECTION 19. AMENDMENT.** Section 19-20.3-02 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **19-20.3-024.1-38-18. (Contingent effective date - See note.) Risk management**
12 **program - Enforcement authority.**

13 If the agriculture commissioner determines that there is noncompliance on the part of any
14 person that sells, stores, or handles anhydrous ammonia for agricultural purposes and that is
15 required to comply with the risk management program requirements referenced in section
16 19-20.3-01, the agriculture commissioner may:

- 17 1. Bring an action to enjoin a violation or a threatened violation;
- 18 2. Issue a cease and desist order; and
- 19 3. Impose a civil penalty through an administrative hearing in an amount not exceeding
20 ten thousand dollars per day for each violation.

21 **SECTION 20. CONTINGENT EFFECTIVE DATE.** Sections 18 and 19 of this Act are
22 effective on the date that the governor certifies to the legislative council that the agriculture
23 commissioner has been delegated by the administrator of the United States environmental
24 protection agency to implement and enforce the risk management program as it pertains to the
25 sale, storage, and handling of anhydrous ammonia for agricultural purposes, in accordance with
26 section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30,
27 2011.

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**3 **SECTION 1. AMENDMENT.** Section 4-35-06.2 of the North Dakota Century Code is
4 amended and reenacted as follows:5 **4-35-06.24.1-39-01. Crop protection product harmonization and registration board -**
6 **Recovery of funds.**7 The crop protection product harmonization and registration board may accept funds
8 received for expenses paid relating to the registration of pesticides or donations offered to or for
9 the benefit of the board. All moneys received under this section must be deposited in the minor
10 use pesticide fund to pay expenses relating to the registration of pesticides or for the specific
11 purpose for which they are given. ~~The~~Whenever possible, the board shall attempt, ~~whenever~~
12 ~~possible,~~ to recover funds expended relating to the registration of ~~pesticides and pesticide.~~The
13 board shall adopt rules to administer this section.

NOTE: This section was also included in Section 30 of bill draft 17.0038.01000 as part of the rewrite on pesticides. The committee may decide whether this section is better left in that bill or as part of the crop protection bill.

14 **SECTION 2. AMENDMENT.** Section 4-35-30 of the North Dakota Century Code is amended
15 and reenacted as follows:16 **4-35-304.1-39-02. Crop protection product harmonization and registration board -**
17 **Membership - Duties - Grants.**

- 18 1. The crop protection product harmonization and registration board consists of:
-
- 19 a. The governor or the governor's designee;
-
- 20 b. The agriculture commissioner or the commissioner's designee;
-
- 21 c. The chairman of the house agriculture committee or the chairman's designee;

- 1 d. The chairman of the senate agriculture committee or the chairman's designee;
- 2 e. A member of the house or senate agriculture committee who is not a member of
- 3 the faction in which the committee chairman is a member, appointed by the
- 4 legislative management chairman;
- 5 f. A crop protection product dealer in the state appointed by the governor from a list
- 6 of three nominees submitted by the North Dakota agricultural association;
- 7 g. A consumer of crop protection products appointed by the governor from a list of
- 8 three nominees submitted by the North Dakota grain growers association;
- 9 h. A consumer of crop protection products appointed by the governor from a list of
- 10 three nominees submitted by the North Dakota oilseed council;
- 11 i. A representative of the crop protection product manufacturing industry appointed
- 12 by the chairman of the legislative management; and
- 13 j. The director of the North Dakota state university agricultural experiment station.
- 14 2. The representative of the crop protection product manufacturing industry and the
- 15 director of the agricultural experiment station shall serve as nonvoting members. The
- 16 governor or the governor's designee shall serve as chairman of the board.
- 17 3. The board shall:
- 18 a. Identify and prioritize crop protection product labeling needs;
- 19 b. Explore the extent of authority given to this state under the federal Insecticide,
- 20 Fungicide, and Rodenticide Act [7 U.S.C. 136a];
- 21 c. Identify the data necessary to enable registration of a use to occur in a timely
- 22 manner;
- 23 d. Determine ~~what research, if any, is necessary~~ research to fulfill the data
- 24 requirements for activities listed in this section;
- 25 e. Request the agriculture commissioner to pursue specific research funding
- 26 options from public and private sources;
- 27 f. Request the North Dakota state university agricultural experiment station to
- 28 pursue specific research to coordinate registration efforts; and
- 29 g. Pursue ~~any~~ opportunities to make more crop protection product options available
- 30 to state agricultural producers ~~in this state~~ through any means the board
- 31 determines advisable.

- 1 4. The board may contract with a consultant to ~~conduct~~provide studies or ~~provide,~~
2 research, or information regarding crop protection product registration and labeling
3 needs.
- 4 5. The board may administer a grant program through which agriculture commodity
5 groups may apply for funds to be used ~~by the groups~~ to address issues related to the
6 registration of crop protection products. To be eligible for ~~receipt of~~ a grant, an
7 applicant must submit an application to the board ~~which requests~~requesting a specific
8 amount of funds, ~~specifies~~specifying the exact purposes for which the grant would be
9 used, and ~~provides~~providing a detailed timetable for the use of the grant funds. The
10 board may impose any additional conditions it determines appropriate for grant
11 recipients, including requiring periodic reports and furnishing of matching funds. The
12 board may terminate funding of a previously approved grant at any time if the board is
13 dissatisfied with the performance of the grant recipient.
- 14 6. The board may use not more than fifteen percent of the funds under its supervision for
15 administrative purposes, including the cost of contracting for administrative services
16 and reimbursement of board member expenses. The members of the board who are
17 members of the legislative assembly are entitled to compensation and expense
18 reimbursement from the legislative council for attendance at board meetings at the
19 rate provided for members of the legislative assembly for attendance at interim
20 committee meetings ~~and are entitled to reimbursement for expenses incurred in~~
21 ~~attending the meetings in the amounts provided by law for other state officers.~~
- 22 7. The board may adopt rules to implement this section.

NOTE: This section was also included in Section 29 of bill draft 17.0038.01000 as part of the rewrite on pesticides. The committee may decide whether this section is better left in that bill draft or as part of the crop protection bill draft.

23 **SECTION 3. AMENDMENT.** Section 4-40-01 of the North Dakota Century Code is amended
24 and reenacted as follows:

25 **4-40-014.1-39-03. Crop protection products - Canadian labels.**

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

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

4 **SECTION 4. AMENDMENT.** Section 4-40-02 of the North Dakota Century Code is amended
5 and reenacted as follows:

6 **4-40-024.1-39-04. Special local needs exemption - Tolerances.**

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

11 **SECTION 5. AMENDMENT.** Section 4-40-03 of the North Dakota Century Code is amended
12 and reenacted as follows:

13 **4-40-034.1-39-05. Crop protection products - Registration process - Joint labeling.**

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

18 **SECTION 6. AMENDMENT.** Section 4-40-04 of the North Dakota Century Code is amended
19 and reenacted as follows:

20 **4-40-044.1-39-06. Crop protection products - Request to petition for registration.**

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

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**3 **SECTION 1. AMENDMENT.** Section 19-20.1-02 of the North Dakota Century Code is
4 amended and reenacted as follows:5 **~~19-20.1-024.1-40-01. Definitions of words and terms.~~**

6 When used in this chapter:

- 7 1. "Brand" means a term, design, or trademark, used in connection with one or several
8 grades of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil
9 amendments, or plant amendments.
- 10 2. "Bulk" means in a nonpackaged form.
- 11 3. "Compost" means a material derived primarily or entirely from biological
12 decomposition of vegetative organic matter or animal manure that ~~does not~~may have
13 inorganic fertilizer added ~~other than~~ to promote decomposition.
- 14 4. "Deficiency" means ~~that an~~ amount of plant nutrient or active ingredient found by
15 analysis ~~is to be~~ less than the amount guaranteed, resulting from a lack of plant
16 nutrient ~~or~~, active ingredients, or ~~from lack of~~ uniformity.
- 17 5. "Distributor" means ~~any a~~ person who imports, consigns, manufactures, produces,
18 compounds, mixes, or blends or who sells or offers for sale fertilizer, fertilizer
19 materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments,
20 ~~or who sells or offers for sale fertilizer, fertilizer materials, micronutrients, specialty~~
21 ~~fertilizers, soil amendments, or plant amendments~~ in this state.
- 22 6. "End user" means a person who uses a fertilizer, fertilizer materials, micronutrients,
23 specialty fertilizers, soil amendment, or plant amendment in a manner for which the
24 product was intended.

- 1 7. "Fertilizer" means any substance containing one or more recognized plant nutrients
2 which is used for its plant nutrient content and which is designed for use or claimed to
3 have value in promoting plant growth, except unmanipulated animal and vegetable
4 manures, marl, lime, limestone, wood ashes, and other products excluded by ~~the~~
5 ~~commissioner by rule~~ rule of the commissioner.
- 6 8. "Fertilizer material" means a fertilizer which:
7 a. Contains no more than one of the primary plant nutrients;
8 b. Has approximately eighty-five percent of its primary plant nutrient content present
9 in the form of a single chemical compound; or
10 c. Is derived from a plant or animal residue or byproduct or a natural material
11 deposit ~~which~~ and has been processed in such a way that its content of primary
12 plant nutrients has not been materially changed except by purification or
13 concentration.
- 14 9. "Grade" means the percentages of total nitrogen, available phosphate, and soluble
15 potassium or soluble potash stated in the same terms, order, and percentages as in
16 the "guaranteed analysis".
- 17 10. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed.
- 18 ~~40-11.~~ "Investigational allowance" means an allowance for variations inherent in the taking,
19 preparation, and analysis of an official sample of fertilizer, soil amendment, or plant
20 amendment.
- 21 ~~44-12.~~ "Label" means all written, printed, or graphic ~~matter~~ materials upon or accompanying
22 any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or
23 plant amendment and any printed material or media announcements used in
24 promoting their sale.
- 25 ~~42-13.~~ "Licensee" means ~~any~~ a person licensed by the commissioner to distribute a fertilizer,
26 fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant
27 amendment.
- 28 ~~43-14.~~ "Manipulated" means to have manufactured, blended, or mixed fertilizers, fertilizer
29 materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments
30 ~~that are manufactured, blended, or mixed, or to have treated in any manner any~~
31 animal or vegetable manures ~~that have been treated in any manner~~, including

1 mechanical drying, grinding, pelleting, and other means, or by adding other chemicals
2 or substances.

3 ~~14.15.~~ "Micronutrient" means a fertilizer that contains only essential chemical elements that
4 are required at low levels for normal plant growth.

5 ~~15.16.~~ "Mobile mechanical unit" means any portable machine or apparatus used to blend,
6 mix, or manufacture fertilizers, fertilizer material, micronutrients, specialty fertilizers,
7 soil amendments, or plant amendments.

8 ~~16.17.~~ "Official sample" means any sample of fertilizer, fertilizer material, micronutrients,
9 specialty fertilizer, soil amendment, or plant amendment, taken ~~by the commissioner~~
10 and designated as "official" by the commissioner.

11 ~~17.18.~~ "Organic" in reference to fertilizer nutrients, ~~refers~~means only to naturally occurring
12 substances, generally recognized as the hydrogen compounds of carbon and their
13 derivatives or synthetic products of similar composition with a water insoluble nitrogen
14 content of at least sixty percent of the guaranteed total nitrogen.

15 ~~18.19.~~ "Percent" or "percentage" means the percentage by weight.

16 ~~19.20.~~ "Plant amendment" means a substance applied to plants or seeds which is intended to
17 improve germination, growth, yield, product quality, reproduction, flavor, or other
18 desirable characteristics of plants except fertilizers, unless the fertilizer is represented
19 to contain, as an active ingredient, a substance other than a primary plant nutrient or
20 micronutrient, or is represented as promoting plant growth by supplying something
21 other than a primary plant nutrient or micronutrient.

22 ~~20.21.~~ "Plant nutrient" means a ~~nutrient~~substance generally recognized as beneficial for plant
23 growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron,
24 chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.

25 ~~21.22.~~ "Primary plant nutrients" means nitrogen, phosphate, and potash.

26 ~~22.23.~~ "Registrant" means the person who registers fertilizers, soil amendments, or plant
27 amendments ~~under the provisions of this chapter.~~

28 ~~23.24.~~ "Sell" when applied to fertilizers, fertilizer material, micronutrients, specialty fertilizers,
29 soil amendments, or plant amendments ~~includes~~means:

30 a. ~~The act of selling or transferring~~Transferring or offering to transfer ownership—
31 through a sale, exchange, gift, or distribution; or

1 b. ~~The offering for sale, exchange, or distribution.~~

2 e. ~~Giving away.~~

3 d.~~b.~~ Receiving, accepting, holding, or possessing for sale, exchange, gift or
4 distribution.

5 ~~24.25.~~ "Soil amendment" means any substance ~~that is~~ intended to improve the characteristics
6 of the soil except ~~fertilizers, unmanipulated animal manures, unmanipulated or~~
7 vegetable manures, and pesticides. ~~The term includes fertilizer if, and fertilizers,~~
8 unless the fertilizer is represented to contain, as an active ingredient, a substance
9 other than a primary plant nutrient or micronutrient or is represented as promoting
10 plant growth by supplying something other than a primary plant nutrient or
11 micronutrient.

12 ~~25.26.~~ "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use.

13 ~~26.27.~~ "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

14 **SECTION 2. AMENDMENT.** Section 19-20.1-03 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 ~~19-20.1-034.1-40-02.~~ **Product registration - Fees.**

17 1. Each brand and grade of fertilizer, fertilizer material, micronutrient, specialty fertilizer,
18 soil amendment, and plant amendment must be registered in the name of the person
19 whose name appears upon the label before being offered for sale or distributed in this
20 state.

21 2. The application for registration must be submitted to the commissioner on a form
22 furnished by the commissioner and must be accompanied by:

23 a. A current product label; and

24 b. A fee of fifty dollars per product.

25 3. ~~A~~Each brand and grade registration is effective for a two-year period beginning July
26 first and ending June thirtieth of each even-numbered year.

27 4. Any request for a registration renewal received after July thirty-first must be assessed
28 a penalty of one hundred dollars per product.

29 5. a. ~~This section does not require a distributor~~A distributor is not required to register
30 any product listed in subsection 1 if that product is already registered ~~under this~~

1 chapter by another person, providing the label complies with the issued
2 registration.

3 b. ~~This section does not require the registration of compost~~Compost that is
4 transferred between parties without compensation does not require registration.

5 6. The agriculture commissioner shall forward all fees received under this section to the
6 state treasurer for deposit in the environment and rangeland protection fund.

7 **SECTION 3. AMENDMENT.** Section 19-20.1-03.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **~~19-20.1-03.14.1-40-03.~~ Distributor's license - Fees.**

- 10 1. A person may not distribute any fertilizer, fertilizer material, micronutrient, specialty
11 fertilizer, soil amendment, or plant amendment in this state without first obtaining a
12 distributor's license from the commissioner.
- 13 2. A license is required for each location or mobile mechanical unit used by a distributor
14 in the state.
- 15 3. The application for ~~the~~a license must be submitted on a form furnished by the
16 commissioner and must be accompanied by a fee of one hundred dollars.
- 17 4. A license is effective for a two-year period beginning July first and ending June thirtieth
18 of each even-numbered year.
- 19 5. ~~License~~Any license renewal ~~applications~~application received after July thirty-first must
20 be assessed a penalty of one hundred dollars per location.
- 21 6. ~~A~~Any license issued under this section:
- 22 a. Is not transferable;
- 23 b. Must be conspicuously posted at each location used by the distributor; and
- 24 c. Must be carried in each mobile mechanical unit ~~operating~~operated by the
25 distributor in the state.
- 26 7. The requirements of this section do not apply to persons that distribute only:
- 27 a. Specialty fertilizers; or
- 28 b. Seed inoculants.
- 29 8. The agriculture commissioner shall forward all fees received under this section to the
30 state treasurer for deposit in the environment and rangeland protection fund.

1 **SECTION 4. AMENDMENT.** Section 19-20.1-03.2 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~19-20.1-03.24.1-40-04.~~ **Proof of effectiveness.**

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

10 **SECTION 5. AMENDMENT.** Section 19-20.1-03.4 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 ~~19-20.1-03.44.1-40-05.~~ **Guaranteed analysis.**

- 13 1. Guaranteed analysis must be claimed as follows:
 - 14 a. Total Nitrogen (N) _____ percent;
 - 15 b. Available Phosphate (P₂O₅) _____ percent; and
 - 16 c. Soluble Potash (K₂O) _____ percent.
- 17 2. ~~In~~The total phosphate or degree of fineness, or both, may also be guaranteed, in the
18 case of unacidulated mineral phosphatic materials and basic slag, bone, tankage, and
19 other organic phosphatic materials, ~~the total phosphate or degree of fineness, or both,~~
20 ~~may also be guaranteed.~~
- 21 3. Rules implemented under this chapter may allow or require guarantees for plant
22 nutrients other than nitrogen, phosphorus, and potassium.
 - 23 a. Guarantees under this subsection must be expressed in the form of the element.
 - 24 b. The commissioner may require that the sources of other nutrients, including
25 oxides, salt, and chelates, be stated on the application for registration and
26 included as a parenthetical statement on the label.
 - 27 c. Other beneficial substances or compounds, determinable by laboratory methods,
28 may be guaranteed with permission of the commissioner after consultation with
29 the director of the North Dakota state university extension service.

- 1 4. ~~When any~~Any guaranteed plant nutrients ~~or,~~ other substances, or compounds are-
2 ~~guaranteed,~~ they are subject to inspection and analysis ~~in accord with~~according to the
3 methods and rules prescribed by the commissioner.
- 4 5. a. The commissioner, by rule, may require potential basicity or acidity expressed in
5 terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36
6 kilograms] per ton [907.18 kilograms].
- 7 b. The guaranteed analysis of a soil amendment or plant amendment must be an
8 accurate statement of composition, including the percentages of each ingredient.
9 If the product is a microbiological product, the number of viable micro-organisms
10 per milliliter for a liquid or the number of viable micro-organisms per gram for a
11 dry product must also be listed.

12 **SECTION 6. AMENDMENT.** Section 19-20.1-04 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 ~~19-20.1-04~~19-20.1-04. **19-20.1-04.1-40-06. Label requirement.**

15 Any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant
16 amendment distributed in this state must be labeled.

- 17 1. If the product is in a container, the label must be plainly printed in English and
18 conspicuously placed on or attached to the container. The label must include:
- 19 a. The net weight of the product;
- 20 b. The brand;
- 21 c. The grade, unless no primary nutrients are claimed;
- 22 d. The guaranteed analysis; and
- 23 e. The name and address of the registrant.
- 24 2. If the product is distributed in bulk, a document providing the same information
25 required in subsection 1 must accompany the delivery and be provided to the end user
26 at the time of delivery.
- 27 3. A fertilizer formulated according to specifications ~~that are~~ furnished by a consumer
28 prior to mixing must be labeled to show the net weight, the guaranteed analysis or
29 amount of each plant nutrient it contains in pounds [kilograms], and the name and
30 address of the registrant.

1 **SECTION 7. AMENDMENT.** Section 19-20.1-06 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~19-20.1-06~~**19-20.1-064.1-40-07. Inspection fees - Tonnage reports - Penalty.**

4 1. a. An inspection fee ~~in the amount of ten dollars or~~ twenty cents per ton [907.18
5 kilograms], whichever is greater, must be paid to the commissioner on all
6 fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments,
7 and plant amendments distributed in this state. ~~The inspection fee may not be~~
8 ~~less than ten dollars.~~

9 b. This subsection does not apply to:

10 (1) ~~Manufacturers, distributors, or exchanges~~Exchanges of product between
11 ~~them~~manufacturers and distributors; or

NOTE: The wording of this paragraph would exempt distributors from inspection fees in all cases. Was that intended?

12 (2) Individual fertilizers, fertilizer material, micronutrients, specialty fertilizers,
13 soil amendments, or plant amendments sold exclusively in packages of
14 twenty-five pounds [11.34 kilograms] or less.

15 2. a. On or before January thirty-first, each licensed person who distributes a fertilizer,
16 fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant
17 amendment to an end user in this state shall:

18 (1) File with the commissioner a form stating the number of net tons [kilograms]
19 of each listed product distributed in this state during the preceding calendar
20 year; and

21 (2) Submit to the commissioner the inspection fee required by this section.

22 b. If a person fails to submit an inspection fee, at the time and in the manner
23 required by this section, the commissioner may impose a penalty ~~equal to~~ of ten
24 dollars or ten percent of the amount due, whichever is greater. ~~The penalty must~~
25 ~~be equal to at least ten dollars.~~

26 3. a. On or before January thirty-first, each licensed person that distributes a fertilizer,
27 fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant
28 amendment to a licensed entity in this state shall file with the commissioner a
29 form stating the number of net tons [kilograms] of each listed product distributed
30 in this state during the preceding calendar year.

1 b. If a person fails to file the form, at the time and in the manner required by this
2 subsection, the commissioner may impose a late fee of thirty-five dollars.

3 4. Each distributor shall keep all records regarding purchases and sales for a period of
4 three years. The records may be examined by the commissioner upon request.

5 5. The agriculture commissioner shall forward all fees received under this section to the
6 state treasurer for deposit in the environment and rangeland protection fund.

7 **SECTION 8. AMENDMENT.** Section 19-20.1-08 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 ~~19-20.1-084.1-40-08.~~ **Inspection, sampling, analysis.**

10 1. In order to determine compliance with this chapter and rules implemented under this
11 chapter, the commissioner may enter ~~upon~~ real property during regular business hours
12 and access any structure ~~and/or~~ personal property, ~~during regular business hours~~, to
13 sample, inspect, ~~make analyses of~~ analyze, and test fertilizers, fertilizer material,
14 micronutrients, specialty fertilizers, soil amendments, and plant amendments
15 distributed in this state.

16 2. The commissioner shall adopt methods of analysis and sampling ~~must be those~~
17 ~~adopted by the commissioner from reputable sources such as the Journal of the~~
18 ~~AOAC. In cases not covered by these methods, or if methods are available in which~~
19 ~~improved applicability has been demonstrated, the commissioner may adopt~~
20 ~~appropriate methods from other sources.~~

NOTE: The Journal of the AOAC appears to be nonexistent.

21 3. A single package may constitute an official sample. In determining ~~for administrative~~
22 ~~purposes~~ whether any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil
23 amendment, or plant amendment is deficient, the commissioner ~~must be guided solely~~
24 ~~by~~ shall only consider the ~~commissioner's~~ analysis of the official sample.

25 4. If the results of the commissioner's official analysis indicate that a fertilizer, fertilizer
26 material, micronutrient, specialty fertilizer, soil amendment, or plant amendment may
27 be the subject of a penalty or other legal action, the commissioner shall forward the
28 analysis to the registrant at least ten days before the report is submitted to the
29 purchaser. If during ~~that the ten-day~~ period no adequate evidence to the contrary is
30 made available to the commissioner by the registrant, the report becomes official.

1 5. The commissioner shall retain any official samples found to be deficient for thirty days
2 ~~from~~following the issuance of the analytical report.

3 6. Upon request, the commissioner shall furnish to the registrant a portion of any sample
4 found to be the subject of a penalty or other legal action.

5 **SECTION 9. AMENDMENT.** Section 19-20.1-10 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 ~~19-20.1-104.1-40-09.~~ **Misbranding.**

8 1. A person may not distribute a misbranded fertilizer, fertilizer material, micronutrient,
9 specialty fertilizer, soil amendment, or plant amendment. ~~For purposes of this section,~~
10 a

11 2. A fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant
12 amendment is misbranded if:

- 13 a. False or misleading statements concerning the product are disseminated in any
14 manner or by any means;
15 b. The product label carries a false or misleading statement ~~on the label~~;
16 c. The product is distributed under the name of another product;
17 d. The product is not labeled as required by this chapter or rules implemented under
18 this chapter; or
19 e. The product ~~purports to be or is~~ inaccurately represented as a fertilizer, or is
20 inaccurately represented as containing a plant nutrient or fertilizer unless the
21 plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed in
22 rule by the commissioner.

23 ~~2.3.~~ In adopting rules, the commissioner shall ~~give due regard to~~ consider commonly
24 accepted definitions and official fertilizer terms ~~such as those issued by the~~
25 ~~association of American plant food control officials.~~

26 **SECTION 10. AMENDMENT.** Section 19-20.1-11 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 ~~19-20.1-114.1-40-10.~~ **Publications.**

29 The commissioner may publish:

- 30 1. Information concerning the distribution of fertilizers, fertilizer material, micronutrients,
31 specialty fertilizers, soil amendments, and plant amendments; and

2. Results of analyses based on official samples of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed within the state as compared with the analyses guaranteed under sections 19-20.1-034.1-40-05 and 19-20.1-044.1-40-06.

SECTION 11. AMENDMENT. Section 19-20.1-12 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-124.1-40-11. Rules.

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

SECTION 12. AMENDMENT. Section 19-20.1-13 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-134.1-40-12. Deficiencies.

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

official notice from the commissioner, the registrant of the product shall pay to the
consumer a penalty equal to four times the value of the actual shortage to the
consumer.

SECTION 13. AMENDMENT. Section 19-20.1-14 of the North Dakota Century Code is
amended and reenacted as follows:

~~19-20.1-144.1-40-13.~~ Cancellation of registrations.

1. The commissioner, upon compelling evidence that a registrant, licensee, or distributor
used fraudulent or deceptive practices in the evasion or attempted evasion of this
chapter or any implemented rule, may cancel:
 - a. Cancel the registration of any brand of fertilizer, fertilizer material, micronutrient,
specialty fertilizer, soil amendment, or plant amendment; ~~may cancel;~~
 - b. Cancel the license of any distributor; ~~may refuse;~~
 - c. Refuse to register any brand of fertilizer, fertilizer material, micronutrient,
specialty fertilizer, soil amendment, or plant amendment; ~~and may refuse; or~~
 - d. Refuse to license any distributor; ~~upon satisfactory evidence that the registrant,~~
~~licensee, or distributor used fraudulent or deceptive practices in the evasions or~~
~~attempted evasions of this chapter or any rules implemented under this chapter.~~
2. The commissioner ~~may not refuse a registration or revoke a license without first~~
providing shall provide an opportunity for a hearing prior to refusing a registration or
revoking a license.

SECTION 14. AMENDMENT. Section 19-20.1-15 of the North Dakota Century Code is
amended and reenacted as follows:

~~19-20.1-154.1-40-14.~~ Stop-sale orders.

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

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

1 **SECTION 15. AMENDMENT.** Section 19-20.1-16 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~19-20.1-16~~**4.1-40-15. Seizure, condemnation, and sale.**

- 4 1. Any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment,
5 or plant amendment, not in compliance with this chapter and ~~theor~~ implemented rules
6 ~~implementing this chapter~~, is subject to seizure ~~on~~ upon the filing of a complaint of ~~by~~
7 the commissioner ~~to~~ with the district court of the county in which the product is located.
8 2. If the court finds the product to be in violation of this chapter or ~~a~~ any implemented rule
9 ~~implementing this chapter~~ and orders its condemnation, ~~it~~ the product must be
10 disposed of in any manner consistent with the quality of the product and the laws of
11 the state.
12 3. ~~A~~ Before ordering the disposition of a product, a court may not order disposition of the
13 ~~product without first giving~~ shall give the claimant an opportunity to apply for ~~it~~ the
14 ~~release of the product~~ or for permission to process or relabel the product ~~in order to~~
15 bring it into compliance with this chapter and ~~the~~ implemented rules ~~implementing this~~
16 ~~chapter~~.

17 **SECTION 16. AMENDMENT.** Section 19-20.1-17 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 ~~19-20.1-17~~**4.1-40-16. Violations - Criminal penalty.**

- 20 1. If ~~it appears~~ evidence from the examination of any fertilizer, fertilizer material,
21 micronutrient, specialty fertilizer, soil amendment, or plant amendment indicates that
22 this chapter or the implemented rules ~~implementing this chapter~~ have been violated,
23 the commissioner shall ~~cause notice of the violations to be given to~~ notify the
24 registrant, licensee, manufacturer, distributor, or possessor from whom the sample
25 was taken of the violation. Any person so notified must be given an opportunity to be
26 heard. ~~If it appears after~~ After the hearing, either in the presence or absence of the
27 person so notified, the commissioner may certify the facts to the proper prosecuting
28 attorney if evidence exists that this chapter or ~~the~~ implemented rules ~~implementing this~~
29 ~~chapter have been violated, the commissioner may certify the facts to the proper~~
30 ~~prosecuting attorney~~.

2. Any person ~~that violates~~violating this chapter or the implemented rules implementing this chapter or that impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the commissioner in the performance of the commissioner's duty under this chapter is guilty of a class A misdemeanor.
3. ~~In all~~All prosecutions ~~under this chapter~~ involving the composition of a lot of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments, require a certified copy of the official analysis signed by the person performing the analysis or that person's assigned agent ~~must be~~. The certified and signed copy of the official analysis shall be accepted as prima facie evidence of the composition.
4. The commissioner is not required to ~~report for prosecution or institute~~initiate prosecution or seizure proceedings for minor violations of the chapter if the commissioner believes that the public interest will be best served by a suitable written warning.
5. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any implemented rule ~~implementing this chapter~~, notwithstanding the existence of other remedies at law. An injunction under this section must be issued without bond.

SECTION 17. AMENDMENT. Section 19-20.1-17.1 of the North Dakota Century Code is amended and reenacted as follows:

~~19-20.1-17.14.1-40-17.~~ Violations - Civil penalty.

Any person that violates this chapter or ~~an~~ an implemented rule ~~implementing this chapter~~ is subject to a civil penalty in an amount up to two thousand five hundred dollars per violation. The civil penalty may be imposed by a court or by the agriculture commissioner in an administrative hearing.

SECTION 18. AMENDMENT. Section 19-20.1-18 of the North Dakota Century Code is amended and reenacted as follows:

~~19-20.1-18.1-40-18.~~ Exchanges between manufacturers.

Nothing in this chapter may be construed to restrict or avoid sales or exchanges of fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to each other by importers, manufacturers, or manipulators who mix fertilizers,

- 1 fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments
- 2 for sale or as preventing the free and unrestricted shipments of fertilizer, fertilizer materials,
- 3 micronutrients, specialty fertilizers, soil amendments, or plant amendments to manufacturers or
- 4 manipulators who have registered their brands as required by this chapter.

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**3 **SECTION 1. AMENDMENT.** Section 4-02.1-01 of the North Dakota Century Code is
4 amended and reenacted as follows:5 **4-02.1-0154-66-01. State fair association - North Dakota state fair.**

6 ~~A state fair association, to be known as the~~The North Dakota state fair association, ~~is~~
7 ~~hereby created for the purpose of conducting~~ shall conduct an annual North Dakota state fair
8 ~~and for the purpose of exhibiting at such fair, including exhibition of the agricultural,~~
9 stockbreeding, horticultural, mining, mechanical, industrial, and other products and resources of
10 this state. The North Dakota state fair shall be held at Minot, North Dakota, at a site to be
11 selected by the state fair association. No other fair ~~may be designated as, nor may any other~~
12 ~~fair call itself, thein the state may include in its name the words "state fair".~~

13 **SECTION 2. AMENDMENT.** Section 4-02.1-02 of the North Dakota Century Code is
14 amended and reenacted as follows:15 **4-02.1-02. Organization of state fair association - Initial members.**

16 ~~For the purpose of organizing the state fair association, three residents from each county in~~
17 ~~the state shall compose the initial membership in the state fair association. One member must~~
18 ~~be selected by the county fair board, one member by the board of county commissioners, and~~
19 ~~one member by the county agent of each county. In cases where a county does not have a~~
20 ~~county agent or county fair board, the board of county commissioners shall select the resident~~
21 ~~that either the county agent, or county fair board, would normally have been entitled to select as~~
22 ~~a member of the state fair association. Within thirty days after July 1, 1965, the names of the~~
23 ~~persons selected to serve as the initial members of the state fair association must be forwarded~~
24 ~~to the agriculture commissioner by the agencies making such selection. The agriculture~~

1 commissioner shall compile a list of all such members and forward a copy to each member.
2 Within three months of their selection the initial members of the state fair association shall meet
3 at a time and place agreed upon by them for the purpose of adopting bylaws, electing a
4 temporary board of directors for one year terms or until successors are chosen and qualified,
5 and generally organizing the state fair association pursuant to the provisions of this chapter. The
6 initial members of the state fair association shall serve one year terms of office, or until
7 successors are chosen and qualified, but this provision does not prohibit such initial members
8 from succeeding themselves as regular members of the fair association pursuant to the
9 provisions of this chapter. The initial members and the board of directors selected therefrom
10 shall have all the powers, and be subject to all the laws, as is provided in this chapter, except
11 that the board of directors shall serve only one year terms of office. The first annual meeting of
12 the state fair association must be held at the call of the initial board of directors. A permanent
13 board of directors, elected pursuant to the provisions of this chapter, must be selected at the
14 first annual meeting and new or additional members of the association must be received into
15 the state fair association according to the provisions of this chapter. The state fair association
16 shall initiate plans at the first annual meeting for the purpose of conducting a state fair in the
17 year 1966.

NOTE: The initial membership provision is no longer necessary. The following section provides for continuation of the terms and replacement of members.

18 **SECTION 3. AMENDMENT.** Section 4-02.1-03 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-02.1-0354-66-02. Permanent members of stateState fair association members.**

21 The state fair association, after the expiration of the term of the initial members, must have
22 a membership selected in the following manner:

- 23 1. Three members ~~to be~~must be chosen annually from each ~~of the counties of the~~
24 ~~state~~county, such members ~~to be~~who are residents of ~~such~~the county, ~~with~~. From each
25 county, one member ~~to~~must be selected by the county fair board, one member
26 selected by the board of county commissioners, and one member selected by the
27 county agent. A majority of the members must be selected under this subsection.
- 28 2. ~~Such~~By a two-thirds vote at an annual meeting, the directors may elect individuals
29 ~~who, by reason~~as nonvoting honorary life members in recognition of eminent services
30 ~~in agriculture, horticulture, or in the~~associated arts and sciences connected therewith,

1 or of; long and faithful service in the association; or of benefits conferred upon it, may,
2 by two-thirds vote of the directors at any annual meeting, be elected as honorary
3 membersthe association.

- 4 3. Members may be elected by societies, corporations, limited liability companies, or
5 associations as determined~~allowed~~ in the association bylaws, ~~except that a majority of~~
6 the members must always be selected in accordance with subsection 1.

7 The election and selection of members must be made and certified to the state fair
8 association on or before each annual meeting. The ~~term~~term of all members, except honorary
9 members, ~~must be for a one-year term or~~each member, except honorary life members, begins
10 at the opening of the annual meeting after being chosen under subsection 1 or elected under
11 subsection 3 and continues until the opening of the succeeding annual meeting after such
12 members have qualified as members, except that each. Each member shall ~~hold~~holds office
13 until that member's successor is chosen and qualified and ~~a~~. A member who is a director shall
14 ~~remain~~remains a member ~~until~~through that member's term of office as director is terminated.
15 ~~Honorary members shall continue as such for life. The election and selection of members must~~
16 ~~be made and certified to the state fair association on or before each annual meeting. Each~~
17 ~~member is entitled to one vote on each matter submitted to a vote of the members, except~~
18 ~~honorary members may not vote. Any member may resign from membership by filing a written~~
19 ~~resignation with the secretary of the association but memberships are not transferable or~~
20 ~~assignable. The board of directors, by affirmative vote of the majority~~ vote of all members of the
21 board, may suspend or expel a member for cause.

22 **SECTION 4. AMENDMENT.** Section 4-02.1-04 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **4-02.1-0454-66-03. Meetings - Time and place - Notice.**

- 25 1. The annual meeting of the members of the state fair association must be held as
26 provided in the bylaws of the association. ~~Such~~The annual meeting must be held for
27 the purpose of electing~~include election of~~ directors and for the transaction of such
28 other business ~~as may come before the meeting of the association.~~ If the election of
29 directors is not held on the day designated for ~~any~~the annual meeting or at ~~any~~an
30 adjournment ~~thereof of the annual meeting~~, the board of directors shall cause the
31 election to be held at a special meeting ~~of the members~~ as soon thereafter as ~~may be~~

convenient. The failure to hold the annual meeting at the designated time does not ~~work~~result in a forfeiture or dissolution of the association.

2. A special meeting ~~of the members~~ may be held ~~at any time~~ upon the call of the president or by order of the board of directors, ~~and it is the duty of the.~~ The president ~~to shall~~ call such a special meeting ~~whenever requested to do so~~upon request by ten percent or more of the association members ~~of the association~~.

3. The president or board of directors, whichever calls the meeting, may designate any place within the state as the place of an annual or special meeting ~~for any annual meeting or for any special meeting called by the board of directors~~.

4. Written or printed notice stating the place, day, and hour of any meeting of ~~member~~the association must be delivered either personally or by mail to each member entitled to vote at such meeting, not less than ten, nor more than fifty, days before the date of such meeting by, or at the direction of, the president or the secretary or the officers or persons calling the meeting. In case of a special meeting, or when required by law or the bylaws, the purpose or purposes for which the meeting is called must be stated in the notice. If mailed, the notice of the meeting must be deemed to be delivered when deposited in the United States mail, addressed to the member at the member's address as it appears on the records of the association with postage thereon prepaid.

SECTION 5. AMENDMENT. Section 4-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

~~4-02.1-05~~54-66-04. Compensation of members.

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

SECTION 6. AMENDMENT. Section 4-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1 **~~4-02.1-0654-66-05.~~ Board of directors - Meetings - Notice.**

2 The affairs of the state fair association must be managed by its board of directors, which
3 must consist of nine members unless ~~changed by an amendment to~~ otherwise provided in the
4 association bylaws, ~~except that a.~~ A decrease in the number of directors may not affect the term
5 of any incumbent director. Each director shall hold office for a term of three years, and until that
6 director's successor has been elected and qualified. The terms of the directors ~~elected at the~~
7 ~~first annual meeting~~ must be staggered so that three directors are elected annually thereafter.
8 The directors must be members of the state fair association and residents of the state.

9 **SECTION 7. AMENDMENT.** Section 4-02.1-07 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **~~4-02.1-0754-66-06.~~ Annual meeting - Directors to call special meetings.**

12 A regular annual meeting of the board of directors must be held ~~without other notice than~~
13 ~~that provided for the annual meeting of the state fair association,~~ immediately after and at the
14 same place as the annual meeting of the association. Notice of the regular annual meeting of
15 the board of directors must be included in the notice of the annual meeting of the state fair
16 association. The board of directors may provide by resolution the time and place for the holding
17 of additional regular meetings of the board without other notice than such resolution.

18 Special meetings of the board of directors may be called by the president ~~whenever the~~
19 ~~president deems it necessary~~ or upon the written request of two of the directors. The president
20 shall fix the time and place for the holding of any special meeting of the board of directors.

21 Notice of any special meeting of the board must be given to each director at least three
22 days ~~previously thereto~~ before the meeting by written notice delivered personally or, sent by mail
23 or telegram to each director at the address as shown by the records of the association, or sent
24 by electronic mail directed with verification of receipt to an electronic mail address at which the
25 director has consented to receive notice. If mailed, such notice is deemed to be delivered when
26 the same is deposited in the United States mail in a sealed envelope so addressed, with
27 postage thereon prepaid. If notice be given by telegram, such notice is deemed to be delivered
28 ~~when the telegram is delivered to the telegraph company.~~ Any director may waive notice of any
29 meeting. The attendance of a director at any meeting constitutes a waiver of notice of such
30 meeting, except when a director attends a meeting for the express purpose of objecting to the
31 transaction of any business because the meeting is not lawfully called or convened. Neither the

business to be transacted, nor the purpose of any regular or special meeting of the board of directors, need be specified in the notice or waiver of notice of such meeting.

SECTION 8. AMENDMENT. Section 4-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-0854-66-07. Quorum to transact business.

A majority of the board of directors constitutes a quorum for the transaction of business at any meeting of the board, ~~but if~~. If less than a majority of the directors are present at ~~such a~~ meeting, a majority of those present may adjourn the meeting from time to time without further notice. The act of a majority of the directors present at a meeting at which a quorum is present is the act of the board of directors unless the act of a greater number is required by law or by the bylaws.

SECTION 9. AMENDMENT. Section 4-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-0954-66-08. Vacancies and special compensation of board members.

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

SECTION 10. AMENDMENT. Section 4-02.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-1054-66-09. Officers - Removal - Vacancies.

The officers of the association must be a president, vice president, secretary, treasurer, and such other officers as may be created by the board of directors ~~from time to time. All officers~~ An officer of the association shall perform ~~such~~ the duties of the office as ~~may be~~ prescribed by law, the bylaws, or by the board of directors. Any two or more offices may be held by the same ~~person~~ individual except the offices of president and secretary. The president, vice president, secretary, and treasurer must be elected annually by the board of directors, ~~and any other officers. Any office~~ created by the board may be filled by appointment at any meeting of the board. Each elected officer holds office until that officer's successor has been duly elected and qualified. Any officer elected or appointed may be removed by the ~~persons authorized to elect or appoint such officer, whenever in their judgment the best interests of the association shall be~~

1 served thereby ~~board~~. The removal of any officer is without prejudice to the ~~any~~ contractual
2 rights, ~~if any~~, of the officer. Election or appointment of an officer or agent does not of itself create
3 contractual rights. ~~Vacancies~~ A vacancy in any office because of death, resignation, removal,
4 ~~disqualification, or otherwise~~ may be filled by the board of directors for the unexpired portion of
5 the term.

6 **SECTION 11. AMENDMENT.** Section 4-02.1-11 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-02.1-11 ~~54-66-10~~. Officers - Duties.**

- 9 1. The president is the principal executive officer of the association and shall, ~~in general~~,
10 supervise and control all of the business and affairs of the association and shall
11 preside at all meetings of the ~~members~~ association and of the board of directors. The
12 president may sign, with the secretary, or any other proper officer of the association
13 authorized by the board of directors, any deeds, mortgages, bonds, contracts, or other
14 instruments which the board of directors has authorized to be executed, except in
15 cases when the signing and direction thereof is expressly delegated by the board of
16 directors ~~or by~~, the bylaws, or by law to some other officer or agent of the association,
17 and, ~~in general, the~~. The president shall perform all duties incident to the office of
18 president and ~~such other~~ and duties as may be prescribed by the board of directors
19 from time to time.
- 20 2. In the absence, inability, or refusal to act of the president ~~or in the event of the~~
21 ~~president's inability or refusal to act~~, the vice president, ~~or in the event there be more~~
22 ~~than one vice president through appointment by the board~~, the vice presidents in the
23 ~~order of their election~~, shall perform the duties of the president and when so acting has
24 all the power of and is subject to all the restrictions upon the president. If there is more
25 than one vice president, the vice president elected or appointed earliest in time shall
26 perform the duties of the president. ~~Any~~ A vice president shall perform such other
27 duties as ~~from time to time may be assigned to the vice president by the president or~~
28 ~~by the board of directors~~.
- 29 3. If required by the board of directors, the treasurer shall give a bond for the faithful
30 discharge of the treasurer's duties in such sum with such surety or sureties as
31 determined by the board shall determine. ~~The treasurer shall have charge of and~~

~~custody of and be responsible for all funds and securities of the association received, and give receipts for moneys due and payable to the association from any source whatsoever, and deposit and manage all moneys as prescribed by this chapter. The treasurer shall perform all the duties incident to the office of the treasurer and such other duties as from time to time the board of directors may delegate to the~~
treasurershall:

- a. Keep accurate financial records for the association;
- b. Deposit all money, drafts, and checks in the name of and to the credit of the association in the depositories designated by the board;
- c. Endorse for deposit all notes, checks, and drafts received by the association as directed by the board, making proper vouchers;
- d. Disburse association funds and issue checks and drafts in the name of the association, as directed by the board;
- e. Give to the president and the board, when requested, an account of all transactions by the treasurer and of the financial condition of the association; and
- f. Perform other duties assigned by the board or the president.

4. The secretary shall keep the minutes of the meetings of the ~~members and of the board of directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of the bylaws or as required by law; be custodian of the association records; keep a register of the post-office address of each member which shall be~~as furnished to the secretary by ~~such~~the member; and, in general, perform all duties incident to the office of secretary and ~~such~~ other duties as ~~from time to time may be assigned to the secretary~~assigned by the president or by the board of directors.

5. Any other officers created by the board of directors may be required to give bonds for the faithful discharge of their duties in such sum and with such sureties as determined ~~by the board of directors may determine;~~ and shall perform such duties as ~~may be~~ assigned to them by the treasurer, secretary, president, or board of directors.

SECTION 12. AMENDMENT. Section 4-02.1-12 of the North Dakota Century Code is amended and reenacted as follows:

1 **4-02.1-1254-66-07. Director's liability limited.**

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

6 **SECTION 13. AMENDMENT.** Section 4-02.1-13 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-02.1-1354-66-11. Bylaws, rules, regulations.**

9 The state fair association may make all bylaws, ~~ordinances~~, rules, and regulations, not
10 inconsistent with law, which it may ~~deem~~deems necessary or proper ~~in carrying to~~to carry out the
11 ~~provisions of its responsibilities under~~ this chapter and for the government of the state fair
12 ~~grounds on which the state fair is to be held, and for all fairs to be held~~activities thereon, and for
13 the protection, health, safety, and comfort of the public. Such bylaws, ~~ordinances~~, rules, and
14 regulations are in effect from the time of filing with the secretary of the association.

15 **SECTION 14. AMENDMENT.** Section 4-02.1-14 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **4-02.1-1454-66-12. Appointment of necessary employees.**

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

25 **SECTION 15. AMENDMENT.** Section 4-02.1-15 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **4-02.1-1554-66-13. State fair operating fund - Maintained in state treasury -**
28 **Expenditures Continuing appropriation.**

29 A special fund for the North Dakota state fair association to be known as the state fair
30 operating fund must be maintained in the state treasury, ~~and all~~. All income, fees, rents, interest,
31 ~~moneys which may be appropriated by the legislative assembly from time to time, and any other~~

1 moneys, from whatever~~any~~ source derived by the state fair association, shall be placed in-
2 such~~must be deposited in that~~ fund for the use of the North Dakota state fair association;-
3 provided, however, that moneys which may be appropriated by the legislative assembly must-
4 only be transferred from the general fund appropriation, and placed in the state fair operating-
5 fund by the state treasurer, upon order of the office of management and budget whenever the
6 balance in such fund falls so low as to require supplementation. Any moneys or income in the
7 state fair operating fund shall not revert or be canceled according to the provisions of. Moneys
8 credited to the fund are appropriated as a standing appropriation for the purposes provided in
9 this chapter. The fund is not subject to section 54-44.1-11. All expenditures of the state fair
10 association from the state fair operating fund must be made upon vouchers signed by the
11 secretary, or other person authorized by the board of directors, and approved by the office of
12 the budget, upon warrant checks prepared by the office of management and budget. The
13 directors of the North Dakota state fair association may, not more than fifteen days in advance
14 of the opening of any state fair, submit to the office of the budget a proposed budget of
15 expenditures for operating the state fair, together with a signed voucher or vouchers for the
16 withdrawal from the state fair operating fund of the total amount of the proposed expenditures.
17 Upon approval of such proposed budget of expenditures by the office of the budget, the director
18 of the office of management and budget shall prepare and issue a warrant check or checks in
19 such approved amount payable to the state fair association. Such warrant checks must be
20 deposited to the account of the North Dakota state fair association in the Bank of North Dakota
21 or a Minot area bank selected by a majority vote of the state fair board of directors and
22 qualifying in accordance with law as a public depository, and are subject to being withdrawn by
23 check for the payment of prizes and costs of operation of the state fair. Not later than sixty days
24 after the closing day of the state fair, the association shall file with the office of the budget a
25 detailed and itemized statement of expenditures together with copies of all checks issued, and
26 shall immediately close such account at the Bank of North Dakota or Minot area bank and
27 transfer any remaining balance to the state treasurer for deposit in the state fair operating fund.
28 The treasurer, or other officer delegated such authority by the office of the budget, shall remit
29 monthly all income, fees, rents, interest, or other moneys received by the state fair association,
30 to the state treasurer who shall credit the same to the state fair operating fund and such

1 moneys credited to the fund are hereby appropriated as a standing appropriation for the
2 purposes provided in this chapter.

NOTE: Our office has reviewed this section with the Office of Management and Budget staff. Much of what is provided in this section no longer complies with fiscal practice. The state fair operating fund is the fund used by the association as its business account. General fund appropriations are not deposited in that fund. Warrant checks are archaic. The association does not obtain expenditure approval from the Office of the Budget. The state fair operating fund is not subject to turn back but general fund appropriations may be, depending on the provisions of the appropriation measure.

3 **SECTION 16. AMENDMENT.** Section 4-02.1-16 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **~~4-02.1-16~~54-66-14. Organization under corporation laws - Real property transactions -**
6 **Contracts.**

7 The state fair association possesses ~~all~~has the rights, privileges, and liabilities pertaining to
8 ~~corporations of a corporation~~ under the corporation laws of this state except as ~~may be limited or~~
9 ~~specified~~provided by this chapter. The association may purchase, hold, lease, exchange, trade,
10 or sell real estate for the purpose of promoting and conducting a state fair. ~~Buildings and~~
11 ~~real~~Real estate controlled by the state fair association may be leased, subleased, rented, or
12 used for other than fair purposes ~~other than the conducting of the fair during such times when~~
13 the property is not needed for fair purposes. The state fair association may contract in its own
14 name, but as an agency of the state, and shall make all of its purchases ~~pursuant to~~under the
15 purchasing laws of the state ~~through the office of management and budget~~, except as ~~may be~~
16 exempted ~~therefrom~~ by the director of the office of management and budget ~~as provided by law~~.

17 **SECTION 17. AMENDMENT.** Section 4-02.1-17 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **~~4-02.1-17~~54-66-15. Name in which business conducted and titles taken - Execution of**
20 **written instruments.**

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

26 **SECTION 18. AMENDMENT.** Section 4-02.1-18 of the North Dakota Century Code is
27 amended and reenacted as follows:

1 **~~4-02.1-1854-66-16.~~ Certified audit of state fair association.**

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

5 **SECTION 19. AMENDMENT.** Section 4-02.1-19 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **~~4-02.1-1954-66-17.~~ Attorney general to act as legal adviser.**

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

14 **SECTION 20. AMENDMENT.** Section 4-02.1-20 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **~~4-02.1-2054-66-18.~~ Law enforcement - Arrangements with local law enforcement**
17 **agencies.**

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

27 **SECTION 21. AMENDMENT.** Section 4-02.1-21 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **~~4-02.1-2154-66-19.~~ Service of process.**

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

1 **SECTION 22. AMENDMENT.** Section 4-02.1-22 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-02.1-2254-66-20. Exhibition date of fair to be filed.**

4 ~~The~~By May first, the secretary or other designated officer ~~delegated such duty~~ shall file the
5 dates on which the state fair will be held in that year with the agriculture commissioner, ~~on or~~
6 ~~before May first of each year, the date on which the state fair will be held.~~

NOTE: Is this of any significance? The dates of the fair are generally made public long
before May 1.

7 **SECTION 23. AMENDMENT.** Section 4-02.1-23 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **4-02.1-2354-66-21. Regulation and licensing.**

10 The state fair association shall regulate all shows, exhibitions, performances,
11 establishments, and privileges carried on during the state fair and ~~to such end shall supervise~~
12 ~~and ensure that such enterprises are properly licensed according to local and state laws. The~~
13 ~~state fair association may license any enterprises not required to be licensed by state or local~~
14 ~~laws, and is charged with the responsibility of seeing. The state fair association shall ensure~~
15 ~~that shows, exhibitions, performances, establishments, and exercise of fair privileges are~~
16 conducted in compliance with all state and local laws and all rules and regulations of the state
17 ~~fair association are complied with by such shows, exhibitions, performances, establishments, or~~
18 ~~those granted fair privileges.~~

19 **SECTION 24. AMENDMENT.** Section 4-02.1-25 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **4-02.1-2554-66-22. Nonliability of state for debts - Exception.**

22 The state is not liable for any of the debts or liabilities of the state fair association except as
23 appropriations are made ~~therefor from time to time~~for that purpose by the legislative assembly
24 ~~and transferred to the state fair operating fund.~~

NOTE: General fund appropriations generally are not deposited in the operating fund.

25 **SECTION 25. AMENDMENT.** Section 4-02.1-26 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **4-02.1-2654-66-23. Annual report.**

28 The secretary or other officer charged with ~~the duty to compile~~compiling an annual report of
29 the proceedings of the state fair association and its financial condition for the preceding fiscal

1 year by the annual meeting shall file a copy in the office of the agriculture commissioner. The
2 commissioner shall include it, in whole or in part, in the commissioner's biennial report to the
3 governor and the secretary of state.

NOTE: North Dakota Century Code Section 54-06-04 requires a biennial report to the Governor and Secretary of State from 21 listed officers and agencies, including the Agriculture Commissioner.

4 **SECTION 26. AMENDMENT.** Section 4-02.1-27 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **~~4-02.1-27~~54-66-24. The Iverson grandstand.**

7 The grandstand constructed by the state fair association on the state fairgrounds during the
8 2009-11 biennium is designated the Iverson grandstand.

9 **SECTION 27. REPEAL.** Chapter 4-02.1 of the North Dakota Century Code is repealed.

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**3 **SECTION 1. AMENDMENT.** Section 4-02-08 of the North Dakota Century Code is amended
4 and reenacted as follows:5 **4-02-0811-38-01. OrganizationCounty fair association organization under nonprofit**
6 **corporation laws.**7 A county fair association ~~may~~must be organized by three or more persons as in the case of
8 other corporations, with all the rights, privileges, and liabilities pertaining to corporations under
9 the nonprofit corporation laws of this state, ~~including. In addition to the powers and duties of~~
10 nonprofit corporations under the laws of this state, a county fair association has the rights and
11 privilegespowers and duties specified in sections ~~4-02-04 and 4-02-05~~this chapter.

NOTE: Section 4-02-04 currently requires an association to be not for profit. Corporations only require one person to be an incorporator.

12 **SECTION 2. AMENDMENT.** Section 4-02-26 of the North Dakota Century Code is amended
13 and reenacted as follows:14 **4-02-2611-38-02. County fairs - AssociationFair association - County funding.**15 A ~~county~~ fair association may be organized in any county. The ~~executive~~ officers and
16 directors must be residents of the county or, if the association is to conduct a multicounty fair,
17 residents of one of the participating counties. The association may make written application to
18 the board of county commissioners ~~of the county~~ for a grant to aid in the erection of ~~suitable~~
19 buildings and other improvements ~~to accommodate its patrons and exhibits~~suitable to conduct
20 the fair and to pay premiums and expenses that may be awarded on fair exhibits. An application
21 must ~~state~~include evidence that the incorporation ~~of the association~~ is incorporated in this state
22 as a nonprofit corporation, the names and places of residence of all its executive officers and

1 directors, and the evidence of ownership or right to use of sufficient real property in the county
2 sufficient in area for the purpose of its to conduct the fair.

3 The board of county commissioners may not provide county funding or official county fair
4 authorization under this chapter to more than one fair association or to any association
5 organized for profit.

6 If the board of county commissioners is satisfied that the statements in the application are
7 true and that the association intends in good faith to annually hold a fair within the county
8 annually for the exhibition of agricultural, livestock, horticultural, mining, mechanical, industrial,
9 and manufactured products of the county, and of such articles as are usually exhibited at fairs,
10 and other public displays of human art, industry, and skill, it may provide it official county fair
11 authorization and funding from revenues derived from the county general fund levy authority. If
12 the funding is approved, the county treasurer shall pay to the secretary of the association, by
13 the following July thirty-first, the amount of funding approved and shall take the receipt of the
14 association for the payment.

15 Any amount received by the county fair association must be deposited by the secretary of
16 the association in a special fund ~~to be known as the "county fair fund"~~.

17 To promote holding a county fair, the board of county commissioners may purchase or lease
18 in the name of the county not to exceed two hundred forty acres [97.12 hectares] of real estate
19 and construct buildings and improvements for the conduct of a county fair. The board of county
20 commissioners may issue bonds in the name of the county if approved by electors of the county
21 in accordance with sections 21-03-06 and 21-03-07 to purchase, not to exceed two hundred
22 forty acres [97.12 hectares], of real estate and construct buildings and improvements for the
23 conduct of a county fair.

24 The board of county commissioners may continue to provide funding under this section
25 after the first year's grant of aid upon the board's own motion.

26 The authority of this section may be used by a county to join in formation and funding of a
27 multicounty fair association under terms of an agreement with one or more other counties.

NOTE: A fair association may or may not own land...this section and other provisions of the chapter provide for the county to purchase land and buildings for a fair.

The county fair fund was eliminated as a special fund when the levy for that purpose was consolidated into the county general fund by 2015 Senate Bill No. 2144.

In this chapter, there is reference to forfeiture of official authorization as a county fair. The reference is added to make clear that the county grants that authorization and is limited to one such authorization at a time.

1 **SECTION 3. AMENDMENT.** Section 4-02-30 of the North Dakota Century Code is amended
2 and reenacted as follows:

3 ~~4-02-30~~**11-38-03. Tax****County fair association funding to be submitted to vote.**

4 If the board of county commissioners has voted and ordered a ~~tax levied in aid of an~~
5 ~~agricultural~~ county general fund funding for a fair association and a petition is addressed to the
6 board and filed with the county auditor, asking the discontinuance of the ~~tax~~funding and
7 containing the signatures of the qualified electors of the county in a number equal to twenty
8 percent or more of the total vote cast in the county at the last preceding general election, ~~and~~
9 ~~the petition is filed in the office of the county auditor~~, the board shall submit to the qualified
10 electors of the county at the next succeeding general election the question of whether ~~or not~~ the
11 ~~levying of the tax~~funding shall be continued. The ballot must be in the following form:

12 Shall the board of county commissioners continue the annual levy Yes ☐
13 of a ~~tax~~funding in aid of a county fair? No ☐

14 If a majority of all the ballots cast on the question at the election is in favor of discontinuing the
15 ~~tax~~funding, the board of county commissioners may not thereafter ~~levy any tax~~provide funding
16 in aid of a county fair under this chapter until the question of resuming the annual ~~levy and~~
17 ~~collection of the tax~~funding is submitted to a vote of the qualified electors of the county. The
18 ~~ballots to be used at the election~~ballot must be in the following form:

19 Shall the board of county commissioners resume the annual levy Yes ☐
20 of a ~~tax~~funding in aid of a county fair? No ☐

21 If a majority of ~~all of~~ the ballots cast on the question at the election is in favor of resuming the
22 ~~tax~~funding, the board of county commissioners shall resume the annual ~~levy as long as the~~
23 ~~provisions of section 4-02-29 are complied with and until otherwise directed as herein~~
24 ~~provided~~funding subject to the other provisions of this chapter.

25 ~~Before every election, the county auditor shall certify and give notice of the submission of~~
26 ~~the question as provided by law.~~

NOTE: After 2015 legislative changes, there is no longer a dedicated tax for county fairs. This was replaced by authority to provide "funding" from the county general fund.

The auditor is already required to give notice of ballot contents under Section 16.1-13-05 so the final sentence is unnecessary.

1 **SECTION 4. AMENDMENT.** Section 4-02-26.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~4-02-26.1~~**11-38-04. County fair authorization - Forfeiture.**

4 Any county fair association ~~which~~that fails to hold a county fair for ten consecutive years
5 ~~shall forfeit~~forfeits its official authorization. After such ~~time~~a forfeiture, ~~other~~another fair
6 ~~associations~~association may organize within a county and apply, or the forfeiting organization
7 may reapply, to the board of county commissioners for official county fair authorization and aid
8 ~~as provided by~~under this chapter.

NOTE: Ten years of not holding a fair results in forfeiture of county fair authorization. The word "consecutive" is added. Language is added to allow an association that forfeits authorization to reapply.

 The ten-year forfeiture provision should be considered in light of the two-year and five-year sale of property and fund transfer provisions in the following section.

9 **SECTION 5. AMENDMENT.** Section 4-02-27.3 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 ~~4-02-27.3~~**11-38-05. Disposition of property.**

12 ~~Any~~The board of county commissioners may sell property used for county fair purposes
13 ~~may be sold by the board of county commissioners and held in the name of the county upon~~
14 such terms and conditions asset by the board shall determine, and the. The proceeds of such
15 sale shall be placed in the county fair~~general~~ fund and ~~used exclusively for county fair~~
16 ~~purposes.~~

17 If the county fair association fails to hold a fair within the county for two
18 ~~successive~~consecutive years, the board of county commissioners may direct that any county
19 property on hand ~~may be sold and the proceeds of such~~the sale, together with any other and
20 any unexpended balance in the county fair fund, ~~at the discretion of the board of county~~
21 ~~commissioners, may be transferred to the county general fund.~~

22 ~~The board of county commissioners of any county in which a county fair has not been held~~
23 If the county fair association fails to hold a fair within the county for five consecutive years, the
24 board of county commissioners shall direct the transfer of any funds in the special fund for the
25 county fair fund~~association~~ or funds budgeted for county fairs to the county general fund ~~to be~~
26 ~~used for general county purposes. The funding from revenues derived from the county general~~
27 ~~fund levy authority authorized by section 4-02-26, expenditures of those proceeds, and the~~

1 conduct of the fair shall be governed by sections 4-02-07 through 4-02-31 to the extent such-
2 sections are consistent with section 4-02-26 and this section.

NOTE: Sale of property authority has language added so it is limited to county property. After five years of no fair, this section makes it mandatory for the county commission to empty the county fair fund and cancel county funding. This should be considered in light of the 10-year forfeiture of county fair authorization in the previous section.

3 **SECTION 6. AMENDMENT.** Section 4-02-28 of the North Dakota Century Code is amended
4 and reenacted as follows:

5 **~~4-02-28. Associations entitled to aid.~~**

6 The aid provided for by this chapter shall not be granted to more than one agricultural-
7 association in any one county or to any association organized for profit.

NOTE: The requirements of this section are included in other sections.

8 **SECTION 7. AMENDMENT.** Section 4-02-29 of the North Dakota Century Code is amended
9 and reenacted as follows:

10 **~~4-02-2911-38-06. Levy of taxes~~County funding to cease when fair not held -**
11 **Misappropriation of funds.**

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

19 **SECTION 8. AMENDMENT.** Section 4-02-31 of the North Dakota Century Code is amended
20 and reenacted as follows:

21 **~~4-02-31. Purchase or lease of land - Election required.~~**

22 The board of county commissioners in any county in the state may submit, or when-
23 petitioned by at least five percent of the qualified electors of the county in at least one-half of the
24 voting precincts, based upon the votes cast in the county for secretary of state at the last
25 general election, shall submit, to the qualified electors of the county at any general election the
26 proposition of purchasing or leasing not more than eighty acres [32.37 hectares] of land in the
27 name of the county to be used for county fair purposes. If a majority of the qualified electors
28 voting on the question at the election vote in favor of purchasing or leasing land for such

1 purposes, the board of county commissioners shall purchase or lease, in conformity with this
2 chapter, a tract of land not to exceed eighty acres [32.37 hectares], in the name of the county.
3 The board of county commissioners shall construct such buildings and improvements on the
4 land as it shall deem necessary for the operation and management of the fair. The election on
5 the purchase or lease of land must be conducted and the votes counted as at other elections.

NOTE: Section 4-02-26 currently allows the board of county commissioners to purchase or lease in the name of the county not to exceed 240 acres of land for a fair. The section requires voter approval for bonding such a purchase. It appears unlikely that a county would use the authority of this section.

6 **SECTION 9. AMENDMENT.** Section 4-02-36 of the North Dakota Century Code is amended
7 and reenacted as follows:

8 **~~4-02-36. Chapter not applicable to state fair association.~~**

9 The provisions of this chapter shall not be applicable to the holding of the state fair and
10 shall not apply to the North Dakota state fair association.

NOTE: This chapter could not be interpreted to apply to the state fair. It is not necessary to state this.

11 **SECTION 10. AMENDMENT.** Section 4-02-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **~~4-02-0111-38-07. Power to make regulations governing premises.~~**

14 Fair associations may make rules, regulations, and provisions necessary and proper for the
15 government, management, and control of the premises used by them for the holding of fairs and
16 expositions and for the regulation of the use of such the premises by and department of the
17 public thereon.

18 **SECTION 11. AMENDMENT.** Section 4-02-02 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **~~4-02-0211-38-08. Director's liability limited~~civil immunity.**

21 The individual members of the board of directors of any fair association are not
22 liable~~immune from civil liability for any act or omission relating to service as a director~~ for the
23 negligence of any person, firm, corporation, or limited liability company staging any show, race,
24 or other amusement at any county or municipal fair, ~~nor for the~~ and are immune from civil
25 liability for any negligence of any person employed by the board of directors or the association
26 conducting such fair.

1 **SECTION 12. AMENDMENT.** Section 4-02-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~**4-02-04. Income and expenses -- Membership in association and terms thereof.**~~

4 ~~An agricultural fair association may not be conducted for profit and may not have capital~~
5 ~~stock. The bylaws of the association must provide for charges to the public for admission to the~~
6 ~~grounds, fees for concessions, charges to exhibitors, and rental of the association's property,~~
7 ~~and the amounts thereof may not be greater than is sufficient to discharge the association's~~
8 ~~debts for real estate and improvements thereon, to defray the current expenses of fairs, to carry~~
9 ~~on the business of the association, and to create a sinking fund in an amount not exceeding~~
10 ~~twenty thousand dollars. However, if the association is receiving property tax levy funds, the~~
11 ~~association with the consent of the board of county commissioners may establish a sinking fund~~
12 ~~in excess of twenty thousand dollars. The method of acquiring membership in the association,~~
13 ~~and the term of such membership, must be provided in the association's bylaws.~~

NOTE: Nonprofit status is required by section 1 of this draft. The only provision here that
may be worth retention is the limit of \$20,000 sinking fund balance unless the board of
county commissioners approves a higher amount. The \$20,000 limit has been in place
since 1985 and may not be a realistic number at this time.

14 **SECTION 13. AMENDMENT.** Section 4-02-05 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 ~~**4-02-05. Real property -- District associations -- Limitations on holding.**~~

17 ~~Any district fair association may purchase, hold, or lease any quantity of land, with the~~
18 ~~buildings and improvements erected thereon, and may sell, lease, or otherwise dispose of the~~
19 ~~same at pleasure. The real estate shall be held for the purpose of erecting buildings and making~~
20 ~~other improvements thereon, to promote and encourage agriculture, horticulture, mechanics,~~
21 ~~manufactures, stockraising, and general domestic industry.~~

NOTE: As a nonprofit corporation, a multicounty fair association has the authority
described in this section.

22 **SECTION 14. AMENDMENT.** Section 4-02-07 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 ~~**4-02-07**~~**11-38-09. Treasurer to give bond - Duty of officers and directors.**

25 The officers and directors of any fair association shall require the treasurer thereof of the
26 association to give a sufficient bond to such officers and directors, conditioned for the faithful
27 keeping of such money as may come into the treasurer's hands as such treasurer. ~~No funds~~

1 shall be received by the The treasurer may not receive funds of a fair association until the
2 treasurer is properly bonded.

3 **SECTION 15. AMENDMENT.** Section 4-02-10 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **~~4-02-10. Purpose of fair associations.~~**

6 ~~An association conducting a fair under any provision of this chapter shall exhibit agricultural,~~
7 ~~livestock, horticultural, mining, mechanical, industrial, and other products and resources of the~~
8 ~~state of North Dakota, including proper exhibits of the arts and sciences, and may exhibit other~~
9 ~~public displays of human art, industry, and skill.~~

NOTE: Section 4-02-26 requires exhibition of agricultural, horticultural, mechanical, and
manufactured products of the county, and of such articles as are usually exhibited at fairs.
Some of the language from this section has been blended into that section in this draft.

10 **SECTION 16. AMENDMENT.** Section 4-02-12 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **~~4-02-12~~11-38-10. Nonliability of state for debts - Exception.**

13 The state ~~shall~~is not be liable for any of the debts or liabilities of a fair association except
14 ~~as to the extent~~ appropriations are made ~~therefor from time to time~~for that purpose by the
15 legislative assembly.

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**3 **SECTION 1. AMENDMENT.** Section 4-05.1-01 of the North Dakota Century Code is
4 amended and reenacted as follows:5 **~~4-05.1-01~~15-12.1-01. Definitions.**

6 In this chapter, unless the context otherwise requires:

7 1. "Agricultural experiment station" means the North Dakota state university main
8 research center, the Dickinson research extension center, the Williston research
9 extension center, the Langdon research extension center, the central grasslands
10 research extension center, the Carrington research extension center, the Hettinger
11 research extension center, the north central research extension center, the agronomy
12 seed farm, and any other department or agency designated by the state board of
13 higher education.14 2. "Center director" means ~~an~~the administrator in charge of a research or research
15 extension center.

16 3. "Station director" means the administrator of the agricultural experiment station.

17 **SECTION 2. AMENDMENT.** Section 4-05.1-02 of the North Dakota Century Code is
18 amended and reenacted as follows:19 **~~4-05.1-02~~15-12.1-02. Agricultural experiment station.**20 The state board of agricultural research and education and the president of North Dakota
21 state university shall control and administer the North Dakota agricultural experiment station
22 subject to the supervision of the state board of higher education. Funds appropriated to the
23 agricultural experiment station may not be commingled with funds appropriated to North Dakota
24 state university. Appropriation requests to defray expenses of the agricultural experiment station

1 must be separate from appropriation requests to defray expenses of North Dakota state
2 university.

NOTE: Under Article VIII, Section 6, of the Constitution of North Dakota, the State Board of Higher Education controls and administers the Agricultural Experiment Station. These statutory provisions delegate control and administration to the State Board of Agricultural Research and Education and the President of North Dakota State University under the supervision of the State Board of Higher Education.

3 **SECTION 3. AMENDMENT.** Section 4-05.1-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **~~4-05.1-03~~15-12.1-03. Center directors - Research and research extension centers -**
6 **Records and information.**

7 The ~~station director has jurisdiction over the~~ research and research extension centers of the
8 agricultural experiment station ~~are under the jurisdiction of the station director. Each~~The center
9 director shall administer each research or research extension center ~~must be administered by a~~
10 ~~center director who.~~ The center director shall report to the station director. Each research or
11 research extension center shall keep detailed records of all research activities and The
12 research or research extension center shall publish and disseminate research results and
13 information for the benefit of this state.

14 **SECTION 4. AMENDMENT.** Section 4-05.1-04 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **~~4-05.1-04~~15-12.1-04. Reports.**

17 Each center director shall submit an annual report to the station director ~~as directed by the~~
18 ~~state board of agricultural research and education.~~ Each report must set forth in detail the
19 investigations and experiments made during the preceding year, recommendations for the
20 welfare of the center, the financial condition of the center, how all moneys have been expended
21 during the preceding year, and the results of all experiments that have been completed during
22 the preceding year. The station director shall submit these reports, with a report of the North
23 Dakota state university main research center, to the state board of agricultural research and
24 education and the state board of higher education ~~on or before the first day of~~ by September first
25 of each year.

26 **SECTION 5. AMENDMENT.** Section 4-05.1-05 of the North Dakota Century Code is
27 amended and reenacted as follows:

1 **~~4-05.1-05~~15-12.1-05. North Dakota state university main research center position**
2 **adjustments - Budget section report.**

3 The North Dakota state university main research center must be located on the campus of
4 North Dakota state university of agriculture and applied science. The center is the administrative
5 location of the agricultural experiment station. The center shall conduct research and coordinate
6 all research activities of the agricultural experiment station. The research must have, as a
7 purpose, the development and dissemination of technology important to the production and
8 utilization of food, feed, fiber, and fuel from crop and livestock enterprises. The research must
9 provide for ~~an~~the enhancement of ~~the~~ quality of life, sustainability of production, and protection
10 of the environment. ~~Subject to the availability of funds, the~~The station director may adjust or
11 increase full-time equivalent positions in order to carry out activities to accomplish the mission
12 of the agricultural experiment station, subject to the availability of funds. All full or partial
13 positions must be separate from North Dakota state university. ~~Annually, the~~The station director
14 shall report annually to the office of management and budget and to the budget section any
15 adjustments or increases made ~~pursuant to~~under this section. The center may conduct baseline
16 research, including production and processing in conjunction with the research and extension
17 centers of the state, regarding industrial hemp and other alternative industrial use crops. The
18 center may collect feral hemp seed stock and develop appropriate adapted strains of industrial
19 hemp which contain less than three-tenths of one percent tetrahydrocannabinol in the dried
20 flowering tops. The agriculture commissioner shall monitor the collection of feral hemp seed
21 stock and industrial hemp strain development and shall certify appropriate stocks for licensed
22 commercial cultivation.

23 **SECTION 6. AMENDMENT.** Section 4-05.1-06 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **~~4-05.1-06~~15-12.1-06. Dickinson research extension center.**

26 The Dickinson research extension center must be located ~~at~~in or near Dickinson in Stark
27 County. The center shall conduct research ~~on~~;

- 28 1. On increasing the carrying capacity of native rangeland, with emphasis on
29 conservation and preservation for future generations. ~~The center shall conduct~~
30 ~~research on~~;

- 1 2. On grass production to determine how to best compensate for the vagaries of the
2 weather as it influences forage production in the agriculture of western North Dakota.
3 ~~The center shall conduct research at:~~
4 3. At the ranch location in Dunn County with beef cattle and swine on breeding, feeding,
5 management, and disease control for the benefit of livestock producers of western
6 North Dakota and the entire state. ~~The center shall conduct research designed; and~~
7 4. Designed to increase productivity of all agricultural products of the soil by maintaining
8 or improving the soil resource base in the agricultural region of southwestern North
9 Dakota by ~~the~~:
10 a. The identification of adapted crop species and superior crop cultivars;
11 propagation
12 b. Propagation and distribution of selected seed stock; and development
13 c. Development of profitable cropping systems that achieve the necessary balance
14 between profitability and conservation of all natural resources.

15 **SECTION 7. AMENDMENT.** Section 4-05.1-07 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **4-05.1-0715-12.1-07. Williston research extension center.**

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

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

26 **SECTION 8. AMENDMENT.** Section 4-05.1-08 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **4-05.1-0815-12.1-08. Langdon research extension center.**

29 The Langdon research extension center must be located ~~at~~in or near Langdon in Cavalier
30 County. The center shall conduct research designed to increase productivity of all agricultural

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

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

SECTION 9. AMENDMENT. Section 4-05.1-09 of the North Dakota Century Code is amended and reenacted as follows:

~~4-05.1-09~~15-12.1-09. Central grasslands research extension center.

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

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

SECTION 10. AMENDMENT. Section 4-05.1-10 of the North Dakota Century Code is amended and reenacted as follows:

~~4-05.1-10~~15-12.1-10. Carrington research extension center.

The Carrington research extension center must be located ~~at~~in or near Carrington in Foster County. The center shall conduct research designed to ~~determine;~~

1. Determine the potential of irrigated agriculture in the region proposed for irrigation development in the state which must be related to both crop and livestock production. ~~The center shall conduct research designed to increase; and~~

1 2. Increase productivity of all agricultural products of the soil while maintaining or
2 improving the soil resource base in the agricultural region of east central North Dakota
3 by the:

4 a. The identification of adapted crop species and superior crop cultivars;
5 propagation

6 b. Propagation and distribution of selected seed stocks; and ~~development~~

7 c. Development of profitable cropping and integrated crop and livestock systems
8 that achieve the necessary balance between profitability and conservation of all
9 natural resources.

10 **SECTION 11. AMENDMENT.** Section 4-05.1-11 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **~~4-05.1-11~~ 15-12.1-11. Hettinger research extension center.**

13 The Hettinger research extension center must be located ~~at~~in or near Hettinger in Adams
14 County. The center shall develop the best available technology in breeding, feeding,
15 management, and disease control pertinent to the production of sheep in the state. The center
16 shall conduct research designed to increase productivity of all agricultural products of the soil
17 while maintaining or improving the soil resource base in southwestern North Dakota by the:

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

19 2. Propagation and distribution of selected seed stocks; and ~~development~~

20 3. Development of profitable cropping systems that achieve the necessary balance
21 between profitability and conservation of all natural resources.

22 **SECTION 12. AMENDMENT.** Section 4-05.1-12 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **~~4-05.1-12~~ 15-12.1-12. North central research extension center.**

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

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

30 2. Propagation and distribution of selected seed stocks; and ~~development~~

- 1 3. Development of profitable cropping systems which achieve the necessary balance
2 between profitability and conservation of all natural resources.

3 **SECTION 13. AMENDMENT.** Section 4-05.1-15 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **~~4-05.1-15~~15-12.1-13. Agronomy seed farm - Investment of reserve income fund.**

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

11 **SECTION 14. AMENDMENT.** Section 4-05.1-16 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **~~4-05.1-16~~15-12.1-14. State board of agricultural research and education - Membership**
14 **- Terms.**

- 15 1. The state board of agricultural research and education consists of:
- 16 a. The president of North Dakota state university or the president's designee;
 - 17 b. The vice president of agricultural affairs at North Dakota state university, who
18 serves in an ex officio nonvoting capacity;
 - 19 c. The administrator of the agricultural experiment station, who serves in an
20 ex officio nonvoting capacity;
 - 21 d. The five persons appointed to the agricultural consultation board by the
22 ag coalition;
 - 23 e. The five persons appointed to the agricultural consultation board by the extension
24 service's multicounty program units;
 - 25 f. The agriculture commissioner, who serves in an ex officio nonvoting capacity;
 - 26 g. The director of the North Dakota state university extension service, who serves in
27 an ex officio nonvoting capacity; and
 - 28 h. Two members of the legislative assembly appointed by the chairman of the
29 legislative management. The chairman shall appoint one member from each
30 political faction. The terms of members are for two years; and members may be

1 reappointed. The legislative council shall pay the compensation and expense
2 reimbursement for the legislative members.

3 2. a. The initial five members appointed by the ag coalition shall select their terms by
4 lot so that one member serves for one year, one member serves for two years,
5 one member serves for three years, one member serves for four years, and one
6 member serves for five years.

7 b. The initial five members appointed by the extension service's multicounty
8 program units shall select their terms by lot so that one member serves for one
9 year, one member serves for two years, one member serves for three years, one
10 member serves for four years, and one member serves for five years.

11 3. At the completion of each initial term, the term of office for each member is four years,
12 beginning on July first. An individual may be reappointed to a second four-year term.

13 4. a. At least ninety days before the term of a member appointed by the ag coalition
14 expires, the ag coalition shall provide to the state board of higher education a list
15 of one or more names from which the state board of higher education shall
16 appoint a successor. The state board of higher education shall ensure that four
17 out of the five seats are held by agricultural producers.

18 b. At least ninety days before the term of a member appointed by the extension
19 service's multicounty program units expires, the units through their advisory
20 groups shall provide to the state board of higher education a list of one or more
21 names from which the state board of higher education shall appoint a successor.
22 The state board of higher education shall ensure that four out of the five seats
23 are held by agricultural producers.

24 5. If an appointed position becomes vacant, the vacancy must be filled for the unexpired
25 portion of the term in the same manner as the initial appointment except that the
26 ninety-day requirement is waived. An individual appointed under this subsection is
27 eligible to serve two full terms after completing the unexpired term for which the
28 individual was appointed.

29 **SECTION 15. AMENDMENT.** Section 4-05.1-17 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **~~4-05.1-17~~15-12.1-15. Compensation of board members - Expenses.**

2 Each appointed member of the state board of agricultural research and education is entitled
3 to receive one hundred thirty-five dollars per day as compensation for the time actually spent
4 devoted to the duties of office and is entitled to receive necessary expenses in the same
5 manner and amounts as state officials for attending meetings and performing other functions of
6 office.

7 **SECTION 16. AMENDMENT.** Section 4-05.1-18 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **~~4-05.1-18~~15-12.1-16. State board of agricultural research and education - Chairman -**
10 **Meetings.**

11 The state board of agricultural research and education ~~annually~~ shall elect one of its
12 members annually to serve as chairman. The board shall meet at the times and locations
13 designated by the chairman in consultation with the vice president of agricultural affairs at North
14 Dakota state university.

15 **SECTION 17. AMENDMENT.** Section 4-05.1-19 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **~~4-05.1-19~~15-12.1-17. State board of agricultural research and education - Duties.**

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

- 22 1. Determine the causes of any adverse economic impacts on crops and livestock
23 produced in this state;
- 24 2. Develop ongoing strategies for the provision of research solutions and resources to
25 negate adverse economic impacts on crops and livestock produced in this state;
- 26 3. Develop ongoing strategies for the dissemination of research information through the
27 extension service;
- 28 4. Implement the strategies developed under subsections 2 and 3, subject to approval by
29 the state board of higher education;
- 30 5. Develop, with the agricultural experiment station and the North Dakota state university
31 extension service, an annual budget for the operations of these entities;

- 1 6. Develop a biennial budget request based on its prioritized needs list and submit that
- 2 request to the president of North Dakota state university and the state board of higher
- 3 education, and forward its prioritized needs list and request without modification to the
- 4 office of management and budget and the appropriations committees of the legislative
- 5 assembly;
- 6 7. Maximize the use of existing financial resources, equipment, and facilities to generate
- 7 the greatest economic benefit from research and extension efforts and to promote
- 8 efficiency;
- 9 8. Annually evaluate the results of research and extension activities and expenditures
- 10 and report the findings to the legislative management and the state board of higher
- 11 education;
- 12 9. Advise the president of North Dakota state university regarding the recruitment,
- 13 selection, and performance of the vice president of agricultural affairs, the extension
- 14 service director, and the station director; and
- 15 10. Present a status report to the budget section of the legislative management.

NOTE: Subsection 10 provides no guidance on how often the status report is to be presented. The reports have been provided since 1997 on a biennial basis.

16 **SECTION 18. AMENDMENT.** Section 4-05.1-20 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 ~~4-05.1-2015-12.1-18.~~ **Agricultural research fund - Continuing appropriation.**

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

NOTE: Language has been adjusted to match current practice.

23 **SECTION 19. AMENDMENT.** Section 4-05.1-21 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 ~~4-05.1-2115-12.1-19.~~ **State board of agricultural research and education -**
26 **Apportionment of research funds.**

- 27 1. The state board of agricultural research and education may use up to ten percent of
- 28 the ~~proceeds of~~moneys in the agricultural research fund, not to exceed fifty thousand

1 dollars per year, for administrative expenses and annually shall apportion the
2 remaining proceeds of the agricultural research fund as follows:

NOTE: Language has been adjusted to match current practice.

- 3 a. Seventy percent to research activities affecting North Dakota agricultural
4 commodities that account for at least two percent of the gross sales of all
5 agricultural commodities grown or produced in the state. The percentage of the
6 dollars available for each agricultural commodity under this section may not
7 exceed the percentage that the gross sales of the agricultural commodity bear to
8 the North Dakota gross sales of all agricultural commodities grown or produced
9 during the previous year, as determined by the agricultural statistics service;
10 b. Eighteen percent to research activities affecting North Dakota animal agriculture;
11 and
12 c. Twelve percent to research activities affecting new and emerging crops in North
13 Dakota.

14 2. The state board of agricultural research and education shall solicit proposals for
15 research from the public and private sectors and shall appoint committees to review
16 the proposals and award the agricultural research grants on a competitive basis. Each
17 committee must consist of a majority of agricultural producers selected in consultation
18 with the agricultural commodity groups representing commodities that are the subjects
19 of the proposed research and may include researchers and other individuals
20 knowledgeable about the proposed area of research. Whenever possible, the
21 committees shall require that a grant recipient commit matching funds.

22 3. The state board of agricultural research and education shall develop policies regarding
23 the award of research grants, including requirements for matching funds, cooperation
24 with other in-state and out-of-state researchers, and coordination with other in-state
25 and out-of-state proposed or ongoing research projects.

Introduced by

1 A BILL for an Act

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

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

5 **~~4-36-01. Declaration of intent.~~**

6 It is hereby found and declared that:

- 7 1. ~~The high cost as well as the lack of availability of agricultural loans for farmers with the~~
8 ~~resultant decreases in crop, livestock, and business productivity and inability on the~~
9 ~~part of farmers to acquire agricultural equipment and machinery, livestock, and real~~
10 ~~estate jeopardizes the continued existence of family owned agricultural enterprises~~
11 ~~and lessens the supply of agricultural commodities available to fulfill the needs of the~~
12 ~~citizens of this state.~~
- 13 2. ~~As a result of the continuing increase in the costs of maintaining operations, including~~
14 ~~costs of construction and rehabilitation, maintenance and repair expenses, and the~~
15 ~~cost of real estate, the state suffers from structural economic weaknesses which~~
16 ~~contribute to a decline in the operation and maintenance of agricultural enterprises~~
17 ~~and the capital investment therein.~~
- 18 3. ~~The reduction in family owned agricultural enterprises results in an insufficiency of~~
19 ~~gainful employment in rural areas and adds additional pressure on the state's welfare,~~
20 ~~public health, and crime prevention programs and increases the cost of unemployment~~
21 ~~compensation to the existing enterprises of the state.~~

NOTE: Statements of legislative policy, purpose, and intent within the North Dakota Century Code are strongly discouraged. Such statements may be used for a purpose unintended by the drafter and the Legislative Assembly.

1 **SECTION 2. AMENDMENT.** Section 4-36-02 of the North Dakota Century Code is amended
2 and reenacted as follows:

3 ~~**4-36-02. Legislative findings -- Need for agricultural loan financing -- How**~~
4 ~~**accomplished.**~~

5 ~~There exists in this state an inadequate supply of, and a pressing need for, farm credit and~~
6 ~~agricultural loan financing at interest rates which are consistent with the needs of farmers.~~

7 ~~The problems set forth in section 4-36-01 and this section cannot alone be remedied~~
8 ~~through the operation of private enterprise or individual communities or both, but can be~~
9 ~~alleviated through governmental action designed to encourage the investment of private capital~~
10 ~~in the agricultural sector through the use of financing as provided in this chapter for the purpose~~
11 ~~of making loans available at interest rates lower than those available in the conventional farm~~
12 ~~credit markets.~~

13 ~~Alleviating the conditions and problems, set forth in section 4-36-01 and this section by the~~
14 ~~encouragement of private investment through a financing as provided in this chapter, is a public~~
15 ~~purpose and use for which public money provided by the sale of revenue bonds may be~~
16 ~~borrowed, expended, advanced, and loaned. Such activities must not be conducted for profit.~~
17 ~~Such activities are proper governmental functions and can best be accomplished by the~~
18 ~~industrial commission of North Dakota. The necessity for the provisions of this chapter to protect~~
19 ~~the health, safety, morals, and general welfare of all the people of this state is hereby declared~~
20 ~~as a matter of legislative determination. The industrial commission of North Dakota under this~~
21 ~~chapter shall make financing available for farmers to meet the credit needs which private~~
22 ~~industry is unable to serve.~~

NOTE: This is another statement of legislative policy, purpose, and intent that is strongly
discouraged. The language included in the final sentence of this section has been moved
to Section 4 of this bill draft.

23 **SECTION 3. AMENDMENT.** Section 4-36-03 of the North Dakota Century Code is amended
24 and reenacted as follows:

25 ~~**4-36-036-09.19-01. Terms defined**~~**Definitions.**

26 As used in this chapter, unless the context otherwise requires:

27 1. "Agriculture or agricultural enterprise" includes the real;

28 a. Real and personal property constituting farms, ranches, and other agricultural
29 commodity producers; agriculturally

b. Agriculturally related businesses; ~~agriculturally~~

c. Agriculturally related sewage, liquid and solid waste collection, disposal, treatment, and drainage services, and facilities; ~~agriculturally~~

d. Agriculturally related antipollution and air, water, ground, and subsurface pollution abatement and control facilities and services; ~~agriculturally~~

e. Agriculturally related permanent soil and water conservation projects; including the installation of tiling for drainage; planting of perennial grasses, legumes, shrubs, or trees; the establishment of grassed waterways; and the construction of terraces, or any other permanent soil and water conservation practice approved by the local soil conservation or water resource district; and conservation

f. Conservation farm equipment or any type of no-till or minimum-till machinery and equipment.

2. "Bonds" ~~means~~includes any bonds, notes, debentures, interim certificates, ~~bond~~, grant and revenue anticipation notes, or any other ~~evidenc~~evidence of indebtedness.

NOTE: It is pointless to define bonds as bonds (especially twice). It appears what is intended is to include within references to bonds any other evidence of indebtedness.

3. "Commission" means the industrial commission of North Dakota ~~created pursuant to section 54-17-01.~~

4. "Contracting party" means any party to a lease, sales contract, or loan agreement except the commission.

5. "Lender" means any federal or state-chartered bank, federal land bank, production credit association, bank for cooperatives, savings and loan association, building and loan association, small business investment company, or any other institution qualified within the state to originate and service loans, including insurance companies, credit unions, and mortgage loan companies.

6. "Loan insurer" ~~and or~~ "loan guarantor" ~~mean~~means an agency, department, administration, or instrumentality, corporate or otherwise, of or in the department of housing and urban development, the farmers home administration of the department of agriculture, or the veterans administration of the United States, or any private mortgage insurance company, or any other public or private agency ~~which~~that insures or guarantees loans.

1 7. "Operating loan" means an operating loan as defined under section 6-09.9-02.

2 8. "State" means the state of North Dakota.

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

5 **4-36-046-09.19-02. Commission - Powers enumerated.**

6 The commission is hereby ~~granted all powers necessary or appropriate to carry out and~~
7 ~~effectuate the purposes of this chapter, including the following~~may:

8 1. Make and execute contracts and all other instruments necessary or convenient for the
9 performance of its powers and functions ~~under this chapter.~~

10 2. Employ and compensate architects, engineers, attorneys, inspectors, accountants,
11 agricultural and financial experts, and such other advisors, consultants, and agents as
12 may be necessary in its judgment, ~~and to fix their compensation.~~

13 3. Borrow money and issue bonds ~~as provided by this chapter.~~

14 4. Procure insurance or guarantees from any public or private entities, including any
15 department, agency, or instrumentality of the United States, for payment of any bonds
16 issued by the commission ~~under this chapter~~, including the power to pay premiums on
17 any such insurance.

18 5. Receive ~~and accept~~ from any source, aid or contributions of money, property, labor, or
19 other things of value, including gifts or grants from any department, agency, or
20 instrumentality of the United States, to be held, used and applied to carry out the
21 purposes of this chapter subject to the conditions upon which the grants or
22 contributions are made, ~~including gifts or grants from any department, agency, or~~
23 ~~instrumentality of the United States for any purpose consistent with the provisions of~~
24 ~~this chapter.~~

25 6. Enter into agreements with any department, agency, ~~or~~ instrumentality of the United
26 States ~~or~~, this state ~~and~~, or with lenders, and enter into loan agreements with
27 contracting parties ~~for the purpose of planning, regulating, and providing to plan,~~
28 regulate, and provide for the financing and refinancing of any agricultural enterprise or
29 an operating loan.

30 7. Enter into contracts or agreements with lenders ~~for the servicing and processing of to~~
31 service and process loans.

8. To the extent permitted under its contract with the holders of bonds of the commission, consent to any modification ~~with respect to~~regarding the rate of interest, time, and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease, or agreement of any kind to which the commission is a party.

9. To the extent permitted under its contract with the holders of bonds of the commission, enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States or of this state, the reduction can be made without jeopardizing the economic stability of the agricultural enterprise being financed.

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

4-36-056-09.19-03. Commission - Duties enumerated.

The commission ~~has the following duties in the exercise of powers granted by this chapter~~shall:

1. ~~To invest~~Invest proceeds and funds obtained from bonds issued under this chapter ~~and any funds obtained therefrom which are not needed for immediate disbursement~~required to be immediately disbursed, including any funds held in reserve, in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, ~~obligations issued by agencies of the United States,~~ any obligations ~~of~~issued by the United States or ~~agencies thereof~~an agency of the United States, obligations of this state, or any obligations or securities ~~which~~that may ~~from time to time~~ be legally purchased by governmental subdivisions of this state, including the unsecured promissory notes of national banking associations having the highest investment rating.
2. ~~To collect~~Collect fees and charges, as ~~the commission determines to be reasonable~~determined by the commission, in connection with its loans, advances, insurance, commitments, and servicing.
3. ~~To sell~~Sell, at public or private sale, with or without public bidding, any loan or ~~other~~ obligation held by the commission.

1 4. ~~To do~~Complete any act necessary or convenient to the exercise of the powers granted
2 or implied by this chapter ~~or reasonably implied from it.~~

3 5. Make financing available for farmers to meet the credit needs that private industry is
4 unable to serve.

5 **SECTION 6. AMENDMENT.** Section 4-36-06 of the North Dakota Century Code is amended
6 and reenacted as follows:

7 **4-36-066-09.19-04. Commission - Loans to lenders - Conditions.**

8 The commission may make, ~~and undertake commitments to make,~~ loans or loan
9 commitments to lenders under terms and conditions ~~requiring~~that require the loan proceeds
10 thereof to be used by ~~such~~the lenders to make operating loans and loans for agricultural
11 enterprises. ~~Loan commitments or actual loans shall~~Loans or loan commitments must be
12 originated through and serviced by ~~any~~a bank, trust company, savings and loan association,
13 mortgage banker, or other financial institution authorized to transact business in this state.

14 **SECTION 7. AMENDMENT.** Section 4-36-07 of the North Dakota Century Code is amended
15 and reenacted as follows:

16 **4-36-076-09.19-05. Commission - Invest in, purchase, or assign loans - Conditions.**

17 The commission may invest in, purchase, or ~~make commitments~~commit to take
18 assignments of, operating loans and loans made by lenders for the construction, rehabilitation,
19 or purchase of agricultural enterprises. ~~No loan~~A loan is not eligible for investment in, purchase,
20 or assignment by the commission if the loan was made more than six months prior to the date
21 of the potential investment, purchase, or assignment by the commission.

22 **SECTION 8. AMENDMENT.** Section 4-36-08 of the North Dakota Century Code is amended
23 and reenacted as follows:

24 **4-36-086-09.19-06. Commission - Lender's requirements.**

25 Prior to exercising any of the powers authorized in sections ~~4-36-066-09.19-04~~ and
26 ~~4-36-076-09.19-05~~, the commission shall require the lender to certify and agree that:

- 27 1. The loan is, or ~~if the same has not been made will,~~ at the time of making, be ~~in all~~
28 respects a prudent investment; and
29 2. ~~Such~~The lender will use the proceeds of ~~such~~the loan, investment, sale, or
30 assignment within a reasonable period of time to make loans or purchase operating
31 loans ~~or loans~~ to provide agricultural enterprises, or, if ~~such~~the lender has made a

1 commitment to make operating loans or loans to provide agricultural enterprises on
2 the basis of a commitment from the commission to purchase such loans, ~~such~~the
3 lender will make ~~such loans~~ and sell the ~~same~~loans to the commission within a
4 reasonable period of time.

5 **SECTION 9. AMENDMENT.** Section 4-36-09 of the North Dakota Century Code is amended
6 and reenacted as follows:

7 **4-36-096-09.19-07. Commission - Optional requirements enumerated.**

8 Prior to exercising any of the powers ~~conferred~~authorized by sections ~~4-36-066-09.19-04~~
9 and ~~4-36-076-09.19-05~~, the commission may, ~~but is not obligated to:~~

- 10 1. Require ~~that~~ the loan involved be insured by a loan insurer or be guaranteed by a loan-
11 guarantor;
- 12 2. Require any type of security that ~~it~~the commission deems reasonable and necessary;
13 or
- 14 3. Authorize the reservation of funds by lenders in ~~such amount~~amounts and subject to
15 such conditions as ~~the commission considers~~deemed reasonable and necessary by
16 the commission.

17 **SECTION 10. AMENDMENT.** Section 4-36-10 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **4-36-106-09.19-08. Commission - Borrow money and issue bonds - Purposes.**

20 The commission ~~has the power to may~~ borrow money and to issue ~~from time to time its~~
21 bonds in such principal amounts as the commission ~~determines~~isdeems necessary to provide
22 sufficient funds to ~~carry out its purposes under this chapter to include:~~

- 23 1. ~~Carrying~~Carry out the additional powers of sections ~~4-36-066-09.19-04~~ and
24 ~~4-36-096-09.19-07~~.
- 25 2. ~~The payment of~~Pay interest on bonds of the commission issued under this chapter.
- 26 3. ~~The establishment of~~Establish reserves to secure the bonds issued under this chapter.
- 27 4. ~~All~~Pay all other necessary and convenient expenditures of the commission incident to,
28 ~~necessary and convenient, to carry out its purposes and powers under this chapter.~~

29 **SECTION 11. AMENDMENT.** Section 4-36-11 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **4-36-116-09.19-09. Commission - Issue bonds to renew, pay, or refund bonds.**

2 1. The commission has ~~the power to issue from time to time~~ may:

3 a. Issue bonds to renew or to pay bonds, and their interest, issued under this
4 chapter, ~~including the interest thereon, and whenever it deems refunding~~
5 ~~expedient, to refund~~;

6 b. Refund any bonds issued under this chapter, when the commission deems
7 refunding expedient, by the issuance of new bonds, regardless of whether the
8 bonds to be refunded have ~~or have not~~ matured, and to issue; and

9 c. Issue bonds partly to refund outstanding bonds and partly for any other purposes
10 permitted under this chapter.

11 2. The refunding bonds may be sold and the proceeds applied to the purchase,
12 redemption, or payment of the bonds to be refunded, or exchanged for the bonds to
13 be refunded.

14 **SECTION 12. AMENDMENT.** Section 4-36-12 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **4-36-126-09.19-10. Commission - Bond issuance - Special obligations - How paid and**
17 **secured.**

18 ~~Bonds~~Any bond issued under this chapter ~~shall not be~~ are payable only from ~~nor charged~~
19 ~~upon any funds other than the revenues specifically pledged to the payment thereof, nor is the of~~
20 ~~the bond. The commission is not subject to any liability thereon for any bond issued under this~~
21 ~~chapter. Such~~The bonds do not constitute a charge, lien, or encumbrance, legal or equitable,
22 upon any commission property ~~of the commission, except those~~ whole or partial agricultural
23 enterprises, ~~or portions thereof, mortgaged or otherwise encumbered under the provisions and~~
24 ~~for the purposes of this chapter. The bonds may be additionally secured by a pledge of any~~
25 ~~grant, contribution, or guarantee from the federal government, the state, or any corporation,~~
26 ~~limited liability company, association, institution, or person.~~

NOTE: Under Section 1-01-49, which applies to the entire Century Code, "Person" means
 an individual, organization, government, political subdivision, or government agency or
 instrumentality.

27 **SECTION 13. AMENDMENT.** Section 4-36-13 of the North Dakota Century Code is
28 amended and reenacted as follows:

4-36-136-09.19-11. Commission - Bond issuance - State or political subdivision - No obligation - Statement.

~~No bonds~~Bonds issued by the commission under this chapter do not constitute a debt, liability, or general obligation of this state or any political subdivision thereof, or a pledge of the faith and credit of this state or any political subdivision thereof, but are payable solely as provided by section ~~4-36-126-09.19-10~~. ~~Each~~The face of each bond issued under this chapter ~~shall~~must contain ~~on the face thereof~~ a statement that neither ~~the~~ of the following are pledged to the payment of the principal or the interest on the bond:

1. The faith and credit ~~nor the taxing power~~ of this state or any political subdivision thereof ~~is pledged to the payment of the principal of or the interest on such bond.; or~~
2. The taxing power of this state or any political subdivision.

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

4-36-146-09.19-12. Bonds authorized by resolution - Contents - Manner of sale.

1. A bond under this chapter must be authorized by a resolution of the commission, ~~shall~~. A bond must bear such the date or dates of authorization, the interest rate or rates, including variations of the rates, and shall must mature at such the time or times as such resolution may provide, except that not provided in the resolution.
A bond must be in denominations, be in either coupon or registered form, carry registration privileges, be executed in a manner, be payable in a medium of payment, at a place or places, and be subject to terms of redemption, including redemption prior to maturity, as provided in the resolution. A resolution of the commission authorizing a bond must provide:
 - a. That a bond may not mature more than thirty years from the date of its issue, ~~as the resolution shall provide. The bonds shall bear;~~
 - b. The interest at such rate or rates of the bond, including variations of ~~such the~~ rates, ~~be in such;~~
 - c. The denominations, be in such of the bond;
 - d. The form of the bond, either coupon or registered, ~~carry such;~~
 - e. The registration privileges, be executed in such;
 - f. The manner, be payable in such in which the bond is to be executed;

g. The medium of payment, at such of the bond:

h. The place or places, and be subject to such where the bond may be redeemed;
and

i. The terms of redemption, including redemption prior to maturity, as such
resolution may provide.

2. The provisions of other state laws relating to the issuance of revenue bonds do not apply to bonds issued by the commission under this chapter. Bonds of the commission issued under this chapter may be sold by the commission at public or private sale, and at such a price or prices ~~as the commission shall determined~~ determined by the commission.

SECTION 15. AMENDMENT. Section 4-36-15 of the North Dakota Century Code is amended and reenacted as follows:

4-36-156-09.19-13. Bond issuance - Resolution provisions enumerated.

Any resolution authorizing the issuance of bonds under this chapter may ~~contain~~ specify provisions, ~~which shall~~ that must be a part of the contract or contracts with the holders of ~~such~~ the bonds, ~~as to~~ including:

1. The setting aside, regulation, and disposition of ~~reserves~~ reserve funds or sinking funds ~~and the regulation and disposition thereof.~~
2. Limitations on ~~the purposes to which~~ how the proceeds from the sale of bonds may be applied and limitations on pledging the proceeds to secure the payment of the bonds.
3. Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.
4. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent ~~thereto~~ to amend or abrogate the contract, and the manner in which the consent may be given.
5. Limitations on the amount of money to be expended ~~by the commission~~ for operating expenses of the commission.
6. Vesting in a trustee or trustees ~~such~~ property, rights, powers, and duties in trust as determined by the commission ~~may determine~~, and limiting or abrogating the right of

bondholders to appoint a trustee or limiting the rights, powers, and duties of the trustee.

7. Defining the acts or omissions to act which constitute a default and the obligations or duties of the commission to the holders of the bonds; and providing for the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver; ~~but the~~ The rights and remedies must not be inconsistent with the general laws of this state and other provisions of this chapter.

NOTE: The "provisions of this chapter" are "laws of this state."

8. Any other matter, ~~of like or different character, which~~ that in any way affects the security or protection of the holders of the bonds.

SECTION 16. AMENDMENT. Section 4-36-16 of the North Dakota Century Code is amended and reenacted as follows:

~~4-36-166-09.19-14.~~ 4-36-166-09.19-14. Commission - Pledge - Effect - Lien - Recording not required.

Any pledge made by the commission is valid and binding from the time the pledge is made. The revenue, money, or properties so pledged and ~~thereafter~~ subsequently received by the commission are immediately subject to the lien of ~~such~~ the pledge without any physical delivery thereof or further act, and the lien of any ~~such~~ pledge is valid and binding as against all ~~parties~~ any party having claims of any kind in tort, contract, or otherwise against the commission, irrespective of whether the parties have notice ~~thereof~~ of the pledge. ~~Neither the~~ The resolution ~~nor, or~~ any other instrument by which a pledge is created ~~need be~~ is not required to be recorded.

SECTION 17. AMENDMENT. Section 4-36-17 of the North Dakota Century Code is amended and reenacted as follows:

~~4-36-176-09.19-15.~~ 4-36-176-09.19-15. Commission - Purchase bonds of commission canceled - Price.

The commission, subject to ~~such~~ any existing agreements with bondholders ~~as may then exist,~~ has the power to ~~may~~ purchase bonds issued by it hereunder out of any funds available ~~therefor~~ to the commission, which must ~~thereupon~~ subsequently be canceled, at any reasonable price which, if the bonds are ~~then~~ redeemable, may not exceed the redemption price ~~then~~ currently applicable plus accrued interest to the next interest payment ~~thereon~~ of the bond.

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

1 **~~4-36-186-09.19-16.~~ Bonds secured by trust indenture - Contents - Expenses how**
2 **treated.**

3 The bonds issued under this chapter may be secured by a trust indenture ~~by and between~~
4 the commission and a corporate trustee ~~which that~~ may be any bank having the power of a trust
5 company or any trust company ~~within or without the state.~~ ~~Such~~ A trust indenture may contain
6 such reasonable provisions for protecting and enforcing the rights and remedies of the
7 bondholders ~~as may be reasonable and proper and not in violation of law,~~ including covenants
8 setting forth the duties of the commission ~~in relation to the exercise of~~ regarding its powers and
9 the custody, safekeeping, and application of all money. The commission may provide by the
10 trust indenture for the payment of the proceeds of the bonds and the revenue to the trustee
11 under the trust indenture or other depository, and for the method of disbursement thereof, with
12 such safeguards and restrictions ~~as the commission may determined~~ determined by the
13 commission.

14 **SECTION 19. AMENDMENT.** Section 4-36-19 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **~~4-36-196-09.19-17.~~ Bonds - Negotiable instruments.**

17 ~~Whether or not the~~ All bonds issued under this chapter are ~~in the form and character of~~
18 ~~negotiable instruments, such bonds are hereby made~~ negotiable instruments, subject only to
19 provisions of the bonds relating to registration.

20 **SECTION 20. AMENDMENT.** Section 4-36-20 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **~~4-36-206-09.19-18.~~ Bonds - Signatures of prior members or officers - Validity.**

23 ~~In the event that~~ If any of the members or officers of the commission cease to be members
24 or officers of the commission prior to the delivery of any bonds or coupons ~~signed by~~
25 ~~them~~ bearing their signatures, their signatures or facsimiles thereof ~~are nevertheless remain~~
26 valid and sufficient for all purposes, ~~the same as if such members or officers had remained in~~
27 ~~office until such delivery.~~

28 **SECTION 21. AMENDMENT.** Section 4-36-21 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 ~~4-36-216-09.19-19. Commission - Execute bonds - Members~~members not subject to
2 personal liability on bond issues.

3 Neither the members A member of the commission nor or any other person executing the
4 bonds issued under this chapter is not subject to personal liability or accountability by reason of
5 the issuance thereof of those bonds.

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

8 ~~4-36-226-09.19-20. Funds created.~~

9 The commission may create and establish ~~such~~any funds and accounts ~~as may be~~
10 necessary or desirable for carrying out the ~~purposes of~~ this chapter.

11 **SECTION 23. AMENDMENT.** Section 4-36-23 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 ~~4-36-236-09.19-21. Bondholders - Pledge - Agreement of the state.~~

14 The state does hereby ~~pledge to and agree with the holder of any bonds issued under this~~
15 ~~chapter that the state will~~may not limit or alter the rights vested in the commission to fulfill the
16 terms of any agreements made with the holders ~~thereof~~ of bonds or in any way impair the rights
17 or remedies of the holders until the bonds, together with the interest ~~thereon~~, with interest on
18 any unpaid installments of interest, and all costs and expenses in connection with any action or
19 proceeding by or on behalf of the holders, are fully met and discharged. The commission ~~is~~
20 ~~authorized to~~may include this pledge and agreement of the state in any agreement with the
21 holders of the bonds.

NOTE: This section appears to be unnecessary. Article X, Section 13, of the Constitution of North Dakota provides in part "Every law authorizing a bond issue shall provide for levying an annual tax, or make other provision, sufficient to pay the interest semiannually, and the principal within thirty years from the date of the issue of such bonds and shall specially appropriate the proceeds of such tax, or of such other provisions to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid."

22 **SECTION 24. AMENDMENT.** Section 4-36-24 of the North Dakota Century Code is
23 amended and reenacted as follows:

4-36-246-09.19-22. Bank of North Dakota - Authorization to exercise administrative powers - Payment of commission expenses - Reimbursement - Liability of state or political subdivision.

The commission may delegate to the Bank of North Dakota, and the Bank of North Dakota is hereby authorized to may exercise, all administrative powers granted to the commission under this chapter. The Bank of North Dakota is further authorized to may advance from its funds the amount necessary to permit the commission to issue bonds under this chapter ~~which~~. The advanced funds must be refunded to the Bank of North Dakota by the commission upon issuance of ~~said~~ the bonds. ~~Thereafter, all~~ Any subsequent expenses incurred by the commission in carrying out the provisions of this chapter must be payable solely from funds provided under this chapter, ~~and nothing in this~~. This chapter may not be construed to authorize the commission to incur indebtedness debt or liability on behalf of or payable by this state or any political subdivision of it.

SECTION 25. AMENDMENT. Section 4-36-25 of the North Dakota Century Code is amended and reenacted as follows:

4-36-256-09.19-23. Commission - Bonds exempt from taxation - Exception.

All bonds issued under this chapter, their interest ~~payable thereon~~ and their income derived ~~therefrom~~ except inheritance, estate, and transfer taxes, are ~~at all times~~ exempt from all taxes imposed by this state, any county, any city, or any other political subdivision of this state. ~~Bonds may be~~ Interest on bonds issued under this chapter ~~whereby the interest on the bonds is subject~~ to federal income taxation.

SECTION 26. AMENDMENT. Section 4-36-26 of the North Dakota Century Code is amended and reenacted as follows:

4-36-266-09.19-24. Bonds - Legal investments - Considered securities.

The bonds issued ~~by and under the authority of~~ this chapter by the commission are legal investments in which all public officers or public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all banks, bankers, banking associations, trust companies, savings associations, including savings and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons who are now or may later be authorized to invest in bonds or in other obligations of this state, may invest funds, including

capital, in their control or belonging to them. The bonds are authorized securities which may be deposited with and received by all public officers and bodies of this state or any agency or political subdivision of this state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of this state is now or may be later authorized by law.

SECTION 27. AMENDMENT. Section 4-36-27 of the North Dakota Century Code is amended and reenacted as follows:

4-36-276-09.19-25. Chapter - How construed.

~~Neither this chapter nor anything contained in this~~ This chapter is or shall may not be construed as a restriction or limitation upon any commission powers ~~which the commission might otherwise have authorized~~ under any other law of this state, ~~and this chapter is cumulative to such powers.~~ This chapter ~~does and~~ must be construed to provide a complete, additional, and alternative method for ~~the doing of the thing~~ exercising the powers and duties of the commission authorized under law and must be regarded as supplemental and additional to powers conferred by any other laws. The issuance of bonds under ~~the provisions of this chapter~~ is not required to comply with the requirements of any other state laws applicable to the issuance of bonds, notes, and other obligations. ~~No proceedings, notice, or approval is~~ Proceedings, notices, or approvals are not required for the issuance of any bonds or any instrument or the security ~~therefor of any bond or instrument~~, except as provided in this chapter. All agricultural enterprises for which funds are advanced, loaned, or otherwise provided by the commission under this chapter must be in compliance with any land use, zoning, subdivision, and other laws of this state applicable to the land upon which ~~such~~ the enterprise is located or is to be constructed.

SECTION 28. AMENDMENT. Section 4-43-01 of the North Dakota Century Code is amended and reenacted as follows:

4-43-016-09.18-01. Definitions.

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

1. "Bank" means the Bank of North Dakota.
2. "Bonds" means ~~revenue bonds~~ any notes, debentures, interim certificates, grant and revenue anticipation notes, or other ~~evidence~~ evidence of indebtedness issued by the commission under this chapter.

1 3. "Commission" means the industrial commission.

NOTE: The definition of bonds was amended to be consistent with the definitions in the preceding definition section of this draft.

2 **SECTION 29. AMENDMENT.** Section 4-43-02 of the North Dakota Century Code is

3 amended and reenacted as follows:

4 **4-43-026-09.18-02. Powers.**

5 The commission may:

6 1. Contract for the performance of its duties and functions under this chapter.

7 2. Sue and be sued.

8 3. Borrow money through the issuance and sale of bonds as provided under this chapter.

9 4. Invest proceeds of its bonds not ~~needed~~required for immediate disbursement,
10 including any reserve funds, in securities ~~the commission determines~~determined to be
11 prudent by the commission, subject to any agreements with the holders of the
12 ~~commission's~~ bonds.

13 5. Procure insurance, a guaranty, or a letter of credit for the payment of its bonds,
14 including the payment of premiums or other fees, from any public or private entity.

15 6. Make loans to persons establishing meatpacking plants in this state through the loan
16 program provided for under this chapter and charge the borrowers fees approved by
17 the commission.

18 7. Prescribe and approve the forms and procedures for loan applications under this
19 chapter by persons establishing a meatpacking plant in this state.

20 8. Prescribe the terms and conditions of loans to be made under this chapter.

21 9. Consent to any changes in the terms or provisions of its bonds, or of any other
22 contract to which the commission is a party, subject to any contracts with the holders
23 of the ~~commission's~~ bonds.

24 10. Purchase bonds issued under this chapter out of any funds available to the
25 commission for ~~such~~the purpose of purchasing bonds and not pledged to or necessary
26 for some other purpose, and hold, cancel, or sell the bonds, subject to any contracts
27 with its bondholders.

28 **SECTION 30. AMENDMENT.** Section 4-43-03 of the North Dakota Century Code is

29 amended and reenacted as follows:

1 **4-43-036-09.18-03. Bank of North Dakota.**

2 The commission may delegate to the Bank, and the Bank is ~~authorized to~~ may exercise, all
3 administrative powers granted to the commission under this chapter, including processing and
4 reviewing applications for, and closing and servicing loans made to, persons establishing
5 meatpacking plants in this state.

6 **SECTION 31. AMENDMENT.** Section 4-43-04 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-43-046-09.18-04. Issuance and sale of bonds - Use of bond proceeds.**

9 The commission may issue its bonds in ~~such~~ any principal amounts as deemed necessary
10 by the commission ~~determines is necessary~~ to provide sufficient funds to perform its powers
11 under this chapter. The proceeds may not be used for any purpose other than to make loans,
12 pay the costs of bond issuance, pay accrued or capitalized interest or capitalized principal, and
13 provide ~~any reasonably required~~ reserve funds. The bonds must be authorized by resolution of
14 the commission and must bear ~~such~~ the date, mature at ~~such~~ the times, bear interest at ~~such~~ the
15 rates, be in ~~such~~ the denominations, be payable from ~~such~~ the sources, and be subject to
16 ~~such~~ the terms of redemption as ~~may be~~ provided by the resolution. The bonds may be sold by
17 the commission at public or private sale at the times and at the prices allowed by the
18 commission. The commission may provide for refunding or refinancing of the bonds.

19 **SECTION 32. AMENDMENT.** Section 4-43-05 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **4-43-056-09.18-05. Agreement with bondholders.**

22 Any resolution of the commission authorizing the issuance of bonds under this chapter may
23 contain contractual provisions:

- 24 1. Setting aside ~~of reserves~~ reserve funds or sinking funds.
- 25 2. Limiting ~~the purposes to which~~ how the proceeds from the sale of bonds may be
26 applied and limiting the pledging of the proceeds to secure the payment of the bonds.
- 27 3. Limiting the issuance of additional bonds, the terms upon which additional bonds may
28 be issued and secured, and the refunding of outstanding or other bonds.
- 29 4. Providing ~~the~~ any procedure, ~~if any~~, by which the terms of any contract with
30 bondholders may be amended or abrogated, the amount of bonds the holders of

1 which must consent to ~~such~~the amendment or abrogation, and the manner in which
2 the consent may be given.

3 5. Vesting in a trustee ~~such~~ property, rights, powers, and duties in trust as the
4 commission may determine, and limiting or abrogating the right of bondholders to
5 appoint a trustee, or limiting the rights, powers, and duties of the trustee.

6 6. Defining the acts or omissions, ~~which~~ that constitute a default of the obligations and
7 duties of the commission to the bondholders, and providing for the rights and remedies
8 of the bondholders in the event of a default, provided that the rights and remedies
9 ~~must be~~are consistent with the laws of this state.

10 7. Including any other matter that affects the security or protection of the bondholders.

11 **SECTION 33. AMENDMENT.** Section 4-43-06 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 ~~4-43-066-09.18-06.~~ **Reserve fund.**

14 1. The commission shall establish and maintain a reserve fund for bonds issued under
15 this chapter. The commission shall deposit in the reserve fund:

16 a. All bond proceeds required to be deposited in the reserve fund by the terms of
17 any contract between the commission and the bondholders or by the terms of
18 any resolution of the commission concerning the use of bond proceeds.

19 b. All moneys made available to the commission for deposit in the reserve fund.

20 2. Moneys in the reserve fund may not be used for any purpose other than to make
21 payments of the principal and interest on bonds, including any premium required to be
22 paid when bonds are redeemed prior to maturity, and sinking fund installments as they
23 become due and payable.

24 3. Moneys in the reserve fund may be withdrawn in accordance with the terms of any
25 contract between the commission and the bondholders or any resolution of the
26 commission concerning the use of bond proceeds.

27 **SECTION 34. AMENDMENT.** Section 4-43-07 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 ~~4-43-076-09.18-07.~~ **Exemption from state and local taxes.**

30 All bonds issued under this chapter and the interest and income payable to and received by
31 bondholders are exempt from taxation by the state or any political subdivision of the state.

1 **SECTION 35. AMENDMENT.** Section 4-43-08 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~4-43-086-09.18-08.~~ **Payment of bonds.**

4 Bonds issued under this chapter ~~by the commission~~ are not obligations or ~~debt~~debts of the
5 state, and are payable solely from revenues or other funds available to the commission under
6 this chapter. The bonds do not constitute a charge, lien, or encumbrance, legal or equitable,
7 upon any property of the commission or the Bank, other than the revenues and property
8 pledged under this chapter. Each bond issued under this chapter must contain a statement that
9 neither the faith and credit nor the taxing power of the state is pledged to the payment of the
10 principal of or interest on the bond.

11 **SECTION 36. AMENDMENT.** Section 4-43-09 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 ~~4-43-096-09.18-09.~~ **Legal investments.**

14 Bonds issued under this chapter ~~by the commission~~ are legal investments in which all public
15 officers or public bodies of the state, its political subdivisions, and all banks organized under the
16 laws of the state and engaged in the business of banking may invest funds.

17 **SECTION 37. AMENDMENT.** Section 4-43-10 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 ~~4-43-106-09.18-10.~~ **Validity.**

20 Bonds issued under this chapter must be executed by a member of the commission or by
21 facsimile signature and the manual signature of an authenticating agent. Any bond bearing the
22 signature of a member of the commission in office on the date of execution is valid for all
23 purposes for which it was issued. After issuance, all bonds issued under this chapter by the
24 commission are conclusively presumed to be fully authorized and issued under the laws of the
25 state, and any person is estopped from questioning their authorization, issuance, execution,
26 sale, or delivery by the commission.

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**3 **SECTION 1. AMENDMENT.** Section 4-14-01 of the North Dakota Century Code is amended
4 and reenacted as follows:5 **4-14-014.1-29-01. Definitions.**6 In this chapter, ~~unless the context or subject matter otherwise requires:~~

- 7 1. "Bona fide competitor" ~~is deemed to be~~means a duly licensed dealer in any farm
8 product maintaining a place of business in the same trade territory.
- 9 2. "Farm products" means butter, milk, cream, butterfat, cheese, and other dairy
10 products, honey, eggs, poultry, and grain.
- 11 3. "Person" means an individual, firm, copartnership, corporation, limited liability
12 company, or association.

NOTE: Section 1-01-49 provides for the entire Century Code "Person" means an individual, organization, government, political subdivision, or government agency or instrumentality. Consideration should be given to a broader definition in this section to cover business associations not listed.

13 **SECTION 2. AMENDMENT.** Section 4-14-02 of the North Dakota Century Code is amended
14 and reenacted as follows:15 **4-14-024.1-29-02. Unfair discrimination - Exception.**

- 16 1. Any~~A~~ person is guilty of unfair discrimination if:
 - 17 a. The person is engaged in the business of buying farm products for manufacture
18 or sale ~~who discriminates; and~~
 - 19 b. The person discriminates between different sections, localities, communities, or
20 cities, of this state, by purchasing farm products at a higher price or rate in one
21 locality than is paid for such products of the same kind, quality, and grade by

such a person in another section, locality, community, or city, or than is paid to another person of the same community, after making due allowance for the difference, if any, in the actual cost of transportation paid from the locality of purchase to the locality of manufacture or sale, ~~is guilty of unfair discrimination.~~

2. It is not unfair discrimination for any person to pay in any section, locality, community, or city, a price equal to that actually paid on the same day by any bona fide competitor in such a section or locality for farm products of the same kind and grade if such the price is paid in a bona fide and good-faith effort to meet competition, ~~and in such case, the.~~ The burden of proving such facts is upon the defendant.

SECTION 3. AMENDMENT. Section 4-14-03 of the North Dakota Century Code is amended and reenacted as follows:

4-14-034.1-29-03. Different prices in purchase of agricultural products to be prima facie evidence.

Proof that any person has paid a higher price for any farm products in one section, locality, community, or city, than in another, or has paid another person a different price for the same kind and quality of product in the same community, after due allowance for the cost of transportation ~~has been made~~, is prima facie evidence of a violation of this chapter.

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

4-14-044.1-29-04. Unfair discrimination in sale of farm products.

1. ~~Any~~ A person ~~doing~~ is guilty of unfair discrimination if that person:

- a. ~~Is engaged in the business in the state of North Dakota and engaged in of the~~ manufacture, distribution, or sale of farm products ~~who discriminates in this state;~~ and
- b. ~~Discriminates~~ between ~~or among~~ different sections, communities, cities, or portions thereof in this state, by selling at a lower price or rate in one section, community, city, or portion thereof than is charged by such a person for such farm products in another section, community, city, or portion thereof, after making due allowance for the difference, if any, in the actual cost of transportation of such the products, ~~is guilty of unfair discrimination.~~ Proof of such a differential in price is prima facie evidence of a violation of this section in a civil action.

2. It is not unfair discrimination for ~~any~~a person to sell in any section, locality, community, or city, at a price equal to that actually charged on the same day by any bona fide competitor in ~~such~~a section or locality for farm products of the same kind and grade if ~~such~~the price is charged in a bona fide and good-faith effort to meet competition, ~~and in such case, the~~The burden of proving such facts is upon the defendant in a civil action.

7 **SECTION 5. AMENDMENT.** Section 4-14-05 of the North Dakota Century Code is amended
8 and reenacted as follows:

9 **4-14-054.1-29-05.** Complaint of unfair discrimination - Investigation - Prosecution -
10 **Duty of agriculture commissioner.**

1 When a complaint is made to of unfair discrimination may be filed with the agriculture
2 commissioner or to the dairy commissioner that any person is guilty of unfair discrimination,
3 either of them. The agriculture commissioner shall investigate such the complaint, or either. The
4 agriculture commissioner, upon that individual's own initiative, without the filing of a complaint,
5 may investigate and ascertain whether this chapter has been violated, and in either event may
6 subpoena, supervise, and control witnesses, administer oaths, and take testimony, the same as
7 the district court. If, in the agriculture commissioner's opinion, sufficient ground evidence of a
8 violation exists therefor, the agriculture commissioner may shall report the facts to the attorney
9 general who thereupon shall prosecute an action the defendant in the name of this state in the
10 proper court to annul the charter of any corporation or limited liability company violating the
11 provisions of this chapter. If any corporation or limited liability company person is adjudged by
12 the courts to be guilty of unfair discrimination, the court may vacate the charter or revoke the
13 authority of such corporation or limited liability company the person to do business in the this
14 state of North Dakota, and may enjoin it the person permanently from transacting business in
15 this state.

26 **SECTION 6. AMENDMENT.** Section 4-14-06 of the North Dakota Century Code is amended
27 and reenacted as follows:

28 ~~4-14-06~~4.1-29-06. Enforcement of chapter.

29 The agriculture commissioner ~~and the state dairy commissioner and their deputies, the~~
30 ~~agriculture commissioner's designee,~~ assistants, and agents and the state's attorneys, sheriffs,
31 and peace officers of the respective counties shall enforce the provisions of this chapter. The

1 authority extended to ~~of~~ the agriculture commissioner and to the state dairy commissioner under
2 this chapter ~~must be considered as~~ a duty of such officers only, and does not preclude any
3 other prosecuting officer or any interested party from instituting proceedings, civil or criminal, for
4 the enforcement of any of the provisions of this chapter.

5 **SECTION 7. AMENDMENT.** Section 4-14-07 of the North Dakota Century Code is amended
6 and reenacted as follows:

7 **4-14-074.1-29-07. Penalty.**

8 Any person violating the provisions ~~a provision~~ of this chapter is guilty of a class A
9 misdemeanor.

10 **SECTION 8. AMENDMENT.** Section 4-14-08 of the North Dakota Century Code is amended
11 and reenacted as follows:

12 **4-14-084.1-29-08. Remedies of chapter cumulative.**

13 The remedies provided in this chapter are cumulative and not exclusive.

14 **SECTION 9. AMENDMENT.** Section 4-14-09 of the North Dakota Century Code is amended
15 and reenacted as follows:

16 **4-14-094.1-29-09. Unfair trade practices in the dairy industry.**

- 17 1. As used in this section, the term "dairy products" includes milk, cream, butter, cheese,
18 cheese food, ice cream, frozen desserts, ice milk, sherbet, and any other edible
19 product manufactured or processed which has any of ~~such~~ the preceding products as
20 ~~its~~ a principal ingredients.
- 21 2. ~~Each of the practices described in this subsection is declared to be an unfair trade~~
22 ~~practice.~~ It is unlawful for any person to be engaged in ~~such~~ unfair trade practices. ~~Not~~
23 is an unfair trade practice for a person who is a dealer in or a vendor of dairy products,
24 for sale to a retailer or who sells dairy products to any person for retail sales ~~may to~~:
- 25 a. Give or extend discounts on dairy products sold to retail outlets, except for
26 standard printed public discounts ~~which~~ that fairly represent cost savings
27 ~~which~~ that may be passed on to the consumer.;
- 28 b. Make payments of money, credit, gifts, or loans to retail outlets as rental for the
29 storage or display of dairy products on the premises where they are offered for
30 sale.;

- 1 c. Maintain or make repairs of any equipment owned by a retail outlet, except
2 ~~that those~~ used exclusively for dairy products, charging comparative, competitive
3 commercial fees and charges for the service and parts; or
4 d. Give any gift of money, merchandise, services, or materials of any value to any
5 retail outlet, except bona fide charities, ~~except such other than~~ services heretofore
6 specifically permitted.
- 7 3. ~~Nothing in this~~ This section may not be interpreted to prohibit the operation of a retail
8 outlet by a person who is also a dealer in or a vendor of retail products for sale to a
9 retailer or for retail sales, or to prohibit the use by that person in ~~such a~~ retail outlet of
10 any equipment or advertising or miscellaneous matter owned by that person provided
11 that ~~such the~~ retail outlet is under direct control and management of the dealer.
- 12 4. ~~Nothing in this~~ This section may not be interpreted to prohibit the giving-
13 away distribution of merchandise, without charge, to be consumed on the premises.
- 14 5. For the purpose of this section, any subsidiary or affiliate corporation, cooperative,
15 officer, director, manager, governor, or partner of a corporation, a limited liability
16 company, a cooperative, or partnership which is a dealer in or a vendor of dairy
17 products is deemed to be a dealer in or vendor of dairy products.

18 **SECTION 10. AMENDMENT.** Section 4-14-10 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **~~4-14-104.1-29-10.~~ 4-14-104.1-29-10. Contracts void - Penalty.**

21 All contracts and agreements made in violation of sections ~~4-14-094.1-29-09~~ through
22 ~~4-14-114.1-29-11~~ are void. Any person who violates any of the provisions of sections
23 ~~4-14-094.1-29-09~~ through ~~4-14-114.1-29-11~~ is guilty of a class B misdemeanor.

24 **SECTION 11. AMENDMENT.** Section 4-14-11 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **~~4-14-114.1-29-11.~~ 4-14-114.1-29-11. Enforcement of fair trade practices.**

27 The attorney general is ~~responsible for the enforcement of~~ shall enforce sections
28 ~~4-14-094.1-29-09~~ through ~~4-14-114.1-29-11.~~ Prosecution of ~~violators of sections 4-14-09~~ section
29 4.1-29-09 through ~~4-14-11~~ is 4.1-29-11 violations are under the supervision of the state's
30 attorney of the county in which the violation occurred.

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**3 **SECTION 1.** A new section to chapter 4.1-01 of the North Dakota Century Code is created
4 and enacted as follows:

NOTE: The existing Chapter 4-37 is relatively compact and could be consolidated within a single section for placement within another chapter, perhaps the chapter covering powers and duties of the Agriculture Commissioner. This draft is prepared on that basis.

5 **~~4-37-01. Agriculture in the classroom program.~~**

6 ~~1. Recognizing the need to promote and foster an understanding of the agricultural-~~
7 ~~economy of the state of North Dakota and the values of rural lifestyles, an agriculture-~~
8 ~~in the classroom program is established. The agriculture commissioner shall~~
9 ~~administer the an agriculture in the classroom program with the advice of the~~
10 ~~agriculture in the classroom council.~~

11 **~~4-37-02. Agriculture in the classroom council.~~**

12 ~~1-2.~~ The agriculture in the classroom council consists of seven individuals. The agriculture
13 commissioner shall appoint six council members. The seventh council member is the
14 superintendent of public instruction or the superintendent's designee.

15 ~~2. The Annually, the council members may select one from among themselves shall elect~~
16 ~~one of its members to serve as the chairman.~~

17 ~~3.~~ The council shall meet at least twice each year, at the call of the chairman, ~~for the-~~
18 ~~purpose of providing advice to confer with and advise the agriculture commissioner~~
19 ~~regarding issues related to the agriculture in the classroom program.~~

1 **~~4-37-03. Purpose -- Powers and duties.~~**

2 ~~4.3.~~ The agriculture commissioner may award grants and contract with any person for the
3 provision of an agriculture in the classroom program, the development of agricultural
4 curriculum activities applicable to students from kindergarten through grade twelve,
5 and the training of teachers in agricultural curriculum activities.

6 ~~2.~~ ~~The agriculture commissioner shall work with teachers, the superintendent of public~~
7 ~~instruction, the department of career and technical education, and the United States~~
8 ~~department of agriculture to provide and promote an agriculture in the classroom~~
9 ~~program.~~

NOTE: This provision is mostly duplication of subdivision a in the following subsection.

10 ~~3.4.~~ In addition to any other powers and duties set forth in this section, the agriculture
11 commissioner may:

- 12 a. Consult and work with the superintendent of public instruction, the department of
13 career and technical education, the United States department of agriculture, and
14 any other public or nonpublic entities to provide and promote an agriculture in the
15 classroom program;
- 16 b. Prepare instructional, informational, and reference publications on the North
17 Dakota agricultural economy and rural lifestyles;
- 18 c. Provide training programs for public school teachers in agricultural curriculum
19 activities;
- 20 d. Encourage research on and identification of new instructional, informational, and
21 reference publications relating to this state's agricultural economy and rural
22 lifestyles; and
- 23 e. Monitor the quality and condition of the agriculture in the classroom program.

24 **~~4-37-04. Gifts and grants.~~**

25 ~~5.~~ The agriculture commissioner may accept and expend gifts, grants, and donations in
26 support of the agriculture in the classroom program. If any gifts, grants, or donations
27 are designated for a specific purpose, the commissioner shall honor the purpose
28 provided the purpose is consistent with this chapter.

29 **~~4-37-05. Expenses of council members.~~**

30 ~~6.~~ Members of the agriculture in the classroom council may not receive any
31 compensation for their services on the council, but are entitled to be reimbursed for

1 their expenses incurred in performing their duties in the amounts provided by law for
2 state employees.

3 **NOTE:** The subsections in the draft might be rearranged in more logical order but are
4 presented here in the order they fall in current law.