CHAPTER 36-05
LIVESTOCK AUCTION MARKETS

36-05-01. Definitions.

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

1. "Commissioner" means the agriculture commissioner.
2. "Livestock" means horses, mules, asses, bison, cattle, swine, sheep, farmed elk, and goats.
3. "Livestock auction market" means a place or establishment conducted or operated for compensation or profit as a public market or a private buying station, consisting of pens or other enclosures and their appurtenances, in which livestock is received, held, or kept for sale and where such livestock is sold or offered for sale, at either public auction or private sale.

36-05-02. Premises excluded from application of chapter.

The provisions of this chapter do not apply to:

1. Any place used solely for the dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing the person's business.
2. The premises of any butcher, packer, or processor who receives animals exclusively for immediate slaughter.
3. Any place where any individual or any duly constituted association of breeders of livestock of any class assembles and offers for sale and sells under the individual's or association's management registered livestock or breeding sires owned by the individual or members of the association if such individual or association assumes all responsibility of the sale, guarantees title of such livestock, and makes proper provision for the inspection of all animals sold.
4. Any place where a duly constituted association of breeders of livestock of any class assembles and offers for sale and sells under its management, at an annual production sale, which sale may not exceed twenty-one calendar days, livestock raised or held for at least one year by producers affiliated with such association, provided such association assumes all responsibility of the sale, guarantees title of such livestock, and makes proper provision for the inspection of all animals sold.

36-05-03. License requirements - Application - Fee - Commission schedule - Facilities.

No person may establish or operate a livestock auction market within this state without first procuring a license to do so from the commissioner. The commissioner may not approve any application without written permission from the state veterinarian. An applicant for such license shall do all of the following:

1. Make a written application therefor in the form prescribed by the commissioner.
2. File such evidence as the state board of animal health or the commissioner may require showing that the person is financially responsible to operate such an auction market and that the person will own or control adequate facilities for the care, sorting, feeding, loading and unloading, and shipment of livestock.
3. Pay to the commissioner a license fee of two hundred dollars.
4. File with the commissioner a schedule of the fees and commissions which will be charged to owners, sellers, or their agents. The schedule must be posted conspicuously at the auction market. This schedule may not be altered except upon notification to the commissioner and reposting of the changed schedule.
5. State the place where the applicant proposes to operate a livestock auction market.
6. Make a complete and detailed description of the property and facilities proposed to be used in connection with such livestock auction market.
7. Make a showing of public convenience and necessity to the satisfaction of the commissioner.

36-05-04. Bond to accompany application for license - Amount - Approval - Conditions - Exemptions.

Each applicant for a license to operate a livestock auction market shall file with the application for license, or for a renewal thereof, a surety bond in the minimum amount of ten thousand dollars. The bond must be approved as to the amount, form, and surety by the commissioner. The commissioner must be named the obligee in the bond, and the bond must be for the benefit of, and for the purpose of protecting, any person selling to or through or buying livestock through or from the licensee or the licensee's agent. The commissioner may demand an additional bond of the licensee whenever in the commissioner's judgment the volume of the business of the licensee warrants such demand. The bond must be conditioned for:

1. The payment of all money received by the licensee and operator of such livestock auction market as such operator, less reasonable expenses and agreed commissions;
2. The faithful performance by the licensee of the duties as such; and
3. The faithful performance by the licensee of all of the provisions of this code relating to the purchase, sale, or holding of livestock.

The bond must cover the entire license period. Provided, however, where the commissioner is the trustee or obligee of a surety bond wherein the auction market operator is the principal and is operating and is bonded under the Packers and Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.], the commissioner may accept such bond in lieu of the one herein otherwise required, except that the minimum bond requirements of ten thousand dollars will be continued.

36-05-04.1. Records release required with application for licensure.

A livestock auction market shall file, together with the license application, a release authorizing the access of the commissioner to financial records of the livestock auction market held by financial institutions, accountants, and other sources. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing a livestock auction market or in the course of an investigation of a livestock auction market. Any information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to the attorney general, other state agencies, and any prosecuting officials requiring the information for use in pursuit of official duties.

36-05-05. Expiration and renewal of license - Fee returned upon failure to issue or renew license.

Each license issued under this chapter expires on the thirty-first day of March next following the date of issuance. Each license must be renewed annually on or before March thirty-first. The fee for a renewal license is the same as that prescribed for an original license. If the commissioner does not issue a requested original license or renewal license, the fee paid must be refunded to the applicant. Licenses issued in 1991 extend until March 1992.

36-05-06. Investigation of auction market - Hearing to determine whether license should be issued or revoked.

1. The commissioner upon the commissioner's own motion or upon a complaint by any person may enter into an investigation of the sales and transactions of any livestock auction market and of the conditions under which its business is conducted. The commissioner when the commissioner deems it necessary may conduct a hearing to determine whether the license of any auction market should be revoked or whether the application of the owner or operator of a livestock auction market for an original or renewal license should be denied.
2. The commissioner shall conduct an investigation of an alleged violation of this chapter when:

a. A complaint, allegation, or order to show cause, alleging an act which would constitute a violation of this chapter, is issued by or sought by the packers and stockyards administration of the United States;
b. The commissioner has information sufficient to form a reasonable belief that a violation of this chapter has occurred; or
c. The commissioner has received a sworn statement, affidavit, or other evidence from any person alleging a violation of this chapter.

3. The commissioner shall conduct a hearing to determine whether a violation has occurred when, pursuant to an investigation, probable cause exists that a violation of this chapter has occurred.
4. The commissioner shall conduct an audit, or cause an audit to be conducted, when probable cause exists that any livestock auction market has violated any of the financial provisions of this chapter, when it reasonably appears that the liabilities of the livestock auction market exceed its assets, or when the auction market has refused to pay a proper claim without reasonable cause.

36-05-06.1. Cease and desist authority.

The commissioner may issue an order to cease and desist when, in the opinion of the commissioner, or any auction market within the state is taking or planning any action which is or may be in violation of this chapter. If an order is granted, the commissioner shall conduct a hearing within thirty days of the issuance of the order to determine whether the actions of the person named in the order violated or would have violated this chapter. The commissioner shall, after the hearing but not later than forty-five days after the issuance of the order, revoke the order or make it permanent, as the facts require.

36-05-06.2. Injunctive authority.

The commissioner may, when in the commissioner's belief any auction market or person is violating this chapter or is pursuing a course of action which may lead to a violation of this chapter, seek an order from the district court of Burleigh County to enjoin the prohibited act.

36-05-07. Sanitary regulations of livestock auction market.

Every livestock auction market must be maintained in a sanitary condition. Any portion thereof used for the handling of hogs, including all hogpens, alleys, and auction markets, must be equipped with concrete floors at least three inches [7.62 centimeters] thick. Such floors must be cleaned and disinfected after each sale, or in case of a continuous sale, not less than once each week or as often as may be prescribed by the state board of animal health.

36-05-08. Scales maintained by auction market to be inspected.

All scales used in the operation of a livestock auction market must be tested and inspected by the department of weights and measures in the manner provided in this code. All livestock sold by weight must be weighed on such scales, and the purchaser and seller of such livestock must be furnished with a true and correct statement of such weight.

36-05-09. Records to be kept by operator of auction market - Contents - Examination - Report.

The operator of each livestock auction market shall keep on file an accurate record of all of the following:

1. The date on which each consignment of animals was received and sold.
2. The name and address of the buyer and seller of such animals.
3. The number and species of the animals received and sold.
4. The marks and brands on each such animal.

This record, together with the gross selling price, commission, and other proper care, handling, and sales charges on each consignment of livestock must be available for inspection by the commissioner, or authorized inspectors, and a copy thereof must be supplied to the owner of

such livestock. All records of sales during the preceding twelve months must be kept readily accessible for immediate examination.

36-05-09.1. Notice - Nonsufficient funds checks.

A livestock auction market that receives a check for the sale of livestock which is returned unpaid with a notation that the payment has been refused because of nonsufficient funds shall notify the commissioner within forty-eight hours after receipt of the check.

36-05-10. Inspection of livestock - Fees and rules governing.

When an animal enters a livestock auction market and before it is offered for sale, it must be inspected for health by a veterinarian licensed in this state and approved by the state board of animal health and in the case of cattle for brands by a trained brand inspector, acting under rules adopted by the North Dakota stockmen's association and the state board of animal health. Veterinary inspection must include all livestock, whether it is to be moved interstate or intrastate. The veterinary inspector must be recommended by the livestock auction agency and approved by the state board of animal health. Such veterinarian must be a local veterinarian or a veterinarian of the vicinity, unless there is no such veterinarian available. If the livestock agency fails to recommend such a veterinarian within a reasonable time, the board may in ten days' notice to such agency appoint a veterinarian. The services and duties of the veterinary inspector are under the supervision of the state board of animal health and the inspector must be relieved of office when the inspector fails to perform those services and duties. This section does not apply to veterinarians who were approved by an authorized state agency before July 1, 1969. Fees for the inspection must be paid to the veterinarian by the auction market company and must be in an amount agreed upon by the auction market company and the veterinarian.

36-05-10.1. Livestock unfit for sale.

Livestock may not be offered for sale or sold at any licensed public livestock auction market if the livestock has a condition including the following:

1. Is infected with a disease that permanently renders the livestock unfit for human consumption;
2. Has severe neoplasia;
3. Has severe actinomycosis;
4. Is unable to rise to its feet by itself; or
5. Has an obviously fractured long bone or other fractures or dislocation of a joint that renders the livestock unable to bear weight on the affected limb without the limb collapsing.

If, in the judgment of a veterinarian licensed in this state and approved by the state board of animal health, the livestock consigned and delivered on the premises of a livestock auction market is in any of the conditions described above, the veterinarian shall humanely euthanize the livestock or direct the consignor to immediately remove the livestock from the premises of the livestock auction market. All expenses incurred for euthanasia and disposal of the livestock under the provisions of this section are the responsibility of the consignor. Collection of expenses is not the responsibility of the consignee.

36-05-11. Treatment administered to livestock before removal from auction market - Fees for inspection and treatment.

No operator of a livestock auction market may permit the removal of any livestock from the establishment until such livestock has been treated in accordance with the rules adopted by the state board of animal health. If livestock is destined to be shipped interstate, the authorized veterinarian of such board shall furnish to each purchaser a certificate showing that inspection has been made and treatment administered in accordance with the requirements of the state of destination. All fees for veterinary inspection, treatment, and services, including brand inspection, must be collected by the operator of the livestock auction market and paid to the inspector.

36-05-11.1. Grievance committee.

Any livestock auction market having a complaint against the veterinarian assigned to the livestock auction market, or any veterinarian having a complaint against the auction market to which the veterinarian is assigned, may submit a written complaint to the grievance committee. The grievance committee consists of the president of the North Dakota stockmen's association or the president's designee, the president of the livestock auction market association or the president's designee, and the president of the North Dakota veterinary medical association or the president's designee. The members of the committee shall choose one member to serve as chairman. The committee shall meet at the call of the chairman. The committee shall take all complaints under consideration and report its recommendation to the state board of animal health within thirty days after receipt of the complaint.

36-05-12. Operator to warrant title to purchaser - Dispute in title of animal sold.

The operator of each livestock auction market shall warrant to the purchaser the title of all livestock bought by the purchaser through the auction market and is liable to the rightful owner of any livestock sold through the auction market for the net proceeds in cash received for the livestock. If the operator of an auction market is notified by an authorized brand inspector that there is a question as to whether or not any designated livestock sold through the auction market is lawfully owned by the consignor of the livestock, the operator shall hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed sixty days, to permit the consignor to establish ownership. At the expiration of such time, if the consignor fails to establish lawful ownership of the livestock to the satisfaction of the brand inspector, the proceeds must be remitted to the state treasurer for deposit in the North Dakota stockmen's association fund in accordance with chapter 36-22.

36-05-13. Use of fees - Grounds for refusal or revocation of license - Procedure on default of licensee.

All fees collected by the commissioner under this chapter must be credited to the general fund of the state treasury. A license to operate a livestock auction market may be refused or revoked for any of the reasons specified in section 36-04-10 or subsection 2 of section 36-04-04. When the holder of a license issued under this chapter defaults in any of the conditions of any bond filed with the commissioner by the licensee, the commissioner will become trustee of the bond and sections 36-04-12 through 36-04-19 govern the procedure to be followed.

36-05-13.1. Review by the court.

The action of the commissioner in denying an application for a license or in revoking or suspending a license may be appealed to the district court of Burleigh County by procedure applicable to appeals taken in the manner provided in chapter 28-32, except that the commissioner's order revoking or suspending the license may be stayed by the court appealed to upon filing with the clerk of said court a bond approved by and in the amount set by the judge of said district court for the faithful observance of the laws of the state relative to the operation of the business licensed during the pendency of the appeal.

36-05-13.2. Unlawful acts.

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

1. Make or cause to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
2. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any or all of such records relating to the dealer's business;
3. Fail or refuse to furnish the information required under this chapter as prescribed by the department;

4. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-05-09.1;
5. Fail to pay brand inspection fees or veterinarian fees as required by law;
6. Fail to collect beef promotion assessments pursuant to chapter 4.1-03; or
7. Fail to pay for livestock purchased. Such failure includes the issuance of a check or payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

36-05-14. Penalties - Criminal - Civil.

1. Any auction market or person who violates any of the provisions of this chapter is guilty of a class A misdemeanor.
2. Any auction market or person who violates any of the provisions of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing under chapter 28-32.

36-05-15. Public livestock markets or commission firms - Duplicate scale tickets.

All public livestock markets or commission firms doing business in this state shall deliver to each person consigning livestock to such market or purchasing livestock from such market a duplicate scale ticket showing the weight of such livestock.