

# AGRICULTURE

## CHAPTER 65

### HOUSE BILL NO. 1247

(Representatives Schmidt, Belter, Damschen, Headland, D. Johnson)  
(Senators Dotzenrod, Wanzek)

AN ACT to create and enact a new section to chapter 4-01 of the North Dakota Century Code, relating to a database of agricultural wetland credits.

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

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

#### **Agricultural wetland credits - Database.**

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

Approved April 15, 2013  
Filed April 16, 2013

## CHAPTER 66

### SENATE BILL NO. 2146

(Senators Krebsbach, Grindberg, Hogue, O'Connell)  
(Representatives Belter, Kempenich)

AN ACT to create and enact a new section to chapter 4-01 of the North Dakota Century Code, relating to the grape and wine advisory committee; and to provide an appropriation.

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

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

##### **Grape and wine advisory committee - Membership.**

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

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

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$80,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of awarding grape and wine industry grants, for the biennium beginning July 1, 2013, and ending June 30, 2015. Grants awarded under this section must be used to provide research in support of or to promote the grape and wine industry in this state. The commissioner shall consult with the grape and wine advisory committee before selecting the grant recipients.

Approved April 17, 2013  
Filed April 17, 2013

## CHAPTER 67

### SENATE BILL NO. 2352

(Senators Krebsbach, Lyson, O'Connell)  
(Representatives Klein, Onstad, Sukut)

AN ACT to authorize the conveyance of real property owned by the state of North Dakota.

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

##### SECTION 1. TRANSFER OF LAND AUTHORIZED.

1. The state of North Dakota may sell, trade, or otherwise convey certain real property used for the purposes of the north central research extension center and the Williston research extension center in Ward County and Williams County if determined appropriate by the state board of agricultural research and education and the vice president for agricultural affairs at North Dakota state university and approved by the budget section of the legislative management. If any of the real property authorized to be conveyed under this Act is conveyed, the terms of the conveyance must be determined jointly by the state board of agricultural research and education, the vice president of agricultural affairs at North Dakota state university, and the director of the research extension center that is the subject of the conveyance. However, no conveyance may be completed unless the terms of the conveyance or other provisions allow for an appropriate relocation of the research extension centers and the replacement of the structures and personal property of the centers in a manner that is substantially equivalent to the research center property conveyed. Any funds received as a result of a conveyance under this Act which exceed the amount necessary to relocate an extension center must be deposited in a special fund that may be used by the state board of agricultural research and education solely for agricultural research purposes at the research extension center that is the subject of the conveyance. Sections 54-01-05.2 and 54-01-05.5 do not apply to a conveyance authorized by this Act.
2. The land authorized to be conveyed in Ward County is generally described as follows:
  - The south  $\frac{1}{2}$  and the northwest  $\frac{1}{4}$  of section 10 of township 154 north, range 83 west.
  - The north  $\frac{1}{2}$  and the southwest  $\frac{1}{4}$  of section 11 of township 154 north, range 83 west.
  - The northwest  $\frac{1}{4}$  of section 12 of township 154 north, range 83 west.
  - The northeast  $\frac{1}{4}$  of section 15 of township 154 north, range 83 west.

3. The land authorized to be conveyed in Williams County is generally described as follows:

The northeast  $\frac{1}{4}$  of section 36 of township 154 north, range 102 west.

Section 25 of township 154 north, range 102 west.

Approved April 19, 2013  
Filed April 19, 2013

## CHAPTER 68

### SENATE BILL NO. 2072

(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to create and enact a new subsection to section 4-30-01 and two new sections to chapter 4-30 of the North Dakota Century Code, relating to shared animal ownership agreements; to amend and reenact subsection 21 of section 4-30-01 and sections 4-30-36.2, 4-30-36.3, and 4-30-36.4 of the North Dakota Century Code, relating to dairy products regulations; and to provide for a legislative management study.

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

<sup>22</sup> **SECTION 1. AMENDMENT.** Subsection 21 of section 4-30-01 of the North Dakota Century Code is amended and reenacted as follows:

21. "Pasteurized Milk Ordinance" means the ~~2009~~2011 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.

<sup>23</sup> **SECTION 2.** A new subsection to section 4-30-01 of the North Dakota Century Code is created and enacted as follows:

"Shared animal ownership agreement" means any contractual arrangement under which an individual:

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

**SECTION 3. AMENDMENT.** Section 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines.**

The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the

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<sup>22</sup> Section 4-30-01 was also amended by section 2 of Senate Bill No. 2072, chapter 68.

<sup>23</sup> Section 4-30-01 was also amended by section 1 of Senate Bill No. 2072, chapter 68.

public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - ~~2009~~2011 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines in the Standard Methods.

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

**4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines.**

The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the Standard Methods and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~2009~~2011 Edition".

**SECTION 5. AMENDMENT.** Section 4-30-36.4 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-36.4. Grade A pasteurized milk ordinance.**

Dairy producers, processors, and manufacturers shall comply with the Pasteurized Milk Ordinance and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ~~2009~~2011 Revision".

**SECTION 6.** A new section to chapter 4-30 of the North Dakota Century Code is created and enacted as follows:

**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 7.** A new section to chapter 4-30 of the North Dakota Century Code is created and enacted as follows:

**Commissioner - Rulemaking authority - Limitation.**

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

**SECTION 8. LEGISLATIVE MANAGEMENT STUDY - RAW MILK.** During the 2013-14 interim, the legislative management shall consider studying the availability of raw or unpasteurized milk, for human consumption, in this state. The study should examine the nature and extent of governmental oversight with respect to the safety of the milk; the health of the animals used to produce the milk; and the conditions under which the product is produced, transferred, or obtained. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

Approved April 29, 2013  
Filed April 29, 2013

## CHAPTER 69

### SENATE BILL NO. 2070

(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact subsection 10 of section 4-33-01 of the North Dakota Century Code, relating to the control of plant pests.

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

**SECTION 1. AMENDMENT.** Subsection 10 of section 4-33-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Plant" means ~~agronomic field crops, horticultural crops, and native and tame grasses used for livestock production~~any part of a plant, tree, aquatic plant, plant product, plant material, shrub, vine, fruit, rhizome, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting, scion, bud, graft, fruit pit, or agricultural commodity.

Approved March 19, 2013  
Filed March 19, 2013

## CHAPTER 70

### HOUSE BILL NO. 1054

(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact section 4.1-14-01 of the North Dakota Century Code, relating to forage certification; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 4.1-14-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-14-01. Certification of forage - Compliance with other standards.**

1. To obtain certification that weeds prohibited according to the standards of the North American weed invasive species management association are not cut when producing viable seeds and included in baled forage, the owner of the forage shall request that the agriculture commissioner conduct a certification inspection.
2. Upon receiving the request, the agriculture commissioner shall:
  - a. Inspect the forage acreage within ten days before harvest to verify that weeds prohibited according to the standards of the North American weed invasive species management association are not present and producing viable seeds; and
  - b. (1) Ascertain that the scheduled harvest has occurred;  
(2) Determine the number of bales for which certification tags or department-approved twine, or both, must be issued; and  
(3) Verify that the baled forage is stored or will be stored only in an area where weeds prohibited according to the standards of the North American weed invasive species management association are not present and producing viable seeds.
3. If the agriculture commissioner determines that the conditions of subsection 2 have been met, the commissioner shall issue and affix or cause to be affixed on each bale of forage one dated certification tag or shall authorize the use of department-approved twine to bale the forage.

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

Approved April 15, 2013  
Filed April 16, 2013

## CHAPTER 71

### SENATE BILL NO. 2026

(Legislative Management)  
(Agriculture Committee)

AN ACT to create and enact chapters 4.1-52, 4.1-55, and 4.1-56 and section 4.1-57-18.1 of the North Dakota Century Code, relating to the North Dakota seed department, seed potatoes, and seed potato control areas; to repeal chapters 4-10 and 4-26 and sections 4.1-53-02, 4.1-53-03, 4.1-53-04, 4.1-53-05, 4.1-53-06, 4.1-53-07, 4.1-53-08, 4.1-53-09, 4.1-53-10, 4.1-53-11, 4.1-53-62, 4.1-57-20, and 4.1-57-21 of the North Dakota Century Code, relating to seed potatoes, seed potato control areas, and general provisions regarding the North Dakota seed department; to provide a penalty; and to provide a continuing appropriation.

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

**SECTION 1.** Chapter 4.1-52 of the North Dakota Century Code is created and enacted as follows:

##### **4.1-52-01. Seed department - Location.**

The North Dakota seed department is the official seed-certifying agency of the state. The seed department must be located on the campus of North Dakota state university.

##### **4.1-52-02. Seed department - Official seal.**

The seed department shall use an official departmental seal that has been recorded in the office of the secretary of state.

##### **4.1-52-03. Seed commission membership.**

The seed commission is the governing board of the seed department. The seed commission consists of the following members:

1. An individual appointed by the North Dakota crop improvement association;
2. An individual appointed by the North Dakota certified seed potato growers association;
3. An individual appointed by the North Dakota dry edible bean seed growers association;
4. An individual appointed by the North Dakota agricultural association;
5. An individual appointed by the North Dakota potato council;
6. A resident of this state appointed by the northern plains potato growers association;

7. An individual who operates a seed-conditioning plant approved by the seed department, appointed by the North Dakota grain dealers association;
8. The director of the agricultural experiment station or the director's designee; and
9. The agriculture commissioner or the agriculture commissioner's designee.

#### **4.1-52-04. Seed commission - Chairman - Meetings.**

1. The agriculture commissioner shall serve as the chairman of the seed commission.
2. The chairman shall call all regular meetings of the seed commission and shall call a special meeting within seven days if petitioned to do so by two members of the seed commission.
3. The seed commission shall hold at least two regular meetings each year.

#### **4.1-52-05. Seed commission - Appointment of proxy.**

If a member of the seed commission is unable to attend a meeting of the commission, the member may appoint a proxy. The appointment must be in writing and must be presented to the chairman. The vote of the proxy is final.

#### **4.1-52-06. Seed commission - Members - Compensation.**

Each member of the seed commission, except the agriculture commissioner and the director of the agricultural experiment station, is entitled to receive compensation at the rate of one hundred thirty-five dollars per day and reimbursement for expenses, as provided by law for state officers, if the member is attending a commission meeting or performing duties directed by the commission.

#### **4.1-52-07. Seed commission - Powers.**

The seed commission may:

1. Establish branch offices and laboratories at locations in this state, other than the campus of North Dakota state university, if the seed commissioner determines that the offices and laboratories are necessary to carry out the duties of the seed commission, the seed commissioner, or the seed department;
2. Dismiss the seed commissioner for cause;
3. Appoint an acting seed commissioner if the position becomes vacant; and
4. Engage in efforts to promote and market certified seed produced in this state.

#### **4.1-52-08. Seed commission - Duties.**

The seed commission shall:

1. Appoint a seed commissioner;
2. Compensate the seed commissioner; and

3. Review the appointment of a seed commissioner, annually.

#### **4.1-52-09. Seed commissioner - Powers.**

The seed commissioner may:

1. Contract with North Dakota state university for the use of facilities and equipment;
2. Contract with any person for any lawful purpose;
3. Enter upon real property and access any structure and personal property, at any time, to:
  - a. Inspect, sample, and test seeds, potatoes, including seed potatoes, and other commodities for purposes of determining statutory and regulatory compliance; and
  - b. Inspect records for purposes of determining statutory and regulatory compliance;
4. Collect royalty, research, and patent fees; and
5. Issue phytosanitary certificates if authorized to do so by the United States department of agriculture animal and plant health inspection service or the agriculture commissioner.

#### **4.1-52-10. Seed commissioner - Duties.**

The seed commissioner shall:

1. Manage the seed department;
2. Provide, equip, and maintain offices, laboratories, and any other facilities necessary to carry out this chapter, subject to the approval of the seed commission;
3. Employ and compensate necessary personnel;
4. Permit North Dakota state university to use the seed department facilities and the services of the seed department laboratories at convenient times;
5.
  - a. Determine the nature and size of any seed and plant samples required by the seed department in order to conduct official tests or make official determinations; and
  - b. Prescribe the manner in which the seed and plant samples are to be obtained and delivered to the seed department;
6. Provide commodity inspection services upon request;
7. Establish and charge fees for services, subject to the approval of the seed commission;
8. Provide periodic reports to the seed commission regarding the management and operation of the seed department;

9. Recommend to the seed commission the annual budget and annual salary schedules for the seed department;
10. Do all things necessary to enforce the chapters over which the commissioner has authority and the rules implementing those chapters; and
11. Perform any other duties as directed by the seed commission.

#### **4.1-52-11. Seed department fund - Continuing appropriation.**

1. The seed commissioner shall forward all moneys received under the chapters over which the commissioner has authority to the state treasurer for deposit in a special fund known as the seed department fund. All moneys in the seed department fund are appropriated on a continuing basis to the seed department to carry out its statutory and regulatory obligations.
2. The seed commissioner shall approve all expenditures made pursuant to the chapters over which the commissioner has authority and shall document the expenditures at the time and in the manner required by the office of management and budget.
3. The seed commissioner shall provide a report to the house and senate appropriations committees of the legislative assembly, at the time and in the manner directed by the chairmen of the committees. The report must contain a summary of the department's activities during the current biennium and a statement of revenues and expenditures for the ensuing biennium.
4. At the direction of the seed commission, the state treasurer shall invest all available moneys in the seed department fund. The state treasurer shall credit twenty percent of the investment income to the general fund and the remaining eighty percent of the investment income to the seed department fund.

**SECTION 2.** Chapter 4.1-55 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-55-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Certification" means a process that includes the random inspection of potato plants growing in the field, the random inspection of seed potatoes after they have been harvested, and a determination that the seed potatoes are within acceptable disease tolerance levels.
2. "Certified" means a designation, the use of which is authorized by the seed commissioner, to indicate that the seed potatoes have met the requirements for certification.
3. "Closed container" means a container that is sewn, tied, sealed, glued, nailed, or otherwise secured for handling.
4. "Inspection" means the examination of a random sample of potato plants or potato tubers in accordance with rules of the seed department or requirements of the United States department of agriculture.

5. "Label" means a tag or device attached to a container, stamped or printed information on a container, or documentation accompanying a container, which sets forth the information required by law.
6. "Potato" means an Irish potato.
7. "Selection" means a subgroup of a potato variety and includes clones, lines, strains, and sports.
8. "Variety" means a subdivision of a kind that:
  - a. Can be differentiated by one or more identifiable morphological, physiological, or other characteristics from other varieties of the same kind;
  - b. Has describable variations in essential and distinct characteristics; and
  - c. Will remain unchanged in its essential and distinct characteristics and uniformity when reproduced or reconstituted, as required by the different categories of varieties.

#### **4.1-55-02. Seed commissioner - Duties.**

The seed commissioner shall:

1. Establish a system for the certification of seed potatoes; and
2. Provide for grade inspections of commercial potatoes in accordance with standards established by the United States department of agriculture or by contract.

#### **4.1-55-03. Seed potato grades.**

1. Seed potatoes may be graded:
  - a. (1) U.S. No. 1 seed potatoes;  
(2) U.S. No. 2 seed potatoes; or  
(3) North Dakota Certified Seed; or
  - b. As otherwise designated by the seed commissioner.
2. The U.S. grades must meet all of the requirements and standards established by the United States department of agriculture provided, however, that the seed commissioner may authorize an exception based on size.

#### **4.1-55-04. Label requirements.**

1. a. Except as otherwise provided in this subsection, every container of seed potatoes must be labeled if the potatoes:
  - (1) Were grown in this state;
  - (2) Are transported or shipped into this state; or

(3) Are offered for sale or consignment in this state.

b. Subdivision a does not apply to potatoes that are not intended for planting purposes.

2. The label must:

a. Be plainly printed in English;

b. Indicate the net weight when packed;

c. Indicate the correct grade or designation; and

d. Meet any other criteria established by the seed commissioner.

**4.1-55-05. Seed potatoes - Certification - Exception.**

1. a. A person may not plant seed potatoes unless the seed potatoes:

(1) Have been certified by the seed commissioner as meeting the standards of this state;

(2) Have been certified by another state or province having seed potato standards that are determined by the seed commissioner to meet or exceed the standards of this state; or

(3) At the request of the producer, were field inspected and approved for planting by the seed commissioner.

b. Subdivision a does not apply to a person who:

(1) Plants less than one acre [.405 hectare] of seed potatoes; or

(2) Is within twelve months of having that person's own certified parent seed potatoes.

2. The seed commissioner shall permit a North Dakota producer to sell or otherwise transfer certified seed potatoes to another North Dakota producer. The recipient producer may plant the seed potatoes only for commercial production. The seed potatoes may not be recertified or retained for use in the following production cycle.

3. If the seed commissioner determines that seed potatoes meeting the requirements of this section are not available in sufficient quantities to fulfill planting needs, the seed commissioner may permit the planting of seed potatoes with a higher disease content, provided that bacterial ring rot is not present and that no other serious disease threat is posed.

4. For purposes of this section, a "North Dakota producer" means a person that grows potatoes on property located within this state.

**4.1-55-06. Records.**

Any producer that plants more than one acre [.405 hectare] of seed potatoes shall maintain records indicating the acreage [hectarage], varieties, and source of all seed potatoes planted. The producer shall retain the records for a period of two years from

the completion of planting and make the records available to the seed commissioner upon request.

**4.1-55-07. Imported seed potatoes - Certification requirement.**

All seed potatoes brought into this state must be accompanied by:

1. A grade certificate;
2. A health certificate indicating that the seed potatoes were field inspected by an official certifying agency and meet standards that are determined by the seed commissioner to be similar to those established by this chapter; and
3. Any other documentation required by the jurisdiction of origin for seed potatoes entering that jurisdiction.

**4.1-55-08. Exported seed potatoes - Certification requirement.**

All seed potatoes leaving this state must be accompanied by:

1. A grade certificate; and
2. If required by the receiving jurisdiction, a health certificate.

**4.1-55-09. Official inspection locations - Designation.**

1. The seed commissioner shall designate the locations at which potato shipment inspections are conducted. In determining the locations, the seed commissioner shall consider the volume of shipments requiring inspection and the expense of maintaining the locations.
2. Upon request, the seed commissioner may provide inspection services at locations other than those designated in subsection 1. The seed commissioner may charge a fee for conducting any inspections requested under this subsection.

**4.1-55-10. Potatoes shipped into state - Labeling requirement - Exception.**

If seed potatoes are shipped into this state, the person receiving the potatoes shall ensure that the potatoes are labeled:

1. In the same manner as required for potatoes grown in this state; or
2. In accordance with the requirements of the state, territory, or country of origin, if permitted by the seed commissioner.

**4.1-55-11. Grade inspection certificate - Prima facie evidence.**

A grade inspection certificate issued by the seed commissioner is prima facie evidence that the seed potatoes described in the certificate were of the grade, quality, and condition indicated on the certificate at the time of inspection.

**4.1-55-12. Liability - Potato crop quantity and quality.**

A warranty of any kind, either expressed or implied, including a warranty of merchantability, fitness for a particular purpose, absence of disease, varietal identity,

or selection identity, is not made by the seed commission, the seed department, the seed commissioner, or any certified seed potato producer, as to the quantity or quality of the crop produced from the seed potatoes that were inspected and certified. The sole warranty is that the potatoes were inspected under the rules of the seed department or the United States department of agriculture. The seed commissioner functions and serves only in an official regulatory manner.

#### **4.1-55-13. Plant and seed records - Exempt.**

The following records of the seed commission are exempt from section 44-04-18:

1. Records of any plant or seed inspection, analysis, or testing and germination, purity, variety, or disease determinations conducted by the seed department on a fee-for-service basis for nonpublic entities or persons; and
2. Information received by the seed commissioner under this chapter from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret.

#### **4.1-55-14. Prohibitions.**

1. A person may not offer for sale, sell, transport, or ship any seed potatoes that:
  - a. Are not labeled in accordance with this chapter; or
  - b. Are labeled with information the person knows is false or misleading.
2. A person that sells seed may not alter the label or a grade inspection certificate issued by the seed commissioner.

#### **4.1-55-15. Seizure of seed potatoes - Liability.**

1. The seed commissioner may seize any seed potatoes, if the seed commissioner believes that the seed potatoes are mislabeled.
2. The seed commissioner may hold any seed potatoes seized under this section until they are:
  - a. Graded or reconditioned to meet the claims on their label; or
  - b. Properly relabeled.
3. The seed commissioner is not liable for any loss or damage, or any other costs due to seizure when acting in accordance with this chapter and any applicable rules.
4. A person aggrieved by a seizure under this section may request a hearing pursuant to chapter 28-32.

#### **4.1-55-16. Enforcement - Hearing.**

1. If the seed commissioner believes that a violation of this chapter or the rules implementing this chapter may have occurred, the seed commissioner may hold a hearing.

2. If based on the testimony and evidence presented at the hearing the seed commissioner determines that a violation has occurred or if the person involved fails to appear, the seed commissioner may impose the civil penalty provided for in this chapter or consult with the attorney general regarding the institution of further legal proceedings.

#### **4.1-55-17. Penalties.**

1. Any person willfully violating this chapter is guilty of a class A misdemeanor.
2. Any person willfully violating this chapter is subject to a civil penalty in an amount not exceeding five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the seed commissioner.

**SECTION 3.** Chapter 4.1-56 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-56-01. Definition.**

As used in this chapter, unless the context otherwise requires, "potato" means an Irish potato.

#### **4.1-56-02. Seed potato control area - Proposal - Notice of meeting.**

1. In order to form a seed potato control area, five individuals who own land within the proposed area shall schedule and provide notice of a meeting that is open to all landowners and occupants in the proposed area.
  - a. The notice must define the boundaries of the proposed seed potato control area.
  - b. The notice must be published at least twice, for two successive weeks, in the official newspaper of each county containing land in the proposed seed potato control area.
2. If consented to by a majority of the landowners and occupants present at the meeting, a petition to form a seed potato control area may be circulated among all landowners in the proposed area.

#### **4.1-56-03. Seed potato control area - Petition for formation.**

The petition to be circulated, as provided in section 4.1-56-02, must:

1. Describe the boundaries of the proposed seed potato control area; and
2. State the quality of seed that may be planted within the proposed seed potato control area.

#### **4.1-56-04. Seed potato control area - Creation.**

1. Once the petition has been signed by at least eighty percent of the persons owning land in the proposed seed control area, the petition may be presented to the seed commissioner for approval.

2. If the seed commissioner determines that the petition meets the requirements of this chapter, the seed commissioner may order the creation of:
  - a. The seed potato control area as described in the petition; or
  - b. A seed potato control area having boundaries that are not as extensive as those set forth in the petition.
3. a. In the order establishing the seed potato control area, the seed commissioner shall prescribe the quality of seed potatoes that may be planted within the control area. The quality prescribed may differ from that set forth in the petition.
  - b. After the establishment of a seed potato control area, the seed commissioner may issue an order changing the quality of seed potatoes that may be planted within the control area.

#### **4.1-56-05. Seed potato control area - Governance committee.**

1. Each seed potato control area must be governed by a committee consisting of three individuals who are appointed by the seed commissioner from a list of landowners or occupants within the control area.
2. The terms of office for members of the governance committee and its rules of operation must be provided for in the seed potato control area's bylaws and agreed to by at least eighty percent of the landowners or occupants within the control area.
3. If fewer than three qualified individuals are willing or able to serve as members of the governance committee, the governance committee shall consist of the lesser number. If, however, no qualified individual is willing or able to serve on the governance committee, the seed commissioner shall dissolve the seed potato control area.

#### **4.1-56-06. Governance committee - Powers.**

The governance committee may:

1. Expend moneys collected pursuant to this chapter;
2. Employ and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services to carry out this chapter; and
4. Do all things necessary and proper to enforce this chapter and any rules adopted to implement this chapter.

#### **4.1-56-07. Governance committee - Duties.**

The governance committee shall:

1. Keep a record of its expenses;
2. Submit the record to the seed commissioner at the time and in the manner required by the seed commissioner; and

3. Provide reports at the time and in the manner required by the seed commissioner.

#### **4.1-56-08. Prohibition.**

A person may not plant or authorize the planting of seed potatoes other than those permitted within the seed potato control area.

#### **4.1-56-09. Assessment.**

1. The governance committee may impose an assessment at a rate determined by the committee, but not exceeding two and one-half cents per hundredweight [45.36 kilograms] on all seed potatoes produced within the control area.
2. Any person producing seed potatoes within the control area shall pay the assessment at the time and in the manner required by the governance committee.

#### **4.1-56-10. Shipment of potatoes - Payment of assessment.**

A person producing seed potatoes in a seed potato control area may not ship or transport the seed potatoes out of the area unless the person pays the assessment provided for in this chapter.

#### **4.1-56-11. Seed commissioner - Orders.**

The seed commissioner may by order:

1. Alter the boundaries of the seed potato control area;
2. Assign additional powers and duties to the governance committee;
3. Prescribe requirements for seed selection, seed treatment, field isolation, cultural practices, disease removal, and insect control;
4. Prescribe requirements for the governance committee with respect to seed potato control efforts;
5. Prescribe or authorize seed quality for use within the control area;
6. Provide for the inspection, testing, and approval of seed to be used within the control area; and
7. Set forth additional requirements or prohibitions with respect to activities within the seed potato control area.

#### **4.1-56-12. Seed potato control area - Dissolution.**

Upon a showing of good cause, or as otherwise authorized by this chapter, the seed commissioner may order the dissolution of a seed potato control area.

#### **4.1-56-13. Penalty.**

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

**SECTION 4.** Section 4.1-57-18.1 of the North Dakota Century Code is created and enacted as follows:

**4.1-57-18.1. Liability - Potato crop quantity and quality.**

A warranty of any kind, either expressed or implied, including a warranty of merchantability, fitness for a particular purpose, absence of disease, varietal identity, or selection identity, is not made by wholesale potato dealers licensed under this chapter, as to the quantity or quality of the crop produced from the seed potatoes that were inspected and certified. The sole warranty is that the potatoes were inspected under the rules of the seed department or the United States department of agriculture.

**SECTION 5. REPEAL.** Chapters 4-10 and 4-26 and sections 4.1-53-02, 4.1-53-03, 4.1-53-04, 4.1-53-05, 4.1-53-06, 4.1-53-07, 4.1-53-08, 4.1-53-09, 4.1-53-10, 4.1-53-11, 4.1-53-62, 4.1-57-20, and 4.1-57-21 of the North Dakota Century Code are repealed.

Approved April 1, 2013  
Filed April 1, 2013

## CHAPTER 72

### HOUSE BILL NO. 1026

(Legislative Management)  
(Agriculture Committee)

AN ACT to create and enact chapters 4.1-72, 4.1-73, 4.1-74, 4.1-75, 4.1-83, and 4.1-88 of the North Dakota Century Code, relating to the North Dakota stockmen's association, livestock branding, estrays, registered livestock, and the licensing of livestock dealers and wool dealers; to repeal chapters 36-04, 36-09, 36-13, and 36-22 of the North Dakota Century Code, relating to livestock branding, estrays, and the licensing of livestock dealers and wool dealers; to provide a penalty; to provide for a legislative management study; and to provide a continuing appropriation.

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

**SECTION 1.** Chapter 4.1-72 of the North Dakota Century Code is created and enacted as follows:

##### **4.1-72-01. North Dakota stockmen's association - Statutory authority.**

1. The North Dakota stockmen's association is a livestock association organized under the laws of this state and registered as a market agency under the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.].
  - a. For the protection of the livestock industry of this state; and
  - b. To secure uniformity of inspection and cooperation with the United States department of agriculture.
2. The association shall inspect all cattle, horses, and mules, which are shipped or consigned to any livestock auction market, buying station, or packing plant, in this state, and all those that are shipped or consigned to a livestock auction market, buying station, or packing plant, located outside this state, if brand inspection services are provided in accordance with section 4.1-73-24, for the purpose of determining or verifying ownership and for any other purpose established by law.

##### **4.1-72-02. Discrimination - Prohibited.**

The North Dakota stockmen's association may not discriminate between members of the association and persons who are not members of the association with respect to fees, recordings, complaints, requests for assistance, or any other duties assigned under this chapter.

##### **4.1-72-03. Office for recording brands - Chief brand inspector - Employment.**

The North Dakota stockmen's association shall:

1. Maintain an office for recording brands; and

2. Employ an individual to serve as the chief brand inspector of this state.

#### **4.1-72-04. Chief brand inspector - Deputy brand inspectors - Licensed peace officers.**

The chief brand inspector and any individual employed by the North Dakota stockmen's association to serve as a deputy brand inspector must be licensed peace officers in accordance with chapter 12-63 or hold a limited peace officer license under section 12-63-09. These individuals may exercise the full authority of their license to enforce the brand laws and any other state laws relating to livestock. The chief brand inspector and the deputy brand inspectors may provide aid and assistance to other law enforcement agencies or officers, upon request, provided the requests are not for continuous or ongoing assistance.

#### **4.1-72-05. Animal identification program - Administration.**

The North Dakota stockmen's association shall serve as the state's administrator and allocator for that portion of any federally sponsored animal identification program which pertains to cattle, horses, and mules.

#### **4.1-72-06. Federally sponsored programs - Administration - Records.**

1. Except as provided in subsection 2, any information created, collected, or maintained by the state veterinarian or the North Dakota stockmen's association with respect to the administration of any federally sponsored program pertaining to livestock as permitted by section 4.1-72-05 is confidential and not subject to the open records requirements of section 44-04-18.
2. Neither the state veterinarian nor the North Dakota stockmen's association may release any information designated as confidential under subsection 1, except:
  - a. Upon the written consent of every person identified or identifiable by the information;
  - b. In accordance with federal law;
  - c. To any state or federal agency for the purpose of animal disease control or animal disease traceback;
  - d. To the attorney general and any other law enforcement agency pursuing a criminal investigation; or
  - e. Pursuant to an order issued by a court upon a showing of good cause.
3. This section does not preclude the exchange of information between the state veterinarian and the North Dakota stockmen's association.
4. Any person violating this section is subject to the remedies set forth in section 44-04-21.2. For purposes of applying section 44-04-21.2, "public entity" includes any person that has contracted with the state for the administration of any federally sponsored program pertaining to livestock.

**4.1-72-07. Collection of fees - Continuing appropriation.**

The North Dakota stockmen's association shall forward all moneys received under this title to the state treasurer for deposit in a special fund known as the North Dakota stockmen's association fund. All moneys in the North Dakota stockmen's association fund, together with all income earned on the moneys in the fund, are appropriated on a continuing basis to the North Dakota stockmen's association to carry out its statutory directives.

**4.1-72-08. Biennial audit.**

At least once every two years the North Dakota stockmen's association shall provide for an audit by a certified public accountant or a licensed public accountant and shall submit an electronic copy of the audit report to the legislative council.

<sup>24</sup> **SECTION 2.** Chapter 4.1-73 of the North Dakota Century Code is created and enacted as follows:

**4.1-73-01. Definition.**

For purposes of this chapter, "brand" means an identifying imprint that is:

1. Placed on livestock by use of a hot branding iron; or
2. Placed on equines by means of either a hot branding iron or a freeze branding technique.

**4.1-73-02. Brand - Application for ownership.**

1. To acquire ownership of a brand, a person shall file an application with the North Dakota stockmen's association.
2. The application must contain a depiction of the proposed brand.
3. The application must include a statement regarding:
  - a. The kind of livestock on which the brand will be placed; and
  - b. The placement or position of the brand on each kind of livestock listed in subdivision a.
4. The chief brand inspector shall review each application to ensure compliance with the requirements of this chapter.

**4.1-73-03. Brands - Requirements for recording.**

1. The chief brand inspector shall approve an application for ownership of a brand, filed in accordance with section 4.1-73-02, and record the brand, unless:
  - a. The chief brand inspector determines that:
    - (1) Official records indicate the brand is owned by another person;

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<sup>24</sup> Section 4.1-73-18 was amended by section 2 of Senate Bill No. 2158, chapter 73.

- (2) The brand is deceptively similar to another recorded brand;
- (3) The brand is recorded in another state;
- (4) The brand may not be legible when placed on livestock; or
- (5) The proposed placement or position of the brand does not meet the requirements of section 4.1-73-05; or

b. The brand:

- (1) Consists of only one letter, number, or symbol, except as provided in subsection 2;
- (2) Contains either the letter "g" or the letter "q";
- (3) Contains a letter not found in the modern English alphabet;
- (4) Contains the numeral "0" or "1";
- (5) Contains a dot;
- (6) Contains a letter, number, or symbol placed within another letter, number, or symbol; or
- (7) Contains a symbol other than:
  - (a) A diamond;
  - (b) An arrow;
  - (c) A mill iron;
  - (d) A cross;
  - (e) A heart;
  - (f) A box;
  - (g) A triangle;
  - (h) A quarter circle;
  - (i) A bar;
  - (j) A star; or
  - (k) A forward or a backward slash.

2. The chief brand inspector may permit the recording of a brand that consists of one letter, number, or symbol, provided the brand meets all other statutory requirements for recording and is to be placed only on goats or sheep.

**4.1-73-04. Brand inspection certificate.**

Upon approving an application, the chief brand inspector shall provide a brand certificate to the owner. The certificate is evidence of the brand's ownership.

**4.1-73-05. Brands - Permissible locations.**

1. In the case of cattle, brands that meet all other statutory requirements for recording may be placed only on:
  - a. A designated shoulder;
  - b. A designated rib; or
  - c. A designated hip.
2. In the case of horses and mules, brands that meet all other statutory requirements for recording may be placed only on:
  - a. A designated shoulder;
  - b. A designated hip; or
  - c. A designated jaw.
3. In the case of bison, brands that meet all other statutory requirements for recording may be placed only on:
  - a. A designated rib; or
  - b. A designated hip.
4. In the case of any other livestock, brands that meet all other statutory requirements for recording may be placed only on those locations designated by the chief brand inspector. For purposes of this subsection, the designation of locations is not subject to rulemaking under chapter 28-32.

**4.1-73-06. Recorded numerical brand - Impermissible placement.**

A person may not place a recorded brand that consists entirely of upright numbers on the hips of cattle.

**4.1-73-07. Numerical brands - Applicability of designated placement provisions.**

The design and placement restrictions set forth in this chapter do not apply to:

1. A numerical brand that was first recorded before July 1, 1957, and which has been continually rerecorded; or
2. An unrecorded numerical brand that is used for purposes such as herd or animal identification or registration.

**4.1-73-08. Chief brand inspector - Determination regarding brand.**

A determination by the chief brand inspector regarding the acceptability of a brand or the permissibility of its location or placement, for purposes of recording, is final.

**4.1-73-09. Cancellation of brand.**

1. The chief brand inspector shall cancel a legally recorded brand if the chief brand inspector:
  - a. Receives for filing a bill of sale for the brand, properly executed by the owner, as shown in the records of the chief brand inspector;
  - b. Determines that the brand duplicates a previously recorded brand; or
  - c. Determines that the brand was obtained through fraud, misrepresentation, or other illegal means.
2. The chief brand inspector may cancel a legally recorded brand if the chief brand inspector determines that the brand has been recorded in another state.

**4.1-73-10. Expiration of brands.**

On January 1, 2016, and every five years thereafter, each livestock brand recorded in this state expires, unless:

1. The brand was issued within the six-month period immediately preceding the date of expiration; or
2. The brand has been rerecorded in accordance with this chapter.

**4.1-73-11. Expiration of brand - Notice to owner.**

1. Before September 1, 2015, and every five years thereafter, the chief brand inspector shall provide to each owner of record:
  - a. Written notice of the brand's expiration date;
  - b. Written notice of the owner's right to rerecord the brand; and
  - c. A written statement indicating that if the brand is allowed to expire, the person will have lost ownership interest in the brand and may no longer use the brand.
2. The chief brand inspector shall send the notice and statement required by this section to the owner:
  - a. Electronically; or
  - b. By first-class mail if requested by the owner.

**4.1-73-12. Expiration of brands - Notice by publication.**

1. The chief brand inspector shall publish in the official newspaper of each county a notice of the date by which livestock brands must be rerecorded in accordance with this chapter.

2. The notice must be published at least once per week for three successive weeks. The first publication must occur between the first and fifteenth day of September, before the expiration of all brands.

#### **4.1-73-13. Brands authorized for rerecording.**

Notwithstanding any other provision of this chapter, the chief brand inspector shall accept for rerecording:

1. Any brand that the owner previously recorded; and
2. A brand that consists of one letter, number, or symbol, provided the brand is to be placed only on goats or sheep.

#### **4.1-73-14. Recording and rerecording brands - Fee.**

Each application for recording or rerecording a brand must be accompanied by a fee in the amount of twenty-five dollars.

#### **4.1-73-15. Reassignment of expired brand.**

- a. Except as provided in subdivision b, for a period of one year from the date of a brand's expiration, the chief brand inspector may not reassign the expired brand to any person other than the registered owner at the time of the brand's expiration.
- b. If the person who owned the brand at the time it expired provides the chief brand inspector with written authorization, the chief brand inspector may reassign the brand to a new owner, at any time during the one-year period.
2. Upon expiration of a brand and the passage of time or the procurement of authorization, as set forth in subsection 1, the chief brand inspector may accept an application to record the brand, provided the brand meets the requirements of this chapter.

#### **4.1-73-16. Use of unrecorded brand - Penalty.**

A person is guilty of a class B misdemeanor if the person places upon an animal a brand that has not been recorded in accordance with this chapter.

#### **4.1-73-17. Defacing brands - Unlawful branding - Penalty.**

A person is guilty of a class A misdemeanor for a first offense and a class C felony for a second or subsequent offense if the person:

1. Alters, defaces, or attempts to alter or deface the brand on any animal owned by another for the purpose of deceiving others as to the animal's ownership; or
2. Willfully brands, or causes to be branded, any animal owned by another for the purpose of deceiving others as to the animal's ownership.

#### **4.1-73-18. Bill of sale - Copy with shipment - Effect - Penalty.**

1. A person may not sell any livestock carrying a recorded brand unless:

- a. The seller is the owner of the recorded brand and delivers a bill of sale for the livestock to the purchaser; or
  - b. The seller delivers to the purchaser a bill of sale executed by the owner of the recorded brand and endorsed by the seller evidencing the later transaction.
2. The bill of sale must include:
- a. The date;
  - b. The name, address, and signature of the seller;
  - c. The name, address, and signature of an individual who is at least eighteen years of age and who can verify the name and signature of the seller;
  - d. The name and address of the buyer;
  - e. The total number of animals sold;
  - f. A description of each animal sold as to sex and color; and
  - g. A depiction of the recorded brand.
3. The buyer shall retain the bill of sale for as long as the buyer owns any animals described in the bill of sale.
4. The seller shall provide a copy of the bill of sale to the individual hauling the livestock. The individual shall ensure that the document remains with the livestock while in transit.
5. The bill of sale or a copy of the bill of sale must be shown by the possessor on demand to any law enforcement officer or brand inspector.
6. The bill of sale is prima facie evidence of the sale of the livestock described in the bill of sale.
7. Subsections 1 through 6 do not apply to the sale of livestock for which a brand inspector has issued a certificate of ownership.
8. Any person willfully violating this section is guilty of a class B misdemeanor for a first offense and a class A misdemeanor for a second or subsequent offense.

**4.1-73-19. Proof of ownership - Alteration or falsification - Penalty.**

A person that knowingly makes, completes, alters, or in any way falsifies any document evidencing proof of livestock ownership, with the intent to deceive or harm another, is guilty of a class B felony.

**4.1-73-20. False proof of ownership - Sale of livestock - Penalty.**

A person willfully providing false proof of ownership in conjunction with the sale of livestock is guilty of a class B misdemeanor for a first offense and a class A misdemeanor for a second or subsequent offense.

**4.1-73-21. Transportation of livestock from state - Brand inspection - Penalty.**

1. A person may not transport or attempt to transport cattle, horses, or mules from this state unless a brand inspector has inspected the livestock and issued a certificate of ownership. The certificate must remain with the livestock while in transit and be presented to the purchaser upon arrival at the destination. This subsection does not apply to a person that:
  - a. Transports cattle, horses, or mules from this state to obtain for the animals emergency medical treatment by a licensed veterinarian; or
  - b. Transports cattle, horses, or mules from this state to a livestock auction market, buying station, or packing plant, that is located in a bordering state and which is provided with brand inspection services in accordance with section 4.1-73-24.
2. A person may not remove cattle, horses, or mules from a livestock auction market, buying station, or packing plant until a brand inspector has inspected the livestock and issued a certificate of ownership.
3. Any person willfully violating this section is guilty of a class A misdemeanor. Any person willfully violating this section a second time within five years or willfully violating this section three or more times is guilty of a class C felony.

**4.1-73-22. Request for reinspection - Cost.**

1. A person may request that a brand inspector conduct a reinspection if the person has reason to believe that:
  - a. An error was made during the brand inspection; and
  - b. Cattle, horses, or mules were shipped to an unintended destination as a result of the error.
2. If it is determined that an error was made during the brand inspection, the North Dakota stockmen's association shall bear the cost of the reinspection. If it is determined that a brand inspection error was not made, the person that requested the reinspection shall reimburse the North Dakota stockmen's association for the cost of the reinspection.

**4.1-73-23. Brand inspection services - Out-of-state facilities.**

1. The state board of animal health may authorize the provision of brand inspection services at a livestock auction market, buying station, or packing plant located outside this state.
2. In order to obtain brand inspection services under this section, an entity shall file a petition with the state board of animal health.
3. Before making a determination on the petition, the state board of animal health shall provide the North Dakota stockmen's association with an opportunity to comment.

4. The state board of animal health shall establish by rule the criteria to be considered in determining whether to authorize the services.

#### **4.1-73-24. Rules - Fees for brand inspection.**

1. The state board of animal health, after seeking advice from the North Dakota stockmen's association, shall adopt rules regarding:
  - a. The provision of brand inspection services at livestock auction markets, packing plants, and buying stations; and
  - b. The provision of brand inspection services at locations other than those listed in subdivision a.
2. The rules must include:
  - a. The fees to be charged for the provision of the brand inspections;
  - b. The collection of fees by the brand inspectors; and
  - c. The time and manner in which the brand inspectors must submit the fees to the North Dakota stockmen's association.

#### **4.1-73-25. Slaughtering of cattle - Records - Penalty.**

1. Any person slaughtering cattle on a custom basis or for the purpose of selling the meat at retail or wholesale shall record:
  - a. The date each animal was purchased or accepted for custom slaughtering;
  - b. The name and address of:
    - (1) The seller; or
    - (2) The person for whom custom slaughtering is being performed;
  - c. The animal's age or estimated age;
  - d. The animal's sex; and
  - e. Any brand found on the animal.
2. Any person required to record information in accordance with this section shall:
  - a. Compile the information in the manner directed by the North Dakota stockmen's association; and
  - b. Forward the information to the North Dakota stockmen's association at least quarterly.
3. Until such time as the information is forwarded to the North Dakota stockmen's association, any person required to record information in accordance with this section shall make the information available for inspection by a representative of the association, upon request.

4. Any information created, collected, or maintained by the North Dakota stockmen's association under this section is confidential and not subject to the open record requirements of section 44-04-18. The information may be released by the association only:
  - a. Upon the written consent of every person identified or identifiable by the information;
  - b. In accordance with federal law;
  - c. To any state or federal agency for the purposes of animal disease control or animal disease traceback;
  - d. To the attorney general and any other law enforcement agency pursuing a criminal investigation; or
  - e. Pursuant to an order issued by a court upon a showing of good cause.
5. Any person violating this section is guilty of an infraction.

#### **4.1-73-26. Record of brands.**

The chief brand inspector shall keep a record of all brands issued in this state. The record must include:

1. The name and address of the person that owns the brand;
2. A depiction of the brand;
3. The type of livestock on which the brand is authorized for use; and
4. The location or placement of the brand as authorized by the chief brand inspector.

#### **4.1-73-27. Chief brand inspector to issue brand book.**

1. The chief brand inspector shall compile and issue a brand book from the records required by section 4.1-73-26, as of the final date for rerecording and shall compile and issue an annual supplement.
2. a. The chief brand inspector shall provide a paper or an electronic copy of the brand book and each annual supplement, free of charge, to:
  - (1) Each brand inspector; and
  - (2) Any other law enforcement officer located in this state upon request.
- b. The chief brand inspector shall make paper copies of the brand books and annual supplements available for purchase by all other persons. The purchase price must be established by the North Dakota stockmen's association and approved by the state board of animal health.
3. The chief brand inspector shall post the brand book and each annual supplement on the North Dakota stockmen's association website.

**4.1-73-28. Official brand book - Presumptive evidence.**

The official brand book published by the chief brand inspector must be received in all courts of this state as presumptive evidence of the recording and ownership of livestock brands.

**4.1-73-29. Effect of recorded brand - Bill of sale to be given and kept.**

A brand recorded in accordance with this chapter and properly located on livestock is prima facie evidence that the animal bearing the brand is the property of the brand's owner, unless covered by a bill of sale as provided by section 4.1-73-18.

**SECTION 3.** Chapter 4.1-74 of the North Dakota Century Code is created and enacted as follows:

**4.1-74-01. Registered livestock - Misrepresentation or falsification of records - Penalty.**

1. A person may not willfully:
  - a. Sell any livestock with a certificate of registration or breeding that does not pertain to the livestock;
  - b. Falsify a certificate of registration or breeding;
  - c. Misrepresent or falsify any production or performance information referenced in a certificate of registration;
  - d. Change the markings of livestock with the intent of deceiving a purchaser;  
or
  - e. Misrepresent the sire to which livestock has been bred.
2. A person violating this section is guilty of a class A misdemeanor for a first offense and a class C felony for a second or subsequent offense.

**SECTION 4.** Chapter 4.1-75 of the North Dakota Century Code is created and enacted as follows:

**4.1-75-01. Definition.**

In this chapter, unless the context otherwise requires, "estrays" means cattle, horses, or mules, whether branded or unbranded, whose ownership has not been determined.

**4.1-75-02. Estrays - Possession.**

1. If an individual discovers an estray on property that the individual owns or controls, the individual shall make a good-faith effort to:
  - a. Take possession of the estray;
  - b. Determine its ownership; and
  - c. Facilitate its return.
2. If the individual is unable to determine its ownership, the individual shall:

- a. Notify the sheriff of the county in which the estray was found or the chief brand inspector, and:
    - (1) Provide to the sheriff or the chief brand inspector any information that may assist in determining ownership of the estray;
    - (2) Make the estray available for examination if requested by the chief brand inspector; and
    - (3) Follow the directives of the chief brand inspector regarding the estray's care and disposal; or
  - b. Deliver the estray to a livestock auction market in this state or to an out-of-state livestock auction market that receives brand inspection services under section 4.1-73-24 and notify the brand inspector that it appears to be an estray.
3. Any person failing to comply with this section is liable to the owner of the estray for treble damages and may not claim reimbursement for any expenses otherwise allowed under this chapter.

#### **4.1-75-03. Notification - Record of date and time.**

A county sheriff or the chief brand inspector shall make a record of the date and time that notification is received under section 4.1-75-02. The individual taking possession of the estray is not entitled to reimbursement for expenses incurred before the recorded date and time.

#### **4.1-75-04. Estrays - Notification of chief brand inspector.**

If an individual notifies a county sheriff that the individual has taken possession of an estray, the sheriff shall contact the chief brand inspector and relay any information regarding the estray.

#### **4.1-75-05. Claiming estrays.**

1. If before an estray is sold the chief brand inspector determines its owner, the individual who took possession of the estray shall return it to its owner, provided the owner reimburses the individual for all incurred expenses in accordance with the reimbursement schedule developed by the North Dakota stockmen's association or in a lesser agreed-to amount.
2. If the individual who took possession of the estray and its owner are unable to reach an agreement regarding the return of the estray, as provided for in subsection 1, the individual who took possession of the estray shall:
  - a. Deliver the estray to a livestock auction market in this state or to an out-of-state livestock auction market that receives brand inspection services under section 4.1-73-24; and
  - b. Notify the brand inspector that the estray is to be sold and that reimbursement for the individual's expenses must be paid from the proceeds of the estray's sale, in accordance with the reimbursement schedule developed by the North Dakota stockmen's association.

**4.1-75-06. Reimbursement for costs - Schedule.**

1. Except as otherwise provided in section 4.1-75-05, the individual taking possession of an estray in accordance with this chapter is entitled to receive reimbursement for incurred expenses in accordance with a reimbursement schedule developed by the North Dakota stockmen's association.
2. The amount reimbursable under this section must be deducted from the proceeds of the estray's sale. Any amount remaining thereafter must be forwarded to the North Dakota stockmen's association and submitted to the state treasurer for deposit in the North Dakota stockmen's association fund.

**4.1-75-07. List of estrays - Publication - Proof of ownership.**

1. Each December, the North Dakota stockmen's association shall publish at least twice in the official newspaper of each county, a list of all estrays found in the county and for which the association received sale proceeds during the preceding twelve months.
2. The association shall maintain and make available on its website an updated list of all estrays for which the association received sale proceeds during the preceding seventy-two months.
3. If a person demonstrates ownership of an estray to the satisfaction of the chief brand inspector within seventy-two months of the date on which the proceeds of its sale were distributed to the North Dakota stockmen's association, the association shall return to the owner the amount it received but shall retain any income earned on the amount.

**4.1-75-08. Possession of estray - Immunity from liability.**

1. If an individual, without being negligent, takes possession of an estray and complies with this chapter, that individual is not liable:
  - a. For any injury or damage caused by the estray while in the individual's possession or in the event the estray escapes; or
  - b. For any economic loss incurred by:
    - (1) The owner of the estray, if later identified; or
    - (2) Any other person having a claim to the estray.
2. If an individual, without being negligent, attempts to take possession of an estray in order to comply with this chapter, that individual is not liable:
  - a. For any injury or damage caused by the estray during the attempt to take possession; or
  - b. For any economic loss incurred by:
    - (1) The owner of the estray, if later identified; or
    - (2) Any other person having a claim to the estray.

**4.1-75-09. Failure to comply with chapter - Penalty.**

Any individual who takes possession of an estray and willfully fails to comply with this chapter is guilty of a class B misdemeanor.

**SECTION 5.** Chapter 4.1-83 of the North Dakota Century Code is created and enacted as follows:

**4.1-83-01. Definition.**

In this chapter, unless the context otherwise requires, "livestock dealer" means a person that buys horses, mules, cattle, hogs, goats, or sheep from a producer or a livestock auction market:

1. On the person's own account, more than once per year for the purpose of resale within thirty days;
2. On commission; or
3. For slaughter.

**4.1-83-02. Livestock dealer - License required.**

1. Before a person may transact business as a livestock dealer, the person must be licensed by the agriculture commissioner.
2. This section does not apply to:
  - a. A packing plant, provided the plant's annual purchases of cattle, goats, hogs, horses, mules, or sheep do not exceed five hundred thousand dollars; or
  - b. The purchase of cattle, goats, hogs, horses, mules, or sheep:
    - (1) By a livestock cooperative from a member of the cooperative; or
    - (2) By one member of a livestock cooperative from another member.

**4.1-83-03. Application for livestock dealer's license - Required information.**

To obtain a livestock dealer's license, a person must complete an application and submit it to the agriculture commissioner. The application must include:

1. The applicant's name and:
  - a. The name of each partner if the applicant is a partnership;
  - b. The name of each corporate officer and the state of incorporation if the applicant is a corporation; or
  - c. The name of each manager and the state of organization if the applicant is a limited liability company;
2. The applicant's mailing address; and
3. The applicant's principal place of business.

**4.1-83-04. License - Fee - Expiration.**

1. The fee for a livestock dealer's license is fifty dollars.
2. A livestock dealer's license issued under this chapter expires on June thirtieth of each year.
3. A livestock dealer's license is not transferable.

**4.1-83-05. Application for license - Posting of bond.**

1. As a condition of licensure, the applicant shall post a bond with the agriculture commissioner. The bond must be:
  - a. A surety bond;
  - b. A cash bond; or
  - c. An irrevocable letter of credit.
2. The agriculture commissioner must be named as the obligee.
3. The bond required by this section must be:
  - a. In an amount and form required by this chapter;
  - b. Applicable to the period during which the livestock dealer's license is in effect;
  - c. For the benefit of any person selling livestock to the livestock dealer or the dealer's agent; and
  - d. Conditioned for the payment of any financial obligation owed by a livestock dealer to another person in conjunction with the sale of livestock.

**4.1-83-06. Bond requirements - Alternative.**

Any applicant having a bond on file with the United States department of agriculture pursuant to the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.], may meet the requirements of section 4.1-83-05 by filing a copy of that bond with the agriculture commissioner, provided the commissioner is named as the trustee of the bond.

**4.1-83-07. Out-of-state applicant - Trustee.**

A bond posted by an out-of-state applicant for a livestock dealer's license may name as trustee a financially responsible, disinterested person who is satisfactory to the commissioner.

**4.1-83-08. Bond - Minimum amount.**

1. The agriculture commissioner shall determine the amount of the bond required in accordance with this chapter by using the same basis as that prescribed for livestock dealers who are subject to the provisions of the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.].

2. Notwithstanding subsection 1, if at the time of licensure or at any point during the period of licensure the agriculture commissioner has reason to believe that a bond is inadequate to secure the performance of the livestock dealer's obligations, the commissioner shall require an increase in the amount of the bond.
3. A bond required by this chapter may not be in an amount less than ten thousand dollars.

#### **4.1-83-09. Release of records - Confidentiality.**

1. As a condition of licensure, the applicant shall agree to provide to the agriculture commissioner, upon request, any financial record that the commissioner deems relevant for purposes related to:
  - a. The issuance of a livestock dealer's license; or
  - b. An investigation after issuance of a livestock dealer's license.
2. As a condition of licensure, the applicant shall file a records release with the agriculture commissioner, authorizing the commissioner to obtain, from any source, any financial record that the commissioner deems relevant for purposes related to:
  - a. The issuance of a livestock dealer's license; or
  - b. An investigation after issuance of a livestock dealer's license.
3. Any information gained by the agriculture commissioner under this section is confidential and may be provided only:
  - a. To federal authorities in accordance with federal law;
  - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
  - c. As directed by an order of a court pursuant to a showing of good cause.

#### **4.1-83-10. Dealer's license - Grounds for denial - Hearing.**

1. The agriculture commissioner shall deny an applicant a livestock dealer's license if:
  - a. The applicant's current assets do not exceed the applicant's current liabilities; or
  - b. The applicant submitted false or misleading information in connection with the application.
2. The agriculture commissioner may deny an applicant a livestock dealer's license:
  - a. If after due investigation, the commissioner has reason to believe that the applicant has failed to pay, in a timely manner and without reasonable cause, prior obligations incurred in connection with livestock transactions;

- b. If the applicant has failed to pay brand inspection fees or veterinary inspection fees, as required by law, within sixty days of the date on which they were due;
  - c. If the applicant has violated any of the laws of this state governing the handling, shipment, or transportation of livestock; or
  - d. For any other just and good cause.
3. Any applicant denied a license under this section may request a hearing before the agriculture commissioner within thirty days of the denial.

#### **4.1-83-11. Change of circumstance - Notification of agriculture commissioner.**

A livestock dealer shall notify the agriculture commissioner of:

1. Any legal change to the name in which the livestock dealer's license is issued;
2. Any change to the legal status of the livestock dealer; and
3. Any change in the nature and scope of the livestock dealer's business, if that change would warrant an increase in the amount of the bond posted by the dealer in accordance with this chapter.

#### **4.1-83-12. Records.**

Each livestock dealer shall keep records regarding all purchases and sales of livestock for a period of two years. The records may be examined by the agriculture commissioner upon request.

#### **4.1-83-13. Agent's license.**

Before an individual may serve as the agent of a livestock dealer, the individual must be licensed by the agriculture commissioner. In order for an individual to obtain an agent's license, the agent's principal must request the license, at the time and in the manner determined by the agriculture commissioner.

#### **4.1-83-14. Agent's license - Requirements - Liability of principal.**

Before the agriculture commissioner issues an agent's license, the commissioner shall verify that:

1. The agent's principal is a livestock dealer licensed in accordance with this chapter; and
2. The principal has filed with the agriculture commissioner a signed statement indicating that the principal is responsible for and will be held strictly liable for any acts and omissions arising out of the agent's livestock dealings, even if the dealings were not authorized by the principal.

#### **4.1-83-15. Agent's license - Grounds for denial.**

1. The agriculture commissioner may refuse to issue an agent's license:

- a. If the individual seeking the license was previously denied a livestock dealer's license or an agent's license;
  - b. If the individual seeking the license had a livestock dealer's license or an agent's license revoked;
  - c. If the individual seeking the license has been convicted of an offense for which a term of imprisonment or a fine is authorized by statute; or
  - d. For any other just and good cause.
2. Any applicant denied a license under this section may request a hearing before the agriculture commissioner, within thirty days of the denial.

#### **4.1-83-16. Agent's authority - Limitation.**

While acting as an agent, an individual may not conduct any transaction involving livestock in the agent's own name.

#### **4.1-83-17. Order to cease and desist - Hearing.**

The agriculture commissioner may issue an order to cease and desist if the commissioner has reason to believe that a person has committed or is about to commit a violation of this chapter. If the agriculture commissioner issues a cease and desist order, the commissioner shall hold a hearing within thirty days of the issuance and within sixty days of the issuance, revoke the order or make it permanent.

#### **4.1-83-18. Investigation of livestock dealer - Hearing.**

1. a. The agriculture commissioner shall investigate the conduct of any livestock dealer if the commissioner has reasonable cause to believe that the livestock dealer may have violated this chapter or engaged in any activity that constitutes a ground for license suspension or revocation under this chapter.
  - b. Subdivision 1 does not apply if an investigation is being conducted by the grain inspection, packers and stockyards administration.
2. If after conducting an investigation the agriculture commissioner has probable cause to believe that a violation of the chapter occurred or that the livestock dealer engaged in any activity that constitutes a ground for license suspension or revocation under this chapter, the commissioner may conduct a hearing to determine whether the license of the livestock dealer should be suspended or revoked.

#### **4.1-83-19. Grounds for suspension or revocation of license.**

The agriculture commissioner may suspend or revoke the license of a livestock dealer if:

1. The livestock dealer has violated this chapter;
2. The livestock dealer has violated any of the laws of this state governing the handling, shipment, or transportation of livestock;

3. The livestock dealer has been found guilty of deceit, fraud, dishonesty, forgery, or theft, as a dealer in livestock;
4. The livestock dealer submitted false or misleading information in connection with the application for licensure;
5. The livestock dealer has failed to maintain records that disclose all purchases and sales of livestock, as required by section 4.1-83-12;
6. The livestock dealer has refused the commissioner's request to provide financial records to the commissioner, as required by section 4.1-83-09;
7. The livestock dealer has failed to pay brand inspection fees or veterinary inspection fees, as required by law, within sixty days of the date on which they were due;
8. The livestock dealer is convicted under section 4.1-03-13 of failing to submit beef promotion assessments; or
9. The livestock dealer has failed to pay for livestock purchased in a timely manner and without reasonable cause.

#### **4.1-83-20. License suspension or revocation - Hearing - Appeal.**

1. Before the agriculture commissioner may suspend or revoke a livestock dealer's license, the commissioner shall:
  - a. Prepare a complaint;
  - b. Designate the time and place for a hearing; and
  - c. Serve a copy of the complaint and a notice of the hearing upon the livestock dealer at least fifteen days before the date of the hearing.
2. The agriculture commissioner shall serve the required notice by registered mail or in the manner provided by the North Dakota Rules of Civil Procedure for the service of a summons.
3. At the hearing, the agriculture commissioner shall take and receive testimony and evidence.
4. After the hearing, the agriculture commissioner shall issue an order to:
  - a. Dismiss the proceedings;
  - b. Suspend the livestock dealer's license; or
  - c. Revoke the livestock dealer's license.
5. The aggrieved party may appeal the order to the district court of the county in which the party maintains its principal place of business.

#### **4.1-83-21. Bond - Claim for relief.**

If a livestock dealer defaults in the provisions of any bond required by this chapter, the livestock dealer is deemed to be insolvent within the meaning of this chapter. The

claim for relief for damages upon the bond, and the amount recovered in any claim for relief for the conversion of livestock purchased by the livestock dealer while the license is in force and effect, constitutes a trust fund in the hands of the agriculture commissioner for all persons having a claim for relief against the livestock dealer on the bond.

#### **4.1-83-22. Appointment of trustee.**

1. Upon the insolvency of a livestock dealer, the agriculture commissioner may apply to the district court of the county in which the dealer maintains its principal place of business for appointment as the trustee.
2. Upon notice to the livestock dealer, as the court shall prescribe but not exceeding ten days, or upon a written waiver of notice by the dealer, the court shall hear and make a determination regarding the application in a summary manner.
3. If the court determines that the livestock dealer is insolvent within the meaning of this chapter and that it would be in the best interest of persons holding claims against the dealer for the purchase price of livestock sold to the dealer or to the dealer's agent that the agriculture commissioner execute the trust, the court shall issue an order appointing the commissioner as the trustee, without bond.
4. Upon being appointed as the trustee, the agriculture commissioner shall perform the duties of a trustee as set forth in this chapter.

#### **4.1-83-23. Possession of records and property - Notice to file claims.**

1.
  - a. Upon being appointed trustee, the agriculture commissioner shall take possession of all accounts and records pertaining to the livestock dealer's business. After reviewing the records, the agriculture commissioner may return to the dealer any records that are not necessary to the settlement of claims under this chapter.
  - b. Upon being appointed trustee, the agriculture commissioner shall take possession of all livestock purchased by the dealer under the dealer's license and remaining in the dealer's possession.
2. The agriculture commissioner, as trustee, shall publish a notice once each week for three consecutive weeks in the official newspaper of each county in which the livestock dealer was conducting business, directing any person having a claim against the dealer to file the claim and all supporting documentation with the commissioner no later than forty-five days from the last date of publication. Any person failing to meet the filing requirements set forth in the notice is barred from participating in any funds marshalled by the agriculture commissioner under this chapter.

#### **4.1-83-24. Maintenance of action - Marshalling of assets.**

1. The agriculture commissioner, as trustee, may in the name of the state upon its own relation but for the benefit of all claimants against the livestock dealer's bond, maintain suits or special proceedings upon the bond and against any person who has converted any of the livestock, for the purpose of marshalling all of the trust assets of the insolvent dealer and distributing the assets among the claimants.

2. However, recourse must be had against the bond before recourse is had against a person who knowingly and in good faith converted any of the livestock, unless the agriculture commissioner determines it necessary that all of the remedies be pursued at the same time.

#### **4.1-83-25. Remedy of claimants - Pursuit of separate action.**

1. A claimant may not pursue a separate claim for relief against the livestock dealer's bond unless the agriculture commissioner fails or refuses to apply for appointment as trustee.
2. A claimant may pursue concurrently with the agriculture commissioner, however, any other remedy against the livestock dealer or the dealer's property that the claimant may have for the entire claim or for any deficiency that occurs after all payments have been made from the trust fund.

#### **4.1-83-26. Actions by agriculture commissioner - Exoneration.**

1. The agriculture commissioner may:
  - a. Prosecute an action for any claim arising under this chapter;
  - b. Appeal from any adverse judgment to the court of last resort; and
  - c. Settle and compromise any action if the commissioner determines that doing so is in the best interests of the claimant.
2. When the agriculture commissioner receives a compromise payment or the full amount of any bond or conversion claim, the commissioner may exonerate the person compromising or paying the claim from further liability growing out of the action.

#### **4.1-83-27. Moneys collected on claims - Required deposit.**

All moneys collected and received by the agriculture commissioner as trustee must be deposited in the Bank of North Dakota pending the marshalling of the fund.

#### **4.1-83-28. Report of amounts payable - Distribution of trust fund.**

1. Upon recovery of the trust fund, or so much of the fund as is recoverable or necessary to pay the outstanding claims, the agriculture commissioner shall file with the court a report showing the amount payable on each claim, after recognition of all proper liens, pledges, assignments, and deductions.
2. If the trust fund is insufficient to pay all claims in full, the agriculture commissioner shall prorate the fund among the claimants.
3. The court shall notify the claimants by mail regarding the proposed distribution and direct that the claimants show cause why the report and distribution should not be approved.
4. After holding a hearing on the matter, the court shall:
  - a. Approve or modify the report;
  - b. Issue an order directing that the trust fund be distributed; and

- c. Discharge the agriculture commissioner from all duties as trustee.

#### **4.1-83-29. Court costs.**

The agriculture commissioner is not required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought under this chapter if the fee, cost, or disbursement accrues to the state or to a county in this state.

#### **4.1-83-30. Violations of chapter - Criminal penalty - Civil penalty.**

1. Any person violating this chapter is guilty of a class A misdemeanor.
2. Any person violating this chapter is subject to a civil penalty in an amount not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by a court or by the agriculture commissioner through an administrative hearing.

**SECTION 6.** Chapter 4.1-88 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-88-01. Definition.**

In this chapter, unless the context otherwise requires, "wool dealer" means a person that buys wool from a producer.

#### **4.1-88-02. Wool dealer - License required.**

1. Before a person may transact business as a wool dealer, the person must be licensed by the agriculture commissioner.
2. This section does not apply to the purchase of wool:
  - a. By a wool cooperative from a member of the cooperative; or
  - b. By one member of a wool cooperative from another member.

#### **4.1-88-03. Application for wool dealer's license - Required information.**

To obtain a wool dealer's license, a person must complete an application and submit it to the agriculture commissioner. The application must include:

1. The applicant's name and:
  - a. The name of each partner if the applicant is a partnership;
  - b. The name of each corporate officer and the state of incorporation if the applicant is a corporation; and
  - c. The name of each manager and the state of organization if the applicant is a limited liability company;
2. The applicant's mailing address; and
3. The applicant's principal place of business.

**4.1-88-04. License - Fee - Expiration.**

1. The fee for a wool dealer's license is ten dollars.
2. A wool dealer's license issued under this chapter expires on June thirtieth of each year.
3. A wool dealer's license is not transferable.

**4.1-88-05. Application for license - Posting of bond.**

1. As a condition of licensure, the applicant must post a bond with the agriculture commissioner. The bond must be:
  - a. A surety bond;
  - b. A cash bond; or
  - c. An irrevocable letter of credit.
2. The agriculture commissioner must be named as the obligee.
3. The bond required by this section must be:
  - a. In an amount and form required by this chapter;
  - b. Applicable to the period during which the wool dealer's license is in effect;
  - c. For the benefit of any person selling wool to the wool dealer or the dealer's agent; and
  - d. Conditioned for the payment of any financial obligation owed by a wool dealer to another person in conjunction with the sale of wool.

**4.1-88-06. Out-of-state applicant - Trustee.**

A bond filed by an out-of-state applicant for a wool dealer's license may name as trustee a financially responsible, disinterested person who is satisfactory to the agriculture commissioner.

**4.1-88-07. Bond - Minimum amount.**

1. The agriculture commissioner shall determine the amount of the bond required in accordance with this chapter, provided that the amount of the bond is not less than ten thousand dollars.
2. If at the time of licensure or at any point during the period of licensure the agriculture commissioner has reason to believe that a bond is inadequate to secure the performance of the wool dealer's obligations, the commissioner shall require an increase in the amount of the bond.

**4.1-88-08. Release of records - Confidentiality.**

1. As a condition of licensure, the applicant shall agree to provide to the agriculture commissioner, upon request, any financial record that the commissioner deems relevant for purposes related to:

- a. The issuance of a wool dealer's license; or
- b. An investigation after issuance of a wool dealer's license.
2. As a condition of licensure, the applicant shall file a records release with the agriculture commissioner, authorizing the commissioner to obtain, from any source, any financial record that the commissioner deems relevant for purposes related to:
  - a. The issuance of a wool dealer's license; or
  - b. An investigation after issuance of a wool dealer's license.
3. Any information gained by the agriculture commissioner under this section is confidential and may be provided only:
  - a. To federal authorities in accordance with federal law;
  - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
  - c. As directed by an order of a court pursuant to a showing of good cause.

#### **4.1-88-09. Wool dealer's license - Grounds for denial - Hearing.**

1. The agriculture commissioner shall deny an applicant a wool dealer's license if:
  - a. The applicant's current assets do not exceed the applicant's current liabilities; or
  - b. The applicant submitted false or misleading information in connection with the application.
2. The agriculture commissioner may deny an applicant a wool dealer's license:
  - a. If after due investigation, the commissioner has reason to believe that the applicant has failed to pay, in a timely manner and without reasonable cause, prior obligations incurred in connection with wool transactions; or
  - b. For any other just and good cause.
3. Any applicant denied a license under this section may request a hearing before the agriculture commissioner, within thirty days of the denial.

#### **4.1-88-10. Change of circumstance - Notification of agriculture commissioner.**

A wool dealer shall notify the agriculture commissioner of:

1. Any legal change to the name in which the wool dealer's license is issued;
2. Any change to the legal status of the wool dealer; and

3. Any change in the nature and scope of the wool dealer's business, if that change would warrant an increase in the amount of the bond posted by the dealer in accordance with this chapter.

#### **4.1-88-11. Records.**

Each wool dealer shall keep records regarding all purchases and sales of wool for a period of two years. The records may be examined by the agriculture commissioner upon request.

#### **4.1-88-12. Agent's license.**

Before an individual may serve as the agent of a wool dealer, the individual must be licensed by the agriculture commissioner. In order for an individual to obtain an agent's license, the agent's principal must request the licensure, at the time and in the manner determined by the agriculture commissioner.

#### **4.1-88-13. Agent's license - Requirements - Liability of principal.**

Before the agriculture commissioner issues an agent's license, the commissioner shall verify that:

1. The agent's principal is a wool dealer licensed in accordance with this chapter; and
2. The principal has filed with the agriculture commissioner a signed statement indicating that the principal is responsible for and will be held strictly liable for any acts and omissions arising out of the agent's wool dealings, even if the dealings were not authorized by the principal.

#### **4.1-88-14. Agent's license - Grounds for denial - Hearing.**

1. The agriculture commissioner may refuse to issue an agent's license:
  - a. If the individual seeking the license was previously denied a wool dealer's license or an agent's license;
  - b. If the individual seeking the license has had a wool dealer's license or an agent's license revoked;
  - c. If the individual seeking the license has been convicted of an offense for which a term of imprisonment or a fine is authorized by statute; or
  - d. For any other just and good cause.
2. Any applicant denied a license under this section may request a hearing before the agriculture commissioner, within thirty days of the denial.

#### **4.1-88-15. Agent's authority - Limitation.**

While acting as an agent, an individual may not conduct any transaction involving livestock, in the agent's own name.

**4.1-88-16. Order to cease and desist - Hearing.**

The agriculture commissioner may issue an order to cease and desist if the commissioner has reason to believe that a person has committed or is about to commit a violation of this chapter. If the commissioner issues a cease and desist order, the commissioner shall hold a hearing within thirty days of the issuance and within sixty days of the issuance, revoke the order or make it permanent, as the facts require.

**4.1-88-17. Investigation of wool dealer - Hearing.**

1. The agriculture commissioner shall investigate the conduct of any wool dealer if the commissioner has reasonable cause to believe that the wool dealer may have violated this chapter or engaged in any activity that constitutes a ground for license revocation under this chapter.
2. If after conducting an investigation the agriculture commissioner has probable cause to believe that a violation of the chapter occurred or that the wool dealer engaged in any activity that constitutes a ground for license suspension or revocation under this chapter, the commissioner may conduct a hearing to determine whether the license of the wool dealer should be suspended or revoked.

**4.1-88-18. Grounds for suspension or revocation of license.**

The commissioner may revoke the license of a wool dealer if:

1. The wool dealer has violated this chapter;
2. The wool dealer has been found guilty of deceit, fraud, dishonesty, forgery, or theft, as a dealer in wool;
3. The wool dealer submitted false or misleading information in connection with the application for licensure;
4. The wool dealer has failed to maintain records that disclose all purchases and sales of wool, as required by section 4.1-88-11;
5. The wool dealer has refused the commissioner's request to provide financial records to the commissioner, as required by section 4.1-88-08; or
6. The wool dealer has failed to pay for wool purchased in a timely manner and without reasonable cause.

**4.1-88-19. License suspension or revocation - Hearing - Appeal.**

1. Before the agriculture commissioner may suspend or revoke a wool dealer's license, the commissioner shall:
  - a. Prepare a complaint;
  - b. Designate the time and place for a hearing; and
  - c. Serve a copy of the complaint and a notice of the hearing upon the wool dealer at least fifteen days before the date of the hearing.

2. The agriculture commissioner shall serve the required notice by registered mail or in the manner provided by the North Dakota Rules of Civil Procedure for the service of a summons.
3. At the hearing, the agriculture commissioner shall take and receive testimony and evidence.
4. After the hearing, the agriculture commissioner shall issue an order to:
  - a. Dismiss the proceedings;
  - b. Suspend the wool dealer's license; or
  - c. Revoke the wool dealer's license.
5. The aggrieved party may appeal the order to the district court of the county in which the party maintains its principal place of business.

#### **4.1-88-20. Bond - Claim for relief.**

If a wool dealer defaults in the provisions of any bond required by this chapter, the wool dealer is deemed to be insolvent within the meaning of this chapter. The claim for relief for damages upon the bond, and the amount recovered in any claim for relief for the conversion of wool purchased by the wool dealer, while the license is in force and effect, constitutes a trust fund in the hands of the agriculture commissioner for all persons having a claim for relief against the wool dealer on the bond.

#### **4.1-88-21. Appointment of trustee.**

1. Upon the insolvency of a wool dealer, the agriculture commissioner may apply to the district court of the county in which the dealer maintains its principal place of business for appointment as the trustee.
2. Upon notice to the wool dealer, as the court shall prescribe but not exceeding ten days, or upon a written waiver of notice by the dealer, the court shall hear and make a determination regarding the application in a summary manner.
3. If the court determines that the wool dealer is insolvent within the meaning of this chapter and that it would be in the best interest of persons holding claims against the dealer for the purchase price of wool sold to the dealer or to the dealer's agent that the agriculture commissioner execute the trust, the court shall issue an order appointing the commissioner as the trustee, without bond.
4. Upon being appointed as the trustee, the agriculture commissioner shall perform the duties of a trustee as set forth in this chapter.

#### **4.1-88-22. Possession of records and property - Notice to file claims.**

1. a. Upon being appointed trustee, the agriculture commissioner shall take possession of all accounts and records pertaining to the wool dealer's business. After reviewing the records, the agriculture commissioner may return to the dealer any records that are not necessary to the settlement of claims under this chapter.

- b. Upon being appointed trustee, the agriculture commissioner shall take possession of all wool purchased by the dealer under the dealer's license and remaining in the dealer's possession.
2. The agriculture commissioner, as trustee, shall publish a notice once each week for three consecutive weeks in the official newspaper of each county in which the wool dealer was conducting business, directing any person having a claim against the dealer to file the claim and all supporting documentation with the commissioner no later than forty-five days from the last date of publication. Any person failing to meet the filing requirements set forth in the notice is barred from participating in any funds marshalled by the commissioner under this chapter.

#### **4.1-88-23. Maintenance of action - Marshalling of assets.**

1. The agriculture commissioner, as trustee, may in the name of the state upon its own relation but for the benefit of all claimants against the wool dealer's bond, maintain suits or special proceedings upon the bond and against any person who has converted any of the wool, for the purpose of marshalling all of the trust assets of the insolvent dealer and distributing the assets among the claimants.
2. However, recourse must be had against the bond before recourse is had against a person who knowingly and in good faith converted any of the wool, unless the agriculture commissioner determines it necessary that all of the remedies be pursued at the same time.

#### **4.1-88-24. Remedy of claimants - Pursuit of separate action.**

1. A claimant may not pursue a separate claim for relief against the wool dealer's bond unless the agriculture commissioner fails or refuses to apply for appointment as trustee.
2. A claimant may pursue concurrently with the agriculture commissioner, however, any other remedy against the wool dealer or the dealer's property that the claimant may have for the entire claim or for any deficiency that occurs after all payments have been made from the trust fund.

#### **4.1-88-25. Actions by agriculture commissioner - Exoneration.**

1. The agriculture commissioner may:
  - a. Prosecute an action for any claim arising under this chapter;
  - b. Appeal from any adverse judgment to the court of last resort; and
  - c. Settle and compromise any action if the commissioner determines that doing so is in the best interests of the claimant.
2. When the agriculture commissioner receives a compromise payment or the full amount of any bond or conversion claim, the commissioner may exonerate the person compromising or paying the claim from further liability growing out of the action.

**4.1-88-26. Moneys collected on claims - Required deposit.**

All moneys collected and received by the agriculture commissioner as trustee must be deposited in the Bank of North Dakota pending the marshalling of the fund.

**4.1-88-27. Report of amounts payable - Distribution of trust fund.**

1. Upon recovery of the trust fund, or so much of the fund as is recoverable or necessary to pay the outstanding claims, the agriculture commissioner shall file with the court a report showing the amount payable on each claim, after recognition of all proper liens, pledges, assignments, and deductions.
2. If the trust fund is insufficient to pay all claims in full, the agriculture commissioner shall prorate the fund among the claimants.
3. The court shall notify the claimants by mail regarding the proposed distribution and direct that the claimants show cause why the report and distribution should not be approved.
4. After holding a hearing on the matter, the court shall:
  - a. Approve or modify the report;
  - b. Issue an order directing that the trust fund be distributed; and
  - c. Discharge the agriculture commissioner from all duties as trustee.

**4.1-88-28. Court costs.**

The agriculture commissioner is not required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought under this chapter if the fee, cost, or disbursement accrues to the state or to a county of this state.

**4.1-88-29. Violations of chapter - Criminal penalty - Civil penalty.**

1. Any person violating this chapter is guilty of a class A misdemeanor.
2. Any person violating this chapter is subject to a civil penalty in an amount not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by a court or by the agriculture commissioner through an administrative hearing.

**SECTION 7. AGRICULTURAL LAW REWRITE - STUDY.** The legislative management shall continue its study of North Dakota Century Code provisions that relate to agriculture for the purpose of recommending changes to laws that are found to be irrelevant, inconsistent, illogically arranged, or unclear in their intent and direction. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

**SECTION 8. REPEAL.** Chapters 36-04, 36-09, 36-13, and 36-22 of the North Dakota Century Code are repealed.

Approved April 15, 2013  
Filed April 16, 2013

## CHAPTER 73

### SENATE BILL NO. 2158

(Senators Erbele, Larsen)  
(Representatives D. Johnson, Trottier)

AN ACT to amend and reenact section 36-09-20 of the North Dakota Century Code or in the alternative to amend and reenact section 4.1-73-18 of the North Dakota Century Code, relating to bill of sale requirements in livestock transactions.

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

**SECTION 1. AMENDMENT.** If House Bill No. 1026 does not become effective, section 36-09-20 of the North Dakota Century Code is amended and reenacted as follows:

**36-09-20. Bill of sale to be given and kept - Copy with shipment - Effect - Penalty.**

1. A person may not sell cattle, horses, mules, or any other livestock carrying a registered brand unless:
  - a. ~~The~~ the seller is the owner of the registered brand and delivers a bill of sale for the cattle, horses, mules, or other livestock to the purchaser; ~~or~~
  - b. ~~The seller delivers to the purchaser a bill of sale executed by the owner of the registered brand and endorsed by the seller evidencing the later transaction.~~
2. The bill of sale must include:
  - a. The date;
  - b. The name, address, and signature of the seller;
  - c. The name, address, and signature of an individual who is at least eighteen years of age and who can verify the name and signature of the seller;
  - d. The name and address of the buyer;
  - e. The total number of animals sold;
  - f. A description of each animal sold as to sex and kind; and
  - g. A description of the registered brands.
3. The bill of sale must be kept by the buyer for two years and as long thereafter as the buyer owns any of the animals described in the bill of sale.
4. A copy of the bill of sale must be given to each hauler of the livestock, other than railroads, and must go with the shipment of the livestock while in transit.

5. The bill of sale or a copy of the bill of sale must be shown by the possessor on demand to any peace officer or brand inspector.
6. The bill of sale is prima facie evidence of the sale of the livestock described in the bill of sale.
7. A bill of sale is not required relative to sales of livestock covered by a legal livestock brand inspection.
8. Any person that willfully violates this section is guilty of a class B misdemeanor for a first offense and a class A misdemeanor for a second or subsequent offense.

<sup>25</sup> **SECTION 2. AMENDMENT.** Section 4.1-73-18 of the North Dakota Century Code, as created by section 2 of House Bill No. 1026, as approved by the sixty-third legislative assembly, is amended and reenacted as follows:

**4.1-73-18. Bill of sale - Copy with shipment - Effect - Penalty.**

1. a. ~~A~~Except as provided in subsection 2, a person may not sell any livestock carrying a recorded brand unless:
  - ~~a.~~ The ~~the~~ seller is the owner of the recorded brand and delivers a bill of sale for the livestock to the purchaser;~~or~~
  - ~~b.~~ The seller delivers to the purchaser a bill of sale executed by the owner of the recorded brand and endorsed by the seller evidencing the later transaction.
2. The bill of sale must include:
  - ~~a.~~(1) The date;
  - ~~b.~~(2) The name, address, and signature of the seller;
  - ~~c.~~(3) The name, address, and signature of an individual who is at least eighteen years of age and who can verify the name and signature of the seller;
  - ~~d.~~(4) The name and address of the buyer;
  - ~~e.~~(5) The total number of animals sold;
  - ~~f.~~(6) A description of each animal sold as to sex and color; and
  - ~~g.~~(7) A depiction of the recorded brand.
- ~~3.~~b. The buyer shall retain the bill of sale for as long as the buyer owns any animals described in the bill of sale.
- ~~4.~~c. The seller shall provide a copy of the bill of sale to the individual hauling the livestock. The individual shall ensure that the document remains with the livestock while in transit.

~~5-d.~~ The bill of sale or a copy of the bill of sale must be shown by the possessor on demand to any law enforcement officer or brand inspector.

~~6-e.~~ The bill of sale is prima facie evidence of the sale of the livestock described in the bill of sale.

~~7-2.~~ ~~Subsections 1 through 6 do~~ Subsection 1 does not apply to the sale of livestock for which a brand inspector has issued a certificate of ownership.

~~8-3.~~ Any person willfully violating this section is guilty of a class B misdemeanor for a first offense and a class A misdemeanor for a second or subsequent offense.

Approved April 3, 2013

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