

1999 HOUSE AGRICULTURE

HB 1276

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276

House Agriculture Committee

Conference Committee

Hearing Date 1-22-99

Tape Number	Side A	Side B	Meter #
ONE-HB 1276	x		0.0 to 55.0
		x	0.0 to 7.6
Committee Clerk Signature <i>Arlii Hanson</i>			

Minutes:

Summary of bill: Relating to the confiscation of nontraditional livestock, livestock unfit for sale, and animals imported into the State. also relating to the board of Animal Health, livestock auction markets, rendering plants, contagious and infectious livestock diseases, tuberculosis and brucellosis eradication in animals, and humane treatment of animals.

Senator Solberg: Chief sponsor of HB 1276 Dist 7, some changes that need to be done to make sure the transition that took place 4 years ago works the way we intended it to. The ability of the board of Animal Health to act upon the violations of the laws which are there for the protection of the public. Right now \$2500 max fine is not near high enough. If you have a pot load of cattle and are in violation 2500. isn't much deterrent. Get it up to \$5000 you are going to get somebody attention.

Sec 4. Livestock unfit for sale. Its about time we make some changes there. Need some sort of rules or guide lines for the Veterinary to go by. Animals imported into the state make sure there is health certificate with them.

Larry Schuler: State Vet and ex officer of the State Board of Animal Health. (Testimony Attached) Quite a few changes . Board has been working on this bill for over a year. Board of Animal Health has voted unanimous to approve this draft of the bill. Sec 8 is an exception to the open records law. It closes the open records for disease test records that would keep those confidential but allows for open records for the main disease. Anthrax would be one of the disease that would come under this law. We live in today's world with bio terrorism and if we can't keep something like that confidential it might cause some trouble.

Wade Moser: Stockmens Assoc.Support HB 1276 We want you to strongly consider sec 10, 18, and 26 which all refer to enforcement of the laws. We depend highly upon the Board of Animal Health to keep the status of our industry disease free. We don't have any problem with the increase of fines.

Bill Rotenberg: Representing the ND Vet Assoc. Very supportive of this bill especially two sections dealing with marketing cattle, right now we don't have much authority to turn back sick or injured cattle when brought to the sale ring. This bill gives us some guidelines and authority. Another issue is the open records law. Producers are sometimes reluctant to allow testing of their herd or animals with the open records law in place.

Daune Bohnsack: Representing the ND Pet Assoc, they are in opposition the HB 1276.

(Testomony attached.) Has some changes he would like to see take place, one of these is in the make-up of the board of animal health.

The authority of the ND Board of Animal Health to write administrative rule and law that regulates companion animals without input from these respective groups. We propose that the make up of the Board of Animal Health be changed by adding :

1. Add to the board the following seats
 - a. 1 seat to a nontraditional livestock - exotic producer
 - b. 1 seat to represent puppy, kitten, pet producers of the state
 - c. 2 seats to persons from the retail pet suppliers
 - d. 1 seat to game and fish department - wildlife
2. Change from 2 lg. animals veterinarians to 1 Ag livestock veterinarian - 1 pet veterinarian.
3. Divide the board into 2 equal sub committees, one that regulates traditional livestock in the Agri Industries, and another that regulates the companion animals and nontraditional livestock.
4. Each board member will sit for 6 years, with 2 changing each year.

Nancy J. Bezanson: Owner/breeder of Bezazz Cattery, specializing in rare and unique domestic felines. 'Thanks for the opportunity to outline areas of support and complaint about HB 1276. (Testimony attached.) Proposes some changes.

Jack Sund: Bismarck Pet Store. Rules and Regulations unfair and heavy handed. He would like to see a resolution to do an interim study and come up with a sensible solution.

Rep Stefonowicz : Do you agree with Daune Bohnsack of Bismarck?

Jack Sund: Yes I do. Different regulations for Big Livestock different ones of Pets.

Rep Berg: Is your concern more with Health Dept rather than with the Board of Animal Health.

Daune Bohnsack: The Health Dept has taken to using the Board of Animal Health to accomplish their own agenda

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Rep Mueller: Is your basic concern that you don't have Representation on the Board of Animal Health?

Jack Sund: Yes, If we had someone on the Board to listen to our concerns and who understood them. Nontraditional livestock Counsel doesn't feel like they are ever listened too.

1-28.. Committe action

Rep Warner moved a DO PASS Second by Rep Mueller

Vote totals.. Yes 14 No 0 Absent 1

Carrier: Rep Berg

FISCAL NOTE

(Return original and 10 copies)

Resolution No.: _____ Amendment to: HB 1276 – Conf. Com.
 Requested by Legislative Council Date of Request: April 12, 1999

- Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: There should be no additional costs associated with this bill. Increasing the civil penalty for infractions of North Dakota Century Code Chapter 36 should increase the general fund dollars approximately \$2000. Increasing Nontraditional Livestock license fees would increase general fund dollars about \$2000.

- State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	0	0	\$4000	0	\$4000	0
Expenditures	0	0	0	0	0	0

- What, if any, is the effect of this measure on the budget for your agency or department:

a. For rest of 1997-99 biennium: 0
 (Indicate the portion of this amount included in the 1999-2001 executive budget:)

b. For the 1999-2001 biennium: \$4000 increase general fund revenues
 (Indicate the portion of this amount included in the 1999-2001 executive budget: 0)

c. For the 2001-03 biennium: \$4000 increase general fund revenues

- County, city, and school district fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

Signed: _____
 Typed Name: Jeff Weispfenning
 Department: Department of Agriculture – State Board of Animal Health
 Phone Number: 328-2655
 Date Prepared: 4-12-99

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: _____ Amendment to: HB 1276
 Requested by Legislative Council Date of Request: 3-30-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: There should be no additional costs associated with this bill. Increasing the civil penalty for infractions of North Dakota Century Code Chapter 36 should increase the general fund dollars approximately \$2000.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	0	0	\$2000	0	\$2000	0
Expenditures	0	0	0	0	0	0

3. What, if any, is the effect of this measure on the budget for your agency or department:

- a. For rest of 1997-99 biennium: 0
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- b. For the 1999-2001 biennium: \$2000 increase general fund revenues
(Indicate the portion of this amount included in the 1999-2001 executive budget: 0)
- c. For the 2001-03 biennium: \$2000 increase general fund revenues

4. County, city, and school district fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

Signed: _____
 Typed Name: Jeff Weispfenning
 Department: Department of Agriculture – State Board of Animal Health
 Phone Number: 328-2655
 Date Prepared: 3/31/99

FISCAL NOTE

(Return original and 10 copies)

Resolution No.: HB 1276 Amendment to: _____

Requested by Legislative Council Date of Request: 1-13-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: There should be no additional costs associated with this bill. Increasing the civil penalty for infractions of North Dakota Century Code Chapter 36 should increase the general fund dollars approximately \$2000. Increasing Nontraditional Livestock license fees would increase general fund dollars about \$5000.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	0	0	\$7000	0	\$7000	0
Expenditures	0	0	0	0	0	0

3. What, if any, is the effect of this measure on the budget for your agency or department:

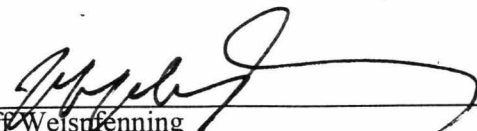
a. For rest of 1997-99 biennium: 0
(Indicate the portion of this amount included in the 1999-2001 executive budget:)

b. For the 1999-2001 biennium: \$7000 increase general fund revenues
(Indicate the portion of this amount included in the 1999-2001 executive budget: 0)

c. For the 2001-03 biennium: \$7000 increase general fund revenues

4. County, city, and school district fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

Signed: 
 Typed Name: Jeff Welspenning
 Department: Department of Agriculture – State Board of Animal Health
 Phone Number: 328-2655
 Date Prepared: 1/13/99

Proposed Amendments to HB 1276

Page 4, line 13, after "officer" strike out "shall" and replace with "may" and after "seize" strike out "all" and replace with "any".

Date: 1-28-89
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1276

House AGRICULTURE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Warner Seconded By Mueller

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chaiman	✓		Bob Stefonowicz	✓	
Dennis E. Johnson, Vice Chm	✓				
Thomas T. Brusegaard					
Earl Rennerfeldt	✓				
Chet Pollert	✓				
Dennis J. Renner	✓				
Michael D. Brandenburg	✓				
Gil Herbel	✓				
Rick Berg	✓				
Myron Koppang	✓				
John M. Warner	✓				
Rod Froelich	✓				
Robert E. Nowatzki	✓				
Phillip Mueller	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Berg

1999 SENATE AGRICULTURE

HB 1276

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276

Senate Agriculture Committee

Conference Committee

Hearing Date 3/11/99

Tape Number	Side A	Side B	Meter #
1		X	2157-END
2	X		0-END
2		X	0-2180
3/12	X		2450-4000
3/25		X	405-3335
3/25	X		1741-END
3/25		X	0-835
Committee Clerk Signature <i>Cristina Jorgensen</i>			

Minutes:

Senator Wanzek called the meeting to order, roll call was taken, all were present.

Senator Wanzek opened the hearing on HB 1276.

Representative Berg introduced the bill. The bill would help control some contagious diseases.

It would shift responsibility over to the board itself.

Larry Schuler, ND State Vet spoke in support of the bill. Testimony enclosed.

Senator Solberg spoke in support of the bill. We need a strong board of animal health to deal with the problem. It's got to be more vigilant than before.

Senator Wanzek: It does appear that we are expanding the enforcement authority of the board, do you feel we are still allowing enough latitude for due process for people that would be affected by that.

Senator Solberg: I certainly do.

Wade Moser from the ND Stockmen's Association spoke in support of the bill. Felt section 15 was very important. Discussed other sections of the bill.

Senator Sand: If we make the cost so high we aren't going to have any new ventures.

Wade Moser: I don't think that is necessarily true.

Senator Sand: I am talking about license fees.

Wade Moser: I believe people who get into non traditional need to understand the impact on traditional livestock.

Senator Sand: How is license going to deter someone from letting an animal loose?

Wade Moser: I guess they are going to do it anyway.

Paul Germolus from the Board of Animal Health spoke in support of the bill. He proposed amendments which were handed out.

Latt Erickson spoke neutrally.

Michelle Pick spoke in opposition of the bill.

Senator Klein: How much input did you get in helping to determine the fees, you are a non traditional producer under this rule correct?

Michelle Pick: Yes I am, I don't consider myself as that.

Senator Klein: They put you in that, so your representative was the one that had to get beat up on with the increase.

Michelle Pick: Yes, and we are kind of out numbered. \$50 is a lot of money for a hobby.

Duane Bohnsack from the ND Pet Retail Association spoke. The bill gives authority to the board that creates some restrictive problems for retailers.

Senator Klein: It surprises me that you have no representation on the board.

Duane Bohnsack: We have a sub committee but they have no voting power.

Peter Lies spoke in opposition to the bill. Testimony enclosed.

Jack Sund briefly spoke in opposition.

Loren Kittelson spoke in opposition to the bill.

Senator Sand: What do you do for a living, how does this affect you?

Loren Kittelson: I am a double agent, I raise cattle and birds.

Senator Klein: Do the health department come out to your place a lot?

Loren Kittelson: Never.

Senator Sand: Have you thought about if you separate hoofed from nontraditional?

Loren Kittelson: That would lend some credence to the problem.

Senator Klein: You are on the non traditional council, how many producers are on there and does you group work well together and understand the issues?

Loren Kittelson: Right now it's going to be less on the council because the Elk people are going to be on a domestic category.

Senator Wanzek: The non traditional council is for no other purpose other than to advise, you have no authority.

Loren Kittelson: None.

Senator Wanzek: Is there one person that is invited to Board of Animal Health?

Loren Kittelson: You can advise but they'll do what they want anyway.

Senator Urlacher: You're attempt to fix the it would be to separate and identify what is a traditional animal and what isn't? The amount of assessment of licensing, is that the package of your concern?

Loren Kittelson: Licensing is out of bounds for the animal.

Senator Kroepflin: This Board of Animal Health, who is on it and who makes it up?

Loren Kittelson: The Governor appoints the seven members.

Jack Sund spoke in opposition to the bill. Feels the non traditional animal owners need representation on the board. Told about how much trouble it is to get animals into his pet store.

Senator Urlacher: Was this a city action.

Jack Sund: By state.

Senator Urlacher: What was the basis of rejection the first time?

Jack Sund: They didn't think they make good pets and that they could carry rabies.

Senator Kinnoin: Could you give me the date of the meeting, the time that was set and the time you actually got in. Do you have documentation?

Jack Sund: I believe it was around June 12.

Senator Kinnoin: The time.

Jack Sund: I called Dr. Schuler and he said to come around 2:00.

Senator Klein: Do you think if you have a member on the board, you will probably be heard but will that be acceptable.

Jack Sund: It's a compromise.

Senator Urlacher: So you're saying communication is the key.

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Senate Agriculture Committee
Bill/Resolution Number Hb 1276
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Jack Sund: Correct.

Duane Bohnsack spoke. Felt they had no voting rights.

Senator Urlacher: Going to be a problem describing what a non traditional animal is.

Duane Bohnsack: They've got about 25 pages describing what it is already.

Senator Wanzek: The advisory board recommended by the association.

Duane Bohnsack: The Board of Animal Health approves them.

Dr. Larry Schuler was asked to the podium for questions.

Senator Kroepflin: Who is on the board and how did they get there?

Larry Schuler: The board is appointed by the governor. There's a representative of pure bred cattle, commercial cattle, dairy cattle, swine and sheep, and 2 practicing veterinarians.

Senator Kroepflin: The advisory committee has no representation on the board.

Larry Schuler: That's true.

Senator Urlacher: Does the Board of Animal Health call in the advisory committee or does the advisory committee have scheduled meetings to move communications to the board.

Larry Schuler: We try to have a non traditional advisory meeting 2 weeks prior to the board meeting.

Senator Kinnoin: The two vets that are on the board, are they both large vets?

Larry Schuler: The two vets at this time are Mark Woods and Steve Yost, they are both mixed practice.

Senator Wanzek: There was an idea of adding people to the board is that ever a possibility do you think?

Larry Schuler: That would be at the discretion of the legislature.

Senator Wanzek: What if the advisory council was allowed to pick one member to sit on the board.

Larry Schuler: Historically the advisory was made because of a wide variety of animals.

Senator Urlacher: Is there a person the advisory council has to communicate to the board on a consistent basis?

Larry Schuler: The deputy state veterinarian was appointed as the chairman of that committee.

Senator Kinnoin: The non traditional livestock membership, that is quite a large group isn't it?

Larry Schuler: I think there is nine or ten of them.

Senator Kinnoin: If those non traditional livestock the advisory council, if they were to choose one member from that group, certainly they would be able to represent those other members.

Senator Klein: We would want one of the producers to move up.

Senator Kroepin: The two vets on the board, are they both large?

Larry Schuler: They are both mixed but one does mainly large and one does mainly small.

Senator Urlacher: The non traditional animals are they an association that they can address their problems and then relay it to the board of animal health.

Larry Schuler: Basically true.

Senator Urlacher: Seems reasonable that there has to be a relationship between the different species and if it strengthens to have a voting member rather maybe we are gaining. Do you feel comfortable with that direction?

Senator Wanzek: The only problem I see is that we are creating an eight member board if we do that.

Senator Sand: Is the issue health or are there other things.

Larry Schuler: The issue is health.

Rod Gilmore spoke in support. Feels there has been a big leap this year, and the board of animal health has been more acceptable of the advisory board.

Senator Sand: Other than rabies could you relate to other diseases that could be spread between animals.

Rod Gilmore: I can't specifically answer. There are about 17 different diseases that can be transferred from animal to humans.

Senator Klein: We maybe didn't work as well with them as we probably could have.

Rod Gilmore: I agree with you on that.

Senator Urlacher: Is it set up by administrative ruling.

Rod Gilmore: Most of the NTL rules set up by administrative rule.

Senator Klein: We want to make it fair to everyone.

Senator Wanzek closed the hearing on HB 1276.

MARCH 12, 1999

Discussion was held.

MARCH 25, 1999

Discussion was held.

Senator Klein proposed amendments and explained them.

Senator Klein made the motion for a Do Pass on the amendments.

Senator Kinnoin seconded.

Discussion was held.

Jack Sund was asked to the podium for some questions.

Paul Germolus was asked to the podium and was asked his opinion on the amendments. He was asked to combine the three amendments into one.

Senator Klein withdrew his motion. Senator Kinnoin seconded.

Paul Germolus from the Attorney General's Office explained the amendment that he put together from the three proposed amendments.

Senator Klein made the motion for a Do Pass on the amendments.

Senator Kinnoin seconded.

Larry Schuler, State Vet briefly spoke on the amendments. He was concerned about a few things.

Senator Kroeplin: The state's attorney, any reason why they don't?

Larry Schuler: Being a class A and B misdemeanor would mean a jury trial, the states attorney doesn't think it is important.

Senator Sand: Can you give me some hypothetical situations when they would be confiscated.

Larry Schuler: Anything considered nontraditional.

Senator Kinnoin: If we take out section 7 aren't these things covered by new rule?

Larry Schuler: There is a section that deals with confiscation.

Discussion was held.

Paul Germolus from the Attorney General's office briefly spoke again.

Wade Moser from the ND Stockmen's Association spoke. They would like section 10 and 18 left in the bill.

Discussion was held.

Senator Urlacher: When you talk about industry you are talking about all animals.

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Senate Agriculture Committee

Bill/Resolution Number Hb 1276

Hearing Date 3/11/99

Wade Moser: All animals particularly beef cattle.

Larry Schuler spoke again.

Senator Urlacher: You need to be in position to take quick action.

Larry Schuler: Yes.

Senator Klein: What if we leave in section 10 and 18.

Larry Schuler: That would help out tremendously.

Discussion was held on the amendments.

Senator Klein made the motion to adopt the amendments.

Senator Kinnoin seconded.

Motion carried.

Senator Klein made the motion to adopt the amendments on pg. 7 line 29.

Senator Kinnoin seconded.

Senator Klein made the motion for a Do Pass as Amended.

Senator Mathern seconded.

ROLL CALL: 7 Yes, 0 No

CARRIER: Senator Klein

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1276

Page 1, line 1, remove "a new section to chapter 36-01"

Page 1, line 2, remove the second "the"

Page 1, line 3, remove "confiscation of nontraditional livestock,"

Page 1, line 7, replace "35-15-21" with "36-15-21"

Page 1, line 14, after the semicolon insert "to provide for a legislative council study;"

Page 3, line 13, remove the overstrike over "~~five~~" and remove "ten"

Page 3, line 15, remove the overstrike over "~~twenty-five~~" and remove "fifty"

Page 3, line 16, remove the overstrike over "~~ten~~" and remove "twenty"

Page 3, line 18, remove the overstrike over "~~seventy-five~~" and remove "one hundred twenty-five"

Page 4, remove lines 9 through 31

Page 5, remove lines 1 through 31

Page 6, line 7, overstrike the colon

Page 6, line 8, remove " ~~1.~~ a."

Page 6, line 9, replace "; or" with a period

Page 6, remove lines 10 through 14

Page 6, line 26, overstrike ", or a law enforcement officer, "

Page 7, line 7, remove "Enforcement orders - Administrative hearing -"

Page 7, remove lines 8 through 20

Page 7, line 23, overstrike "a class B misdemeanor" and insert immediately thereafter "an infraction"

Page 9, line 27, remove "All" and insert "Except as otherwise provided by this chapter or by rule, all"

Page 9, line 29, after "diseases" insert ", and that they meet disease testing and vaccination requirements prescribed by rule. Animals originating in other countries must be tested for diseases, as determined by the board, until a risk assessment is completed for the disease. If the board determines that an unacceptable risk exists, the board may deny entry, require additional testing, or require a vaccination"

Page 9, line 30, replace "A" with "The requirement for a" and replace "not required" with "waived"

Page 9, line 31, replace "if" with "provided the waiver is approved by the state veterinarian and"

Page 10, after line 2, insert:

3. The board may require certification indicating that animals entering this state from a foreign country and intended for human consumption have not been treated with drugs that are disallowed under federal law for use in animals intended for human consumption.

4. The board may adopt rules to implement this section."

Page 10, line 30, remove "Enforcement orders - Administrative hearing -"

Page 11, remove lines 1 through 9

Page 11, line 12, overstrike "a class A misdemeanor" and insert immediately thereafter "an infraction"

Page 13, line 29, overstrike "refuses to assist in or"

Page 13, line 31, overstrike "a class B misdemeanor" and insert immediately thereafter "an infraction"

Page 15, lines 9 and 10, overstrike "It is a responsibility of such" and insert immediately thereafter "A" and overstrike "to" and insert immediately thereafter "may"

Page 15, after line 20, insert:

“SECTION 28. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying the state board of animal health, including its membership, its representation, and the nature and scope of its regulatory authority over nontraditional livestock. The legislative council shall report any findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.”

Renumber accordingly

Date: 3/25
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1276

Senate Agriculture Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amendments

Motion Made By Klein Seconded By Kinnoin

Senators	Yes	No	Senators	Yes	No
Senator Wanzek		✓			
Senator Klein		✓			
Senator Sand		✓			
Senator Urlacher		✓			
Senator Kinnoin		✓			
Senator Kroepflin		✓			
Senator Mathern		✓			

Total (Yes) 0 No 7

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/25
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1276

Senate Agriculture Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amendments

Motion Made By Klein Seconded By Kinnoin

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroeplin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/25
Roll Call Vote #: 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1276

Senate Agriculture Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Klein Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroepflin	✓				
Senator Mathern	✓				

Total (Yes) 1 No 0

Absent _____

Floor Assignment Senator Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1276: Agriculture Committee (Sen. Wanzek, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1276 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new section to chapter 36-01,"

Page 1, line 2, remove the first comma and remove the second "the"

Page 1, line 3, remove "confiscation of nontraditional livestock," and remove the second comma

Page 1, line 7, replace "35-15-21" with "36-15-21"

Page 1, line 14, remove "and" and after "penalty" insert "; and to provide for a legislative council study"

Page 3, line 13, remove the overstrike over "~~five~~" and remove "ten"

Page 3, line 15, remove the overstrike over "~~twenty five~~" and remove "fifty"

Page 3, line 16, remove the overstrike over "~~ten~~" and remove "twenty"

Page 3, line 18, remove the overstrike over "~~seventy five~~" and remove "one hundred twenty-five"

Page 4, remove lines 9 through 31

Page 5, remove lines 1 through 31

Page 6, line 7, overstrike the colon

Page 6, line 8, remove "a." and overstrike "The" and insert immediately thereafter "the"

Page 6, line 9, overstrike "; or"

Page 6, line 10, remove "b." and overstrike "Any law enforcement officer of the county or city in which the animal is"

Page 6, overstrike lines 11 through 13

Page 6, line 14, overstrike "chapter"

Page 6, line 26, overstrike ", or a law enforcement officer,"

Page 7, line 23, overstrike "a class B misdemeanor" and insert immediately thereafter "an infraction"

Page 9, line 27, replace "All" with "Except as otherwise provided by this chapter or by rule, all"

Page 9, line 29, after "diseases" insert ", and that the animals meet disease testing and vaccination requirements prescribed by rule. Animals originating in other countries must be tested for diseases, as determined by the board, until a risk assessment is completed for the disease. If the board determines that an unacceptable risk exists, the board may deny entry, require additional testing, or require a vaccination"

Page 9, line 30, replace "A" with "The requirement for a" and replace "not required" with "waived"

Page 9, line 31, after "if" insert "the waiver is approved by the state veterinarian and"

Page 10, after line 2, insert:

"3. The board may require certification indicating that animals entering this state from a foreign country and intended for human consumption have not been treated with drugs that are disallowed under federal law for use in animals intended for human consumption.

4. The board may adopt rules to implement this section."

Page 11, line 12, overstrike "a class A misdemeanor" and insert immediately thereafter "an infraction"

Page 13, line 29, overstrike "refuses to assist in or"

Page 13, line 31, overstrike "a class B misdemeanor" and insert immediately thereafter "an infraction"

Page 15, line 9, overstrike "It is a responsibility"

Page 15, line 10, overstrike "of such" and insert immediately thereafter "A" and overstrike "to" and insert immediately thereafter "may"

Page 15, line 11, overstrike "same" and insert immediately thereafter "animal"

Page 15, after line 20, insert:

"SECTION 28. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying the state board of animal health, including its membership, its representation, and the nature and scope of its regulatory authority over nontraditional livestock. The legislative council shall report any findings, and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly."

Renumber accordingly

1999 HOUSE AGRICULTURE

HB 1276

CONFERENCE COMMITTEE

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276conf-1

House Agriculture Committee

Conference Committee

Hearing Date 4-7-99

Tape Number	Side A	Side B	Meter #
Two HB 1276conf-1	x		0.0 to
Committee Clerk Signature <i>Orlin Hanson</i>			

Minutes: Conf committee on HB 1276.. Rep Renner, chm., Rep Brandenburg, Rep Froelich, Sen Sand, Sen Klein, Sen Kinnoin. Given a do pass out of House Agriculture committee.

Summary of bill: Relates to Board of Animal Health Livestock Markets, Tuberculosis, & Brucellosis eradication in animals & Human treatment of animals.

Sen Klein: We ended up with all sorts of amendments in the Senate to address the concerns the States Atty give us. The board of Animal Health prepared some amendments to cover some of the concerns that the Board didn't cover. Then I had my set of amendments. then the Berg amendments which took part of HB 1335 and put them in so the board of Animal Health were satisfied. That's the gist of all those amendments. Some of issues were to overstrike class b misdemeanors and replace with infractions because the States Atty were finding it very difficult to prosecute class B misdemeanors. If it was a fraction go into the job collect and get going again.

My amendments were to move the fees back to where they were originally. Lot of discussion about who should be on the Board of animal health, early on discussion were maybe we would put someone on from the Non-traditional animal council on the board. I particularly didn't like that cause I couldn't figure out who. What about elk, buffalo, etc. The only thing we didn't do is buffalo on line 7 page 2.

Rep Froelich: Another problem is the Livestock Markets aren't bonded for buffalo and elk sales so someone could get stuck. We have to do something about this.

Wade Moser: We better put it in cause Kist Livestock over here sell buffalo and elk and not bonded for it. Since you removed them from the non traditional list.

Rep Froelich: In talking to the ND Stockmens Assoc they say in Sec 7 some words should be changed to May instead of shall. Consensus was this may eliminate a lot of the problem. If we don't put it in Statute the St Atty will put it in as an Administrative rule.

Rep Renner: Lets deal with one issue at a time.

Sen Klein: The Non Traditional Animal people don't have much to say about things that effect them directly.

Sen D. Mathern: It may seem like the Non Traditional people take up a lot of time for the Dept. Yet some of these operations will be viable concerns in the future. We want to help them and yet try to not bring any exotic diseases in the process that would effect our traditional cattle industry.

Rep Froelich: I believe there is friction or some problems between the Non Traditional and the Traditional animal groups.

Sen Sand: Suppose a non traditional animal is a problem how does the Board handle it?

Sen Klein: I don't believe we could handle it.

Rep Renner: I asked Rep Froelich and Rep Rennerfeldt to discuss this with Wade Moser and I think they have a solution that might be acceptable to the Board of Animal Health and the ND Stockmens Assoc.

Rep Froelich: I believe sec 7 is something we would like back in there but word it right to satisfy the law enforcement people. There are a few words in there like shall and if we changed them to may it would give them some leeway. If someone brought in A wild Russian Boar and they got loose there is nothing the Board of Animal can do about it. They have to get a court order in order to do something about it. If we change this it will still satisfy everybody. The key word in there is shall and if we change that to may it would help. I think the key word in there is court. The board of Animal Health can not go out an confiscate any animal with first getting a court order.

Sen Sand: They had a Wild Boar loose up in Cavalier County that came from Canada and developed a disease problem with it and this could put our cattle industry in jeopardy. Don't need that. We need to protect them.

Rep Rennerfeldt: I kinda got the feeling that one group didn't want any rules period. They didn't want to have to answer to anyone.

Rep Froelich: I can't speak for the board of animal health. In the case of the Russian Wild Boars the board of animal health didn't know what to do. They wound up handling it by administrative rule.

Sen Klein: To address the Wild Boar situation, 3 times the gentleman who thought he had fenced it properly found out that the board had changed its mind. When they were setting up these rules no Wild Boar owners were contacted to get some ideas or just inform them.

Wade Moser: If there are illegal animals out there the Board of Animal wants the authority to go ahead and confiscate them. We have that problem with the sections you put back in with the people who have traditional livestock here illegally, then the board has some options, and I think that's what they wanted.

Sen Klein: I'm going to be hung one way or the other.

Rep Renner: It is our intent to put Sec 7 back in, I want some flexibility for Ladd Erickson to agree to these changes on behalf of the County States Attorney assoc. If we change the words from shall to may they are willing to work with that.

Motion by Sen Sand to put Sec 7 back in the bill and then the Senate recede from their amendments and further amend on page 4, line 13 by replacing the word "shall" with the word "may" and the word "all" to "any" and page 5, line 5 by removing the words "shall" and replace with the words "may".

Second by, no second from any other Senators.

Sen Klein: Maybe we can just move from this part for now and talk about the buffalo section cause we do want to add buffalo to this bill.

Rep Renner: On page 7 we want to add the word bison on line 29, would you put bison in ahead of mules.

Sen Sand: Probably right after cattle. Let Legislative council decide where it should go. If auction yards don't want to sell bison don't have to pay the fee.

Sen Klein:

(Bill Number) HB 1276 (, as (re)engrossed):

Your Conference Committee

For the Senate:

	YES	NO	PRESENT
SEN KLEIN		X	K X
SEN SAND	X		X X
SEN D. MATHERN	X		X X

For the House:

	YES	NO	PRESENT
REP RENNER	X		X X
REP RENNERFELDT	X		X X
REP FROELICH	X		X X

recommends that the (SENATE/HOUSE) (~~ACCEDE~~ to) (RECEDE from) the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

and place _____ on the Seventh order.

, adopt (further) amendments as follows, and place HB 1276 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4 / 08 / 99

CARRIER: _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

(Bill Number) HB 1276 (, as (re)engrossed):

Your Conference Committee

For the Senate: *2nd vote*

	YES	NO	PRESENT
SEN KLEIN	X	X	
SEN SAND	X		
SEN D. MATHERN	X	X	

For the House: *2nd vote*

	YES	NO	PRESENT
REP RENNER	X		
REP RENNERFELDT	X		
REP FROELICH	X		

recommends that the (SENATE/HOUSE) (~~ACCEDE~~ to) (RECEDE from)
723/724 725/726 S724/H726 S723/H725
 the (Senate/House) amendments on (SJ/HJ) page(s) 1070 - 1071

and place _____ on the Seventh order.
727

, adopt (further) amendments as follows, and place
HB 1276 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.
690/515

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4 / 08 / 99

CARRIER: _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

HB 1276: Your conference committee (Sens. Klein, Sand, D. Mathern and Reps. Renner, Rennerfeldt, Froelich) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1070-1071, adopt amendments as follows, and place HB 1276 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1070 and 1071 of the House Journal and pages 916 and 917 of the Senate Journal and that House Bill No. 1276 be amended as follows:

Page 1, line 2, remove the second "the"

Page 1, line 3, remove "confiscation of nontraditional livestock," and remove the second comma

Page 1, line 7, replace "35-15-21" with "36-15-21"

Page 1, line 14, remove "and" and after "penalty" insert "; and to provide for a legislative council study"

Page 3, line 13, replace "ten" with "seven"

Page 3, line 15, replace "fifty" with "forty"

Page 3, line 16, replace "twenty" with "fifteen"

Page 3, line 18, remove "twenty-five"

Page 4, line 13, replace "shall" with "may" and replace "all" with "any"

Page 5, line 5, replace "shall" with "may"

Page 6, line 7, overstrike the colon

Page 6, line 8, remove "a." and overstrike "The" and insert immediately thereafter "the"

Page 6, line 9, overstrike "; or"

Page 6, line 10, remove "b." and overstrike "Any law enforcement officer of the county or city in which the animal is"

Page 6, overstrike lines 11 through 13

Page 6, line 14, overstrike "chapter"

Page 6, line 26, overstrike ", or a law enforcement officer,"

Page 7, line 23, overstrike "a class B misdemeanor" and insert immediately thereafter "an infraction"

Page 7, line 29, after the underscored comma insert "bison,"

Page 9, line 27, replace "All" with "Except as otherwise provided by this chapter or by rule, all"

Page 9, line 29, after "diseases" insert ", and that the animals meet disease testing and vaccination requirements prescribed by rule. Animals originating in other countries must be tested for diseases, as determined by the board, until a risk assessment is"

completed for the disease. If the board determines that an unacceptable risk exists, the board may deny entry, require additional testing, or require a vaccination"

Page 9, line 30, replace "A" with "The requirement for a" and replace "not required" with "waived"

Page 9, line 31, after "if" insert "the waiver is approved by the state veterinarian and"

Page 10, after line 2, insert:

"3. The board may require certification indicating that animals entering this state from a foreign country and intended for human consumption have not been treated with drugs that are disallowed under federal law for use in animals intended for human consumption.

4. The board may adopt rules to implement this section."

Page 11, line 12, overstrike "a class A misdemeanor" and insert immediately thereafter "an infraction"

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Page 13, line 31, overstrike "a class B misdemeanor" and insert immediately thereafter "an infraction"

Page 15, line 9, overstrike "It is a responsibility"

Page 15, line 10, overstrike "of such" and insert immediately thereafter "A" and overstrike "to" and insert immediately thereafter "may"

Page 15, line 11, overstrike "same" and insert immediately thereafter "animal"

Page 15, after line 20, insert:

"SECTION 29. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying the state board of animal health, including its membership, its representation, and the nature and scope of its regulatory authority over nontraditional livestock. The legislative council shall report any findings, and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly."

Renumber accordingly

HB 1276 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

HB 1276

**Testimony of Larry A. Schuler DVM
State Veterinarian
Executive Officer of State Board of Animal Health
House Bill 1276
January 22, 1999
10:00 A.M. CST
House Agriculture Committee
Peace Garden Room**

Chairman Nicholas and Committee members, my name is Larry Schuler. I am the state veterinarian and executive officer of the State Board of Animal Health. I am here to testify in support of HB 1276.

The State Board of Animal Health has been working on this bill for over one year. Its goal is to make the Board more functional and to overcome some of the deficiencies of the law that deals with the State Board of Animal Health. The State Board of Animal Health has received input from the Nontraditional Livestock Advisory Council and the North Dakota Department of Agriculture. The Board has unanimously approved this draft. Some of the changes are mere housekeeping changes, whereas others are more substantive.

Substantive Proposed Changes:

1. Section 2 allows the State Board of Animal Health to appoint a consulting veterinarian. Under the current statute no one meets the definition that is set forth in Chapter 36-01-07.
2. Section 3 clarifies the authority of the Board by allowing, by rule, the quarantine, regulation or prohibition of any animal that is in violation of the North Dakota Century Code (NDCC) or the North Dakota Administrative Code (NDAC).

Currently, the Board is compelled to issue a license if the premises can meet the licensing requirements. Except for skunks and raccoons, the Board cannot refuse to license a species that may be dangerous to humans, domestic animals, wildlife or the environment if they should escape.

For example, we were recently notified that there were mouflon sheep near a ranch in western North Dakota. This is a species that has been brought into North Dakota as an alternative to traditional livestock. The market for these animals has recently dropped considerably and they are of virtually no economic value. This species can, however, interbreed with our indigenous bighorn sheep. They present a risk to the genetic purity of North Dakota's bighorn sheep. We worked with the North Dakota Game and Fish Department to remove these animals but it does expose the risk that some of these species represent. Should the Board have the authority to refuse to license this species?

3. Section 4 clarifies language and increases license fees for nontraditional livestock premises. Currently, nontraditional livestock fees generate about \$5000 per biennium and the North Dakota Game and Fish Department contributes \$30,000 per biennium (The Executive Budget for 99-01 provides for a \$45,000 contribution from the North Dakota Game and Fish Department). The Board estimates that the nontraditional livestock are requiring approximately 80% of the deputy state veterinarian's time, 20% of the state veterinarian's time, and about 40% of our administrative secretary's time. Including the inspections done by the dairy inspectors and the added operating expense, it is estimated that the costs associated with the nontraditional livestock are approximately \$122,500 per biennium. The rate increase is to help offset some of these costs to the state.
4. Section 5 eliminates the requirement for an annual report to the Governor and Legislative Council. The State Board of Animal Health feels that the merger with the North Dakota Department of Agriculture is complete and that we should be included in the annual report of the North Dakota Department of Agriculture. This is also a time saving effort since completion of the report requires a great amount of time.
5. Section 7 relates to the confiscation of nontraditional livestock held in violation of this chapter. This section allows the board to confiscate nontraditional livestock that are being held illegally. Currently the board does not have any recourse except to refer the issue to a States Attorney. This section also allows for due process through the opportunity for a pre seizure and post seizure hearing.
6. Section 8 allows the State Board of Animal Health to establish a reportable disease list. There is currently a reportable disease list but it is not referred to in statute.

This section also provides for an exemption to the open record laws. This allows the State Board of Animal Health to keep disease test records confidential if they do not relate to mandatory disease control programs or the public health. The mandatory disease control programs include brucellosis, tuberculosis, and pseudorabies. An example of a disease that affects the public health would be rabies.

7. Sections 10, 18, and 26 give the State Board of Animal Health some enforcement authority. The Board has had to rely on States Attorneys for enforcement of Title 36. Currently a violation of Title 36 in most instances is a Class B or A misdemeanor. This requires that these cases be turned over to the States Attorney in the county of origin. In the last two years only two criminal complaints have been filed for a violation of Title 36. This section would give the Board authority to assess a civil penalty and provides for the opportunity for an administrative hearing.

8. Section 12 refers to livestock unfit for sale. Auction markets should not be a site for disposal of animals that are terminally ill. This is an effort to keep animals that are unfit for human consumption out of the trade channels and to keep the livestock industries free of any criticism about the treatment and care of animals.
9. Section 15 clarifies the need for a certificate of veterinary inspection for all animals entering North Dakota. Currently in the North Dakota Century Code (36-14-04 to 36-14-07), only domestic species are listed individually by species as being required to have a certificate of veterinary inspection. The North Dakota Administrative Code (48-02-01-01 through 48-02-01-11) outlines the import requirements for all animals entering North Dakota. The NDAC in 48-02-01-10 requires a certificate of veterinary inspection for "all other animals". This has been in affect since 1989. If individuals have been importing animals without a certificate of veterinary inspection since 1989, they have been doing so in violation of the NDAC.

A certificate of veterinary inspection is important because it means that a veterinarian has inspected the animals and they are showing no signs of clinical disease. It also provides legal documentation as to the origin of the animals in case there is a disease outbreak.

10. Sections 19 through 26 are an effort to expand the scope of Chapter 36-15 to apply to bison. Currently that statute applies only to cattle. The brucellosis and tuberculosis eradication programs group cattle and bison together. Our import requirements for both species are similar. The board has been frustrated in attempts to apply this to bison that have not met our import requirements.
11. Section 27 expands 36-21.1-06 to allow for the disposition of animals for which no public market exists for an animal that has been treated inhumanely.

We recently confiscated several starving dogs. One of these dogs was severely injured. NDCC 36-21.1-06 allows these animals to be sold but it does not offer the Board any other options for disposition of animals for which there is no market.

Sections that would be repealed:

1. The tuberculosis and brucellosis fund has not been funded recently. The NDCC 36-01-19 allows for the emergency commission to provide funds in case of any serious outbreak of any contagious, infectious, or epizootic disease in domestic animals or nontraditional livestock.

36-15-12. Bovine tuberculosis fund and brucellosis fund to be maintained.

There must be maintained in the office of the state treasurer a bovine tuberculosis fund and a brucellosis fund for the purpose of carrying out the provisions of this

chapter. Such funds must consist respectively of the moneys appropriated thereto from time to time by the legislative assembly.

2. These sections would be included in the changes made in Section 15 .

36-14-04. Horses, mules, and asses imported into state to have certificate of veterinary inspection. Each horse, mule, and ass brought into this state must be accompanied by a certificate of veterinary inspection certifying that such animal has been examined within thirty days previous to the shipment and found to be free from all contagious and infectious diseases.

36-14-05. Cattle brought into state - Certificate of veterinary inspection required. All cattle brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of contagious, infectious, or communicable disease, except that no certificate of veterinary inspection is required for those cattle originating directly from a producer's premises and not diverted en route, if the cattle are delivered directly to a licensed auction market or other premises approved by the commissioner of agriculture.

36-14-06. Certificate of veterinary inspection required of sheep imported into state Contents. All sheep brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of contagious, infectious, or communicable diseases, except that no certificate of veterinary inspection is required for those sheep originating directly from a producer's premises and not diverted en route, if the sheep are delivered directly to a licensed auction market or other premises approved by the commissioner of agriculture.

36-14-07. Swine brought into state to have certificate of veterinary inspection -Contents. All swine brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of contagious, infectious, or communicable diseases, except that no certificate of veterinary inspection is required for those swine originating directly from a producer's premises and not diverted en route, if the swine are delivered directly to a licensed auction market or other premises approved by the commissioner of agriculture.

3. Tuberculosis has been combined with brucellosis in Section 21 and paratuberculosis has been eliminated from this Chapter.

36-15-08. Owner entitled to compensation for animal infected with tuberculosis or with paratuberculosis - Board of animal health may make rules governing payments. The owner of an animal adjudged by the board to be infected with tuberculosis or with paratuberculosis and appraised in accordance with the provisions of this chapter is entitled to the amount specified in this

chapter. Provided, that when in the discretion and judgment of the board of animal health, a herd of cattle is so seriously infected with bovine tuberculosis, as to warrant disposal of the entire herd, the board is hereby authorized to approve indemnity payments on all cattle in such herd whether reactors, infected, or not, in accordance with the limits set forth in section 36-15-09. The board may make reasonable rules governing the payment of such compensation within the limitations prescribed in this chapter.

FROM: NORTH DAKOTA PET RETAILERS ASSOCIATION

Regarding HB 1276

Testimony by Duane Bohnsack

Good morning, I am Duane Bohnsack. I have two retail pet stores in ND and am representing the North Dakota Pet Retail Association in opposition to HB1276. I will be brief, because I believe you will have questions when I am done.

Again we are faced with a bill that gives legislative authority to the Animal Board of Health and the ND State Health Department to write Administrative Rule and Law that regulates the companion animals and companion animal industries in the State of North Dakota, without any input from these respective groups.

Section 36-01-08 - (page 2 lines 22-27) States "The board shall protect the health of domestic animals and nontraditional livestock of this state, shall determine the most efficient and practical means for the prevention, suppression, control and eradication of dangerous, contagious and infectious diseases among the domestic animals and nontraditional livestock of this state, ... " Who could argue against such a mission statement. Surely no one wants anything to happen to the domestic livestock population of agriculture, or wildlife, or companion animals and relate animal industries. The question then becomes; can the board of animal health carry through such a charge from the legislature? The answer is no.

The board has 7 members from the Ag livestock industries, 3 cattle - 1 swine - 1 sheep - and 2 large animal Veterinarians. What knowledge do these ag experts have on companion animals, do they know the nature and day to day operations of the industries who operate in companion animals, do they know the economic, social, and mental impact they will

have on the people who own pets. When they write the rules and regulations governing them, I am sure they are very qualified in their field of expertise in the Ag business, but based on their statements, current writing of rules and regulations on companion animals, they are NOT QUALIFIED to tell the people of No. Dakota what pets they can have, or regulate the pet industry of ND.

If the North Dakota Health Department wants the Board of Animal Health to regulate 350,000 residents who own over 1,000,000 pets in the State, we must have a fair and equitable board that represents all livestock, owners of livestock, and all businesses that have financial concerns in those areas. Someone in the past had the vision to let a group of representative Ag livestock producers sit on a board, write rules and regulating the concerns Ag livestock. Now as times change, the same people are being asked to expand their role, take more time from their businesses to regulate the pet industry. No wonder everybody is pointing fingers at each other, blaming one for this or that. They don't have the expertise or time, nor should they. If I can barely keep up in my industry, how can they.

The system that is place still works for Ag livestock, but it must be changed and expanded if you want the same system to work to govern nontraditional and companion pets.

I would like the help of this committee in rewriting the Board of Animal Health charter to include the following;

1. Add to the board the following seats
 - a. 1 seat to a nontraditional livestock - exotic producer
 - b. 1 seat to represent puppy, kitten, pet producers of the state
 - c. 2 seats to persons from the retail pet suppliers
 - d. 1 seat to game and fish department - wildlife

2. Change from 2 lg. animal veterinarians to 1 Ag livestock veterinarian - 1 pet veterinarian.
3. Divide the board into 2 equal sub committees, one that regulates traditional livestock in the Ag industries, and another that regulates the companion animals and nontraditional livestock. When issues affect all industries they will have to work out fair equitable rules and regulations that protect all industries, peoples rights, companion animals, and domestic livestock.
4. Each board member will sit for 6 years, with 2 changing each year, one from each division and they will have equal votes / representation when meeting as a whole.

I believe that such changes in the Board of Animal Health will result in better regulation (if and when needed) for all industries. None of the people that I have talked to that are in the pet field (including veterinarians who practice only on pets) want to tell the livestock industry what to do with their cows, hogs, and sheep, because most of us are not qualified in their fields. But, we do take exception to Ag Board Members writing rules regulating our industry that drive up our cost, restricting our businesses when they know nothing about our businesses at all.

In regards to HB 1276 please kill all aspects that relate the ND State Health Dept. and the Board of Animal Health having the authority to regulate companion animals and related pet industries until we have a fair, balanced, representative board of **all livestock**.

I also want to make it clear, I am not anti regulation, all industries need rules and control, but they must promote, not restrict the ability to do better and grow. They must stop the bad, and reward the good. I am for good sound rules that protect the right to own pets, the right to free and fair trade, as long as it does not harm other people or their property.

At this time I would like to answer any questions you have, and see if any committee members will sponsor a bill this session, make sure it makes it to the full House and Senate, and that gives a fair and equitable voice on the Board of Animal Health to the apx. 1,000,000 companion pets, apx. 350,000 companion pet owners and related pet industries in the State of ND.

A handwritten signature in black ink, appearing to read "Debra L. Strickland". The signature is written in a cursive style with a large, stylized initial "D".

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

JAMES BILLEY AND PETE PETERSON,)

Plaintiffs,)

-v-)

NORTH DAKOTA STOCKMEN'S)
ASSOCIATION,)

Defendants.)

File No. 95-C-2544

MEMORANDUM OPINION

This is an action asking for a Declaratory Judgment finding that certain sections of Chapter 36-09 relating to brands and marks and Chapter 36-22 relating to brand inspections violate Section 2 and Section 12 of Article 10 of the Constitution of the State of North Dakota. The defendants deny the invalidity of such sections and specifically allege the statutes are constitutional.

The enactments of the legislature are presumed to be constitutional, and will be upheld unless it is manifestly in violation of the state constitution. In considering the constitutionality, every reasonable presumption in favor of its constitutionality prevails. The Courts will not declare a statute void unless its invalidity is shown beyond a reasonable doubt. Obviously, the legislature has the power to enact any law not prohibited by the state or federal constitution. See generally, Menz v. Coyle 117 NW 2d 290 (ND 1962).

The facts of this case show that the North Dakota Stockmen's Association has, since 1949, been the body entrusted with the authority to make

inspections of all cattle shipped from our state to any public livestock market, including auction markets, buying stations or packing stations within or without the State of North Dakota. Prior to that time, there had been three separate systems of inspection. In 1993, the association was designated to handle all brand recording duties as well. The North Dakota Board of Animal Health (formerly the Livestock Sanitary Board) sets fees for brand inspections, brand registration, and the cost of brand books. The association has no authority to independently set fees. The Board of Animal Health Members are appointed by the governor. The board approves all rule changes to the regulations governing brand inspections and recording. The statute provides that all fees received as a result of these duties are deposited in the North Dakota Stockmen's Association general fund.

The initial claim of the plaintiff is that this state of facts violates Section 2 of Article 10 of the Constitution which states that the power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any county or other municipal corporation shall be a party. Clearly, there has been no violation of this constitutional provision. The setting of the fees for the services involved are established by a board appointed by the governor. The Stockmen's Association provides input into such determination, but the board establishes the payment involved.

The next contention of the plaintiff is that Section 12 of Article 10 of the Constitution has been violated by the statutory powers granted to the Stockmen's Association. Section 12 generally provides that all public monies from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau or institution of the state receiving the same to the State Treasurer. There are specific exceptions none of which apply herein and, in

addition, the amendment further exempts fees and monies received in connection with the licensing and organization of certain professional people in the state.

Section 36-22-02 vests authority with the stockmen's association as follows:

“North Dakota stockmen's association authority. The North Dakota stockmen's association, a livestock association duly organized under the laws of the state of North Dakota, and duly registered as a market agency under the Act of Congress commonly known as the Packers and Stockyards Act, 1921 (Pub. L. 67-51; 42 Stat. 159; 7U.S.C. 181 et seq.), for the better protection of the livestock industry of the state of North Dakota and for the purpose of securing uniformity of inspection and cooperation with the department of agriculture of the United States, shall make an inspection to determine ownership, of all cattle shipped or consigned from this state to any public livestock markets, including auction markets, buying stations, or packing plants within or without the state of North Dakota.”

In regard to the authority of the association to maintain the brand books, Section 36-09-01 reads as follows:

“Office for recording brands. The North Dakota stockmen's association shall appoint a chief brand inspector. The chief brand inspector shall maintain a general office for recording marks and brand. As used in this chapter, “chief brand inspector” means the chief brand inspector of the North Dakota stockmen's association.

In each instance, the fees generated from such activity are ordered paid into the general fund of the North Dakota Stockmen's Association as a continuing appropriation. All parties agree that the North Dakota Stockmen's Association is a private, nonprofit corporation organized and existing under the laws of the State of North Dakota. It was incorporated in 1941 for promoting the general welfare of the livestock industry in the state.

The initial question before the Court is whether the fees involved

constitute "public monies". Section 21-04-01(5) defines public funds as follows:

"Public funds" includes all funds derived from taxation, fees, penalties, sale of bonds, or from any other source, which belong to and are the property of a public corporation or of the state, and all sinking funds of such public corporation or of the state, and all funds from whatever source derived and for whatever purpose to be expended of which a public corporation or the state have legal custody. The term includes funds of which any board, bureau, commission, or individual, created or authorized by law, is authorized to have control as the legal custodian for any purpose whatsoever whether such funds were derived from general or special taxation or the assessment of persons or corporations for a specific purpose. The term does not include funds of students or student organizations deposited in a student financial institution approved by and under the control of the school board."

From a review of the statutes, I am satisfied that the North Dakota Stockmen's Association is an agent of the state for purposes of maintaining the brand book and conducting brand inspections. Clearly, the statute make it clear that the association is enforcing the rules and regulations as designed by a public board of the State of North Dakota. The history of the brands and marks chapter of the code show that prior to 1993, the general office for recording marks and brands was maintained in the office of the Commissioner of Agriculture. The purposes of the law in each case are for the general protection of the public. In establishing them as an agent for the state, they have been made the exclusive provider of such services. They name and appoint the chief brand inspector who then appoints the people at local areas. As the agents of the state, they carry out a state function.

The defendant first claims that the fees involved herein are not public funds. They say these are only costs for services performed and no different than a health certificate provided by a veterinarian. This Court believes there is a substantial difference. Initially, the Stockmen's Association has been vested with a monopoly. Any veterinarian throughout the state can provide the health certificate.

I believe these are fees generated directly for the benefit of the public. I am satisfied that they do constitute public funds, and must be returned to the state.

The association next contends that they should exempt under the constitutional amendment regarding the licensing and organizations of various professionals. I am satisfied these are not fees for identification and regulation of an industry. They next suggest that they are one of the boards or associations under Section 54-44-12 which has the power to deposit money in any bank selected by them. Clearly, however, this section applies to boards, associations and commissions which are created by law and not existing private corporations which are designated to perform a public purpose.

The plaintiff next claims that Section 18 of Article 10 has been violated. That section prohibits the state from loaning or giving its credit or making donations to any corporation except specified ones. The continuing appropriation to a private corporation violates this provision. In addition, that portion of Section 36-22-08 which allows receipts from the sale of strays to be turned over to the general fund of the association violates such a provision. Although logically, there is a cost involved in taking care of these matters, it must be done in a different manner. The defendant argues that North Dakota's system is similar to South Dakota's and should be held constitutional as a result. The systems are similar except that all excess funds in South Dakota are returned to the State Treasurer.

Accordingly, the Court finds that portion of Section 36-22-03 which reads as follows:

“Brand Inspectors under this chapter shall charge and collect fees for inspection ... which funds, so collected must be paid into the general fund of the North Dakota Stockmen's Association.”

And that portion of Section 36-09-18 which states:

“Any fees collected under this chapter must be deposited in the general fund of of the Stockmen’s Association. The fees deposited under this Chapter in Section 36-22-03 are appropriated as a continuing appropriation of the North Dakota Stockmen’s Association.”

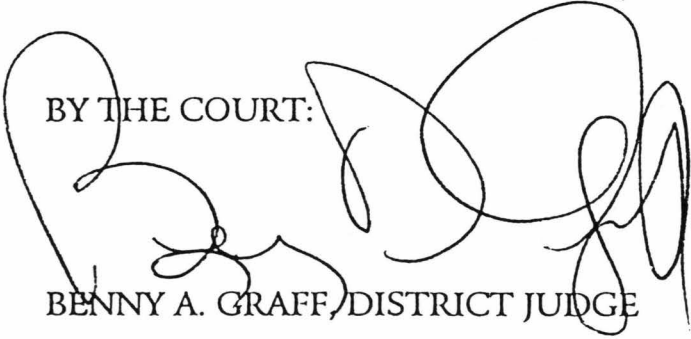
are violations of Section 12 of Article 10 of the Constitution of the State of North Dakota. No exemption is provided for the North Dakota Stockmen’s Association in the constitutional provision nor can they fit under any of the exemptions allowed. By naming them in the statute, they become an agent of the state. As such, they must return the money to the treasurer in an appropriate manner.

The Court hereby stays the effective date of this opinion and order until such time as it can be appealed to the Supreme Court of the State of North Dakota. Until that can be accomplished, the Court orders that the Stockmen’s Association properly identify all funds resulting from the receipt of fees from these chapters of the code. I likewise believe that this opinion should be stayed until such time as the legislature can amend the statutes to properly conform to the Constitution of the State of North Dakota.

Counsel for the plaintiff may prepare the appropriate Order for this Court’s signature.

Dated: June 9, 1997

BY THE COURT:



BENNY A. GRAFF, DISTRICT JUDGE

June 1998

June 4, 1998

- 1st Summit Bank v. Samuelson , 1998 ND 113 - Civil No. 970383
On this record, foreign state's confessed judgment did not deny due process to debtor even though foreign state's procedure does not require signature of debtor under oath.
North Dakota is required to give full faith and credit to another state's money judgment which is properly filed and authenticated in North Dakota, regardless of our own policy or law.
- Ash, et al. v. Traynor, et al. , 1998 ND 112 - Civil No. 980026
The 1997 version of NDCC 65-05-09.3 canceling a worker's compensation permanent total disability benefits when the injured worker became eligible for social security retirement benefits, and replacing them with a much smaller "additional benefit" under NDCC 65-05-09.4, does not apply to a worker who was already receiving permanent total disability benefits before the statute took effect.
- Bachmeier v. Bachmeier , 1998 ND 108 - Civil No. 980025
Custody award summarily affirmed under N.D.R.App.P. 35.1(a)(2).
- Billey v. North Dakota Stockmen's Association , 1998 ND 120 - Civil No. 970332
A plaintiff's motive for bringing suit is irrelevant to the determination whether he has standing.
The North Dakota Stockmen's Association acts as an agent for the State when performing brand inspection and registration services, and the fees generated by those services are "public moneys" which must be paid over to the State Treasurer under N.D. Const. Art. X, section 12.
Those portions of N.D.C.C. sections 36-09-18 and 36-22-03 which direct payment of brand inspection and recording fees into the general fund of the North Dakota Stockmen's Association are unconstitutional.
The Packers and Stockyards Act of 1921, 7 U.S.C. sections 181-231, was not intended to wholly occupy the field and does not preempt state laws governing brand inspection.
A state requirement fees collected by the North Dakota Stockmen's Association for brand inspection services be paid over to the State Treasurer does not conflict with 7 U.S.C. section 217a(c).
- Felco, Inc. v. Doug's North Hill Bottle Shop , 1998 ND 111 - Civil No. 970234
The interpretation of a lease is a question of law.
Part performance must be consistent only with existence of alleged oral agreement to take alleged oral agreement out of the statute of frauds.
If a written agreement is not completely integrated, the parol evidence rule does not bar evidence of a separate oral agreement which is not inconsistent with the written agreement.
A written agreement may be altered by an executed oral agreement.
Interest in a contract action is a question of law.
- Fisher v. American Family , 1998 ND 109 - Civil No. 970315
Coverage for damage to the flooring in a home arising out of the insured floor finisher's operations was not excluded by exclusions b or j in the insured's commercial general liability policy.
Exclusions k and l excluded from coverage the cost of the finish and the sanding and finishing work performed by the insured on the homeowner's flooring.
When an insured has been abandoned by its insurer and enters into a Miller-Shugart settlement agreement, a failure to delineate between covered and non-covered damages does not render the Miller-Shugart agreement totally unenforceable.
- Johnson v. Traynor , 1998 ND 115 - Civil No. 970364

Filed 6/4/98 by Clerk of Supreme Court

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

1998 ND 120

James Billey and
Pete Peterson,

Plaintiffs and Appellees

v.

North Dakota Stockmen's
Association,

Defendant and Appellant

Civil No. 970332

Appeal from the District Court for Burleigh County, South
Central Judicial District, the Honorable Benny A. Graff, Judge.

AFFIRMED.

Opinion of the Court by Sandstrom, Justice.

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Gordon W. Schnell, of Mackoff, Kellogg, Kirby & Kloster,
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Streets, Camden, N.J. 08102, for defendant and appellant.

Billey v. North Dakota Stockmen's Association
Civil No. 970332

Sandstrom, Justice.

[¶1] The North Dakota Stockmen's Association (Stockmen's Association) appeals from a summary judgment declaring portions of N.D.C.C. §§ 36-09-18, 36-22-03, and 36-22-08 unconstitutional. Concluding brand inspection and registration fees are public moneys which must be paid over to the state Treasurer under North Dakota's Constitution, we affirm.

I

[¶2] The Stockmen's Association was formed in 1929, and incorporated as a non-profit corporation in 1941. Prior to 1949, brand inspection in North Dakota was conducted by county brand inspectors, veterinarians, and the Stockmen's Association. In 1949, the legislature designated the Stockmen's Association as the sole entity authorized to conduct brand inspections in the state. 1949 N.D. Sess. Laws Ch. 231, § 2; see N.D.C.C. § 36-22-02. The Stockmen's Association employs a Chief Brand Inspector, two fieldmen, and approximately thirty other employees statewide to conduct brand inspections. The fees for brand inspections are set by the Board of Animal Health, a state board whose members are appointed by the Governor. See N.D.C.C. §§ 36-01-01 and 36-22-03. All fees generated by brand inspections are paid into the general fund of the Stockmen's Association. N.D.C.C. § 36-22-03.

[¶3] Under the version of N.D.C.C. Ch. 36-09 in effect prior to 1993, the state Agriculture Commissioner was responsible for recording brands or marks, maintaining brand books, collecting fees for recording brands, and paying those fees over to the state Treasurer. In 1993, the legislature transferred these duties to the Stockmen's Association and directed the fees generated by brand registration and sale of brand books be paid into the general fund of the Stockmen's Association. See 1993 N.D. Sess. Laws Ch. 357; N.D.C.C. Ch. 36-09.

[¶4] The Stockmen's Association also is given broad authority over estrays. The Stockmen's Association is authorized to take all sale proceeds from estrays,¹ and, if those funds are unclaimed for one year, place them in its general fund. See N.D.C.C. Ch. 36-22.

¹"Estray" is defined in N.D.C.C. § 36-22-01:

"Any marked or branded cattle found at any livestock market, to which a shipper cannot produce title or satisfactory evidence of ownership, is considered as an estray."

The Stockmen's Association uses these estray funds to purchase vehicles for the Chief Brand Inspector and two fieldmen.

[¶5] James Billey and Pete Peterson are North Dakota residents who own livestock and have registered brands. They brought this declaratory judgment action challenging the constitutionality of the brand inspection, brand recording, and estray provisions in N.D.C.C. Chs. 36-09 and 36-22. On cross-motions for summary judgment, the district court concluded portions of N.D.C.C. §§ 36-09-18, 36-22-03, and 36-22-08 violate N.D. Const. Art. X, § 12, which requires all public moneys be paid to the state Treasurer, and N.D. Const. Art X, § 18, which prohibits the state from making loans, giving credit, or making donations to or in aid of any individual, association, or corporation. The court directed its order be stayed "until such time as it can be appealed" to this Court, and further stayed "until such time as the legislature can amend the statutes to properly conform to the Constitution of the State of North Dakota."

[¶6] The district court had jurisdiction under N.D. Const. Art. VI, § 8, and N.D.C.C. § 27-05-06. This Court has jurisdiction under N.D. Const. Art. VI, § 6, and N.D.C.C. §§ 28-27-01 and 28-27-02. The appeal was timely under N.D.R.App.P. 4(a).

II

[¶7] The Stockmen's Association asserts Billey and Peterson lack standing to challenge the constitutionality of the statutes. Billey and Peterson both have paid fees to register brands. Peterson owned cattle, which required brand inspection when he sold them, and he had paid brand inspection fees to the Stockmen's Association. "Standing is a concept utilized to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented to the court." Black's Law Dictionary 1405 (6th ed. 1990). Billey and Peterson clearly have an interest and are affected by the challenged statutes. Furthermore, any state taxpayer has standing to challenge a statute on the basis state funds are being unlawfully dissipated. See Danzl v. City of Bismarck, 451 N.W.2d 127, 129 (N.D. 1990).

[¶8] The Stockmen's Association asserts standing is lacking because Peterson has "an ax to grind" with the Association. Peterson was employed by the Stockmen's Association for 37 years, including 23 years as a fieldman. Peterson apparently retired after conflicts with the executive vice-president of the Stockmen's Association, and the Association asserts he has an improper motive in bringing this suit. The Association, however, cites no authority indicating a plaintiff's motives for initiating suit may

jeopardize his standing to sue. Motive is irrelevant to the determination whether a party has standing.

[¶9] We conclude Billey and Peterson have standing to bring this action.

III

[¶10] The Stockmen's Association asserts the trial court erred in holding portions of N.D.C.C. §§ 36-09-18 and 36-22-03 violate N.D. Const. Art X, § 12.

[¶11] The legislature has given the Stockmen's Association exclusive authority to conduct brand inspection and recording in the state. N.D.C.C. Ch. 36-09 and § 36-22-02. Any fees collected under N.D.C.C. Ch. 36-09 for recording of brands, sale of brand books, and other related services, go to the general fund of the Stockmen's Association:

"Any fees collected under this chapter must be deposited in the general fund of the North Dakota stockmen's association. The fees deposited under this chapter and section 36-22-03 are appropriated as a continuing appropriation to the North Dakota stockmen's association."

N.D.C.C. § 36-09-18. N.D.C.C. § 36-22-03 directs any funds collected for brand inspection services performed in the state must be deposited in the general fund of the Stockmen's Association:

"Brand inspectors under this chapter shall charge and collect fees for inspections on all shipments or consignments of cattle at livestock markets . . . and shall charge and collect fees for inspection at auction markets, buying stations, and packing plants . . . which funds, so collected, must be paid into the general fund of the North Dakota stockmen's association."

[¶12] N.D. Const. Art. X, § 12, requires all "public moneys" be paid over to the state Treasurer and disbursed only by appropriation by the legislature:

"All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and

disbursed only pursuant to appropriation first made by the legislature; . . ."²

[¶13] The seminal question is whether the fees generated under N.D.C.C. Chs. 36-09 and 36-22 are "public moneys." The Stockmen's Association asserts the fees are merely payment for services rendered between private parties and were never in the hands of any state official, and thus are not public moneys. The district court determined the Stockmen's Association acted as an agent of the state when providing brand inspection and recording services, and the fees generated are therefore public moneys.

[¶14] The Stockmen's Association's assertion the fees are a "quid pro quo" for services rendered and were never the property of the state is too simplistic. Under N.D. Const. Art. X, § 12, all fees collected by an officer or agent of the state for a state-wide public purpose, by authority of law, must be paid to the state Treasurer and spent only by specific appropriation. See Menz v. Coyle, 117 N.W.2d 290, 302 (N.D. 1962); Langer v. State, 69 N.D. 129, 138-39, 284 N.W. 238, 243 (1939). There is no dispute these fees are for a state-wide public purpose and are collected under authority of law. See N.D.C.C. § 36-22-02 (purpose of inspection requirements is for protection of the North Dakota livestock industry and to ensure uniformity of inspections). Thus, if the Stockmen's Association is acting as an agent for the state in providing these services, the fees are covered by N.D. Const. Art. X, § 12, and must be deposited with the state Treasurer.

[¶15] The Stockmen's Association argues it is not acting as an agent of the state:

"The trial court somehow concluded that brand fees were public money because the Association is 'an agent of the state.' We submit that in order for the Association to be an agent, there must be an intent on the part of the principal to create an agency relationship, and there must be a specific scope or set of powers for the agent to perform (to the exclusion of others). . . . There is nothing in NDCC § 36-22-02 or § 36-22-03 or elsewhere which indicates an intention to create an agency relationship, particularly one relating to collection of fees for the State. Rather, as stated above, the Association's brand

²The constitutional provision includes numerous exceptions to its rule. None of these exceptions applies to the fees collected by the Stockmen's Association.

inspection activities are a fee for service arrangement, a quid pro quo. Clearly, the plain intent is for the Association to perform the service and retain the fee. There is nothing to even imply that the Association's possession of the fees is on behalf of the State or acting as an agent for the State."

[¶16] The Stockmen's Association's argument is the polar opposite of the position it asserted in prior litigation involving the nature of its brand inspection services. In United States v. Robinson, 106 F.Supp. 212 (D.N.D. 1952), the United States sued the Stockmen's Association and the members of the State Livestock Sanitary Board, asserting the fees charged for brand inspections violated Ceiling Price Regulation 34 under the Defense Production Act of 1950, which restricted increases in charges for services in the course of a trade or business. The Stockmen's Association in that case asserted:

"that brand inspection of livestock is a governmental function coming under the police power of the State of North Dakota and that the North Dakota Stockmen's Association, a non-profit corporation, has been designated by statute as an agency of the State of North Dakota for the performance of such governmental function"

Robinson at 216.

[¶17] The court agreed, holding:

"The law of the State of North Dakota, then, provides that inspection for health and brands shall be made before livestock is offered for sale. In other words, it is mandatory. The purpose of such inspection for either health or brands seems perfectly clear. Insofar as the inspection for brands is concerned, it is to determine ownership, to prevent and detect crime and to prevent fraud and to regulate the sale and distribution of livestock. That has none of the characteristics of a trade or business. It is performed under the direction of the State of North Dakota by a non-profit corporation. It is for the protection and benefit of the public generally. . . .

"It further seems clear to the Court that by virtue of Chapter 36-22 . . . the State of North Dakota, through legislative act,

designated the North Dakota Stockmen's Association, a corporation, as its agency for the making of brand inspections on cattle sold within the state. . . . [C]ertainly the North Dakota Stockmen's Association is an agent of the state in making brand inspections. In other words, the North Dakota Stockmen's Association is, insofar as brand inspection is concerned, designated as an agency of the state to carry out the physical performance of a governmental function."

Robinson at 217. The opinion in Robinson also directly refutes the Stockmen's Association's assertion in this case it is merely providing a service for a fee:

"In this instance, the State of North Dakota, through the North Dakota Stockmen's Association, is selling neither a commodity nor a service in trade or business. It is in competition with no one. It is exercising purely a governmental function in policing the sale of livestock in the state through having inspectors inspect livestock for brand markings. No one other than the State of North Dakota, through the North Dakota Stockmen's Association, has been authorized to do such inspecting and make charge therefor."

Robinson at 218.

[¶18] Further support for the conclusion the Stockmen's Association is acting as an agent for the state and performing purely governmental functions when providing brand inspection or recording services is found in N.D.C.C. § 36-09-24:

"Police powers of chief brand inspector and two fieldmen. The chief brand inspector and two fieldmen employed by the North Dakota stockmen's association have the power:

- "1. Of a police officer for the purpose of enforcing brand laws and any other state laws or rules relating to livestock.
- "2. To make arrests upon view and without warrant for any violation of this chapter or any other state laws or rules relating to livestock committed in the inspector's presence.

"3. To respond to requests from other law enforcement agencies or officers for aid and assistance. . . ."

This broad grant of police powers to the Stockmen's Association's employees is a clear indication the Stockmen's Association is acting as an agent of the state when performing services under N.D.C.C. Chs. 36-09 and 36-22. The Stockmen's Association cites no basis for granting such police powers to a private entity merely performing a private service for a fee.

[¶19] Finally, the legislature also recognized these fees were public moneys belonging to the state. N.D.C.C. § 36-09-18 provides fees collected for brand inspection or recording services and deposited in the Stockmen's Association's general fund "are appropriated as a continuing appropriation" to the Stockmen's Association. If, as the Association asserts, the legislature intended to create a private fee-for-service arrangement, there would be no reason to attempt to make a continuing appropriation. "An 'appropriation' is the 'setting apart from the public revenue of a definite sum of money for the specified object in such a manner that the officials of the government are authorized to use the amount so set apart, and no more, for that object.'" State ex rel. Link v. Olson, 286 N.W.2d 262, 268 (N.D. 1979) (quoting Campbell v. Towner County, 71 N.D. 616, 3 N.W.2d 822, 825 (1941), and State v. Holmes, 19 N.D. 286, 123 N.W. 884, 886-87 (1909)). By nature, an "appropriation" is the expenditure of public funds.

[¶20] The Stockmen's Association does not rely upon the "continuing appropriation" in N.D.C.C. § 36-09-18 to uphold the validity of the transfer of fees to its general fund. Rather, the Association asserts this language is "not necessary" because the Association has earned the fees and already has possession of the funds, so "[t]here is therefore no need for an appropriation."

[¶21] The question in this case is not the validity of a continuing appropriation in general, but whether a continuing appropriation can bypass the state treasury. In Gange v. Clerk of Burleigh County District Court, 429 N.W.2d 429 (N.D. 1988), this Court upheld a continuing appropriation of marriage dissolution fees to fund a "displaced homemaker program." In doing so, the Court stressed the statute specifically directed the clerks of court to pay the fees to the state Treasurer, and therefore did not violate N.D. Const. Art. X, § 12. Gange at 435. Other similar continuing appropriations provisions in our statutes also require payment of such fees first to the state treasury, with a subsequent appropriation of the funds to special uses. See, e.g., N.D.C.C. § 4-10.1-09 ("spud fund" of the North Dakota Potato Council);

N.D.C.C. § 54-17.4-09.1 ("fossil excavation and restoration fund" of the North Dakota Geological Survey). Although a continuing appropriation is not per se impermissible, any such appropriation must comply with N.D. Const. Art. X, § 12. A purported "continuing appropriation" which wholly bypasses the state treasury does not comply with the constitutional mandate all public moneys be paid to the state Treasurer.

[¶22] We conclude the Stockmen's Association acts as an agent of the state when performing brand inspection and recording services, and the fees thereby generated are "public moneys" under N.D. Const. Art X, § 12. Accordingly, those portions of N.D.C.C. §§ 36-09-18 and 36-22-03 which direct payment of fees into the general fund of the Stockmen's Association are unconstitutional.

IV

[¶23] N.D. Const. Art. X, § 18, provides, in part:
"neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor"

The district court concluded that provision was violated by the portion of N.D.C.C. § 36-09-18 which provides the brand inspection and recording fees deposited in the general fund of the Stockmen's Association "are appropriated as a continuing appropriation" to the Stockmen's Association. The Stockmen's Association challenges the district court's holding, asserting there has been no donation or aid because the funds are not state funds, and because the Stockmen's Association provides a service for those fees. Because we have already held N.D.C.C. §§ 36-09-18 and 36-22-03 violate N.D. Const. Art. X, § 12, we need not address whether those provisions also violate N.D. Const. Art. X, § 18. See, e.g., Peterson v. Peterson, 1997 ND 14, ¶22, 559 N.W.2d 826 (a court generally will not decide constitutional questions which are not necessary to its decision); State v. King, 355 N.W.2d 807, 809 (N.D. 1984) (a court will inquire into the constitutionality of a statute only to the extent required by the case before it).

[¶24] The district court also concluded the portion of N.D.C.C. § 36-22-08 which allows receipts from the sale of estrays to go into the general fund of the Stockmen's Association violated N.D. Const. Art. X, § 18. The Stockmen's Association has not challenged this holding on appeal.

[¶25] The Stockmen's Association asserts federal law requires that it receive and retain the fees for brand inspection within North Dakota, and any contrary interpretation of our statutes is preempted by federal law.

[¶26] The Packers and Stockyards Act of 1921, 7 U.S.C. §§ 181-231, authorizes the Secretary of Agriculture to regulate transactions affecting interstate commerce at stockyards. Anyone who buys or sells livestock in interstate commerce on a commission basis or offers services, including brand inspection, at a federally-regulated stockyard must register with the Secretary of Agriculture as a "market agency." 7 U.S.C. §§ 201, 203. Under 7 U.S.C. § 217a(a), the Secretary has discretion to authorize fees for brand inspection at federally-regulated stockyards, and to designate a single market agency to provide inspections:

"The Secretary may, upon written application made to him, and if he deems it necessary, authorize the charging and collection, at any stockyard subject to the provisions of this chapter, by any department or agency of any State in which branding or marking or both branding and marking livestock as a means of establishing ownership prevails by custom or statute, or by a duly organized livestock association of any such State, of a reasonable and nondiscriminatory fee for the inspection of brands, marks, and other identifying characteristics of livestock originating in or shipped from such State, for the purpose of determining the ownership of such livestock. No charge shall be made under any such authorization until the authorized department, agency, or association has registered as a market agency. No more than one such authorization shall be issued with respect to such inspection of livestock originating in or shipped from any one State. If more than one such application is filed with respect to such inspection of livestock originating in or shipped from any one State, the Secretary shall issue such authorization to the applicant deemed by him best qualified to perform the proposed service The decision of the Secretary as to the applicant best qualified shall be final."

The market agency which disburses the funds from the sale of the livestock must collect the brand inspection fees and pay them to

the market agency which performed the inspection. 7 U.S.C. § 217a(c).

[¶27] The Stockmen's Association is a registered market agency under the Act, and has been authorized by the Secretary to perform brand inspection services at federally-regulated stockyards in North Dakota. The Stockmen's Association asserts 7 U.S.C. § 217a(c) therefore requires it receive and retain the fees for such inspections, and any contrary interpretation of state law is preempted.

[¶28] Because of the "interstitial nature of Federal law," preemption of state law by federal statute or regulation is not favored, and consideration under the Supremacy Clause begins with the basic assumption Congress did not intend to displace state law. Federal Land Bank of St. Paul v. Lillehaugen, 404 N.W.2d 452, 455 (N.D. 1987). Accordingly, courts are reluctant to infer preemption, and the party claiming preemption bears the burden of proving Congress intended to preempt state law. State v. Liberty National Bank and Trust Co., 427 N.W.2d 307, 310 (N.D.), cert. denied, 488 U.S. 956, 109 S.Ct. 393, 102 L.Ed.2d 382 (1988). Ultimately, "the question whether federal law in fact preempts state action in any given case necessarily remains largely a matter of statutory construction." Liberty National Bank, 427 N.W.2d at 310 (quoting L. Tribe, American Constitutional Law § 6-25, at 480 (2d ed. 1988)).

[¶29] In NoDak Bancorporation v. Clarkson, 471 N.W.2d 140, 142 (N.D. 1991), we enumerated the three bases of federal preemption:

"Federal preemption of state law may occur if: (1) Congress explicitly preempts state law; (2) Congress impliedly preempts state law by indicating an intent to occupy an entire field of regulation; or (3) state law actually conflicts with federal law."

See also Liberty National Bank, 427 N.W.2d at 309-10; Lillehaugen, 404 N.W.2d at 455. The Stockmen's Association does not assert Congress has explicitly preempted state law.

[¶30] The Stockmen's Association asserts the Packers and Stockyards Act evidences Congressional intent to occupy the entire field with regard to the sale of livestock and related services. The Stockmen's Association concedes, however, the Act does not apply to all livestock transactions within North Dakota. By its terms, the Act applies only to transactions occurring at a "stockyard" as defined in the Act. See 7 U.S.C. § 202(a). Furthermore, the specific provision governing brand inspection

grants discretion to, but does not require, the Secretary to authorize collection of fees for brand inspection by a designated entity: "The Secretary may, upon written application made to him, and if he deems it necessary, authorize the charging and collection . . . of a reasonable and nondiscriminatory fee for the inspection of brands . . ." 7 U.S.C. § 217a(a) (emphasis added). If Congress had intended the federal law wholly occupy the field and prevent all state regulation of brand inspection, it surely would have employed mandatory, rather than discretionary, language.

[¶31] Any doubt about the preemptive effect of the Act is clarified in other provisions of the Act and in the regulations promulgated by the Department of Agriculture under the Act. Congress has specifically provided limited preemption under the Act for state provisions governing bonding of packers and payment requirements for livestock purchases:

"Federal preemption of State and local requirements

"No requirement of any State or territory of the United States, or any subdivision thereof, or the District of Columbia, with respect to bonding of packers or prompt payment by packers for livestock purchases may be enforced upon any packer operating in compliance with the bonding provisions under section 204 of this title, and prompt payment provisions of section 228b of this title, respectively: Provided, That this section shall not preclude a State from enforcing a requirement, with respect to payment for livestock purchased by a packer at a stockyard subject to this chapter, which is not in conflict with this chapter or regulations thereunder: Provided further, That this section shall not preclude a State from enforcing State law or regulations with respect to any packer not subject to this chapter or section 204 of this title."

7 U.S.C. § 228c. This provision would be mere surplusage if Congress intended the Act to wholly occupy the field and preempt all state regulation of subjects covered by the Act. The inclusion of a specific, limited preemption provision is a clear expression of Congressional intent the Act was not meant to wholly preempt state law in this field.

[¶32] The regulations promulgated under the Act by the Department of Agriculture also support this conclusion: "The regulations in this part shall not prevent the legitimate application or enforcement of . . . any other valid law, rule or regulation, or requirement to which any packer, stockyard owner, market agency, or dealer shall be subject which is not inconsistent or in conflict with the act and the regulations in this part."

9 C.F.R. § 201.4(a) (1998). This is a clear indication the Act, and the regulations thereunder, are not intended to entirely occupy the field and wholly preempt state law. When Congressional intent to preempt state law is not clear from the face of the statute, deference should be given to the implementing agency's interpretation of the statute. Teper v. Miller, 82 F.3d 989, 998 (11th Cir. 1996); Health Maintenance Organization of New Jersey, Inc. v. Whitman, 72 F.3d 1123, 1127, 1128 (3d Cir. 1995).

[¶33] In Mahon v. Stowers, 416 U.S. 100, 113, 94 S.Ct. 1626, 1632, 40 L.Ed.2d 79, 89 (1974), the Supreme Court held "nothing in the Packers and Stockyards Act or the regulations issued by the Secretary under the Act overrides the Texas Business and Commercial Code in determining the respective rights of the parties to the funds held by the trustee" of a bankrupt meat packer. On the precise issue presented in this case, the court in Black Hills Packing Co. v. S.D. Stockgrowers Ass'n, 397 F.Supp. 622, 630 (D.S.D. 1975), held the Packers and Stockyards Act was not intended to preempt state laws governing brand inspection. See also Kelly v. Lang, 62 N.W.2d 770, 771, 773 (N.D. 1953) (the Packers and Stockyards Act was not intended to preempt state laws governing chattel mortgages on livestock); Sig Ellingson & Co. v. DeVries, 199 F.2d 677, 679 (8th Cir. 1952), cert. denied, 344 U.S. 934, 73 S.Ct. 505, 97 L.Ed. 719 (1953); Birmingham v. Rice Bros., 26 N.W.2d 39, 44 (Iowa), cert. denied, 332 U.S. 768, 68 S.Ct. 79, 92 L.Ed. 353 (1947); but see Colorado v. United States, 219 F.2d 474, 477-78 (10th Cir. 1954).

[¶34] We conclude the Packers and Stockyards Act was not intended to occupy the field, and does not wholly preempt state regulation of brand inspections.

[¶35] The Stockmen's Association asserts, even if the Act does not occupy the field and wholly preempt state law governing brand inspection, an interpretation of state law requiring the Stockmen's Association to remit the fees to the state Treasurer would directly

conflict with 7 U.S.C. § 217a(c). The Stockmen's Association therefore asserts the federal law must prevail.

[¶36] We set forth the standards for applying "actual conflict" preemption in Liberty National Bank, 427 N.W.2d at 309-10:

"[E]ven when Congress has not intended to entirely displace state law in a particular area, state law is pre-empted to the extent that it 'actually conflicts' with federal law. Michigan Cannery & Freezers v. Agricultural Bd., 467 U.S. 461, 469, 104 S.Ct. 2518, 2523, 81 L.Ed.2d 399 (1984). Conflict pre-emption occurs where compliance with both federal and state laws is a physical impossibility, Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-143, 83 S.Ct. 1210, 1217, 10 L.Ed.2d 248 (1963), or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' Hines v. Davidowitz, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941)."

See also NoDak, 471 N.W.2d at 142; Lillehaugen, 404 N.W.2d at 455. In this case, we believe the state and federal statutory schemes can be interpreted so compliance with both is not a "physical impossibility," and the Congressional purposes and objectives may be accomplished.

[¶37] Among the main objectives of the Packers and Stockyards Act are preventing monopolistic practices by packers and stockyard owners and ensuring fair and reasonable charges for stockyard services:

"The chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper, who sells, and unduly and arbitrarily to increase the price to the consumer, who buys. Congress thought that the power to maintain this monopoly was aided by control of the stockyards. Another evil, which it sought to provide against by the act, was exorbitant charges, duplication of commissions, deceptive practices in respect to prices, in the passage of the live stock through the stockyards, all made possible by collusion between the stockyards management and the commission men, on the one hand, and the packers and dealers,

on the other. Expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper, and increase the price to be paid by the consumer. If they be exorbitant or unreasonable, they are an undue burden on the commerce which the stockyards are intended to facilitate. Any unjust or deceptive practice or combination that unduly and directly enhances them is an unjust obstruction to that commerce."

Stafford v. Wallace, 258 U.S. 495, 514-15, 42 S.Ct. 397, 401, 66 L.Ed. 735, 741 (1922); see also Mahon, 416 U.S. at 106, 94 S.Ct. at 1629, 40 L.Ed.2d at 85; United States v. Morgan, 307 U.S. 183, 188-89, 59 S.Ct. 795, 798-99, 83 L.Ed. 1211, 1216 (1939) (the Act's "dominant purpose [is] to secure to patrons of the stockyards prescribed stockyard services at just and reasonable rates").

[¶38] The Stockmen's Association asserts 7 U.S.C. § 217a(c) directly conflicts with any state requirement fees from brand inspections at stockyards be paid over to the state Treasurer. 7 U.S.C. § 217a(c) provides:

"Charges authorized to be made under this section shall be collected by the market agency or other person receiving and disbursing the funds received from the sale of livestock with respect to the inspection of which such charge is made, and paid by it to the department, agency, or association performing such service."

[¶39] Read in light of the purposes and objectives of the Act, this provision is clearly intended to prohibit the market agency disbursing the funds from retaining a portion of the brand inspection fees, thereby increasing the overall cost of these services, reducing the profit to the seller, and increasing the cost to the ultimate consumer. See Stafford, 258 U.S. at 515, 42 S.Ct. at 401, 66 L.Ed. at 741. It governs the relationship between the two market agencies, one brokering the sale and the other providing brand inspection services.

[¶40] The statute does not purport to govern the ultimate disposition of the fees received by the "department, agency, or association performing such service." We see no conflict between state and federal law in a procedure whereby the Stockmen's Association receives the fees for brand inspection from the market agency disbursing the sale proceeds, as required by federal law, but then remits those fees to the state Treasurer, as required by

state law. So interpreted, compliance with both statutory schemes is not a "physical impossibility" and the state law is not an obstacle to the purposes and objectives of the federal law. See Liberty National Bank, 427 N.W.2d at 309-10.

[¶41] We conclude the state statutory scheme, as interpreted in this opinion, is not preempted by the federal law.

VI

[¶42] The judgment of the district court, including the stay through the next legislative session, is affirmed.

[¶43] Dale V. Sandstrom
William A. Neumann
Mary Muehlen Maring
Herbert L. Meschke
Gerald W. VandeWalle, C.J.

Testimony of Larry A. Schuler DVM
State Veterinarian
Executive Officer of State Board of Animal Health
House Bill 1276
March 11, 1999
11:15 A.M. CST
Senate Agriculture Committee
Roosevelt Room

Chairman Wanzek and Committee members, my name is Larry Schuler. I am the state veterinarian and executive officer of the State Board of Animal Health. I am here to testify in support of HB 1276.

The State Board of Animal Health has been working on this bill for over one year. Its goal is to make the Board more functional and to overcome some of the deficiencies of the law that deals with the State Board of Animal Health. The State Board of Animal Health has received input from the Nontraditional Livestock Advisory Council and the North Dakota Department of Agriculture. The Board has unanimously approved this draft. Some of the changes are mere housekeeping changes, whereas others are more substantive.

Substantive Proposed Changes:

1. Section 2 allows the State Board of Animal Health to appoint a consulting veterinarian. Under the current statute no one meets the definition that is set forth in Chapter 36-01-07.
2. Section 3 clarifies the authority of the Board by allowing, by rule, the quarantine, regulation or prohibition of any animal that is in violation of the North Dakota Century Code (NDCC) or the North Dakota Administrative Code (NDAC).

Currently, the Board is compelled to issue a license if the premises can meet the licensing requirements. Except for skunks and raccoons, the Board cannot refuse to license a species that may be dangerous to humans, domestic animals, wildlife or the environment if they should escape.

For example, we were recently notified that there were mouflon sheep near a ranch in western North Dakota. This is a species that has been brought into North Dakota as an alternative to traditional livestock. The market for these animals has recently dropped considerably and they are of virtually no economic value. This species can, however, interbreed with our indigenous bighorn sheep. They present a risk to the genetic purity of North Dakota's bighorn sheep. We worked with the North Dakota Game and Fish Department to remove these animals but it does expose the risk that some of these species represent. Should the Board have the authority to refuse to license this species?

3. Section 4 clarifies language and increases license fees for nontraditional livestock premises. Currently, nontraditional livestock fees generate about \$5000 per biennium and the North Dakota Game and Fish Department contributes \$30,000 per biennium (The Executive Budget for 99-01 provides for a \$45,000 contribution from the North Dakota Game and Fish Department). The Board estimates that the nontraditional livestock are requiring approximately 80% of the deputy state veterinarian's time, 20% of the state veterinarian's time, and about 40% of our administrative secretary's time. Including the inspections done by the dairy inspectors and the added operating expense, it is estimated that the costs associated with the nontraditional livestock are approximately \$122,500 per biennium. The rate increase is to help offset some of these costs to the state.
4. Section 5 eliminates the requirement for an annual report to the Governor and Legislative Council. The State Board of Animal Health feels that the merger with the North Dakota Department of Agriculture is complete and that we should be included in the annual report of the North Dakota Department of Agriculture. This is also a time saving effort since completion of the report requires a great amount of time.
5. Section 7 relates to the confiscation of nontraditional livestock held in violation of this chapter. This section allows the board to confiscate nontraditional livestock that are being held illegally. Currently the board does not have any recourse except to refer the issue to a States Attorney. This section also allows for due process through the opportunity for a pre seizure and post seizure hearing.
6. Section 8 allows the State Board of Animal Health to establish a reportable disease list. There is currently a reportable disease list but it is not referred to in statute.

This section also provides for an exemption to the open record laws. This allows the State Board of Animal Health to keep disease test records confidential if they do not relate to mandatory disease control programs or the public health. The mandatory disease control programs include brucellosis, tuberculosis, and pseudorabies. An example of a disease that affects the public health would be rabies.

7. Sections 10, 18, and 26 give the State Board of Animal Health some enforcement authority. The Board has had to rely on States Attorneys for enforcement of Title 36. Currently a violation of Title 36 in most instances is a Class B or A misdemeanor. This requires that these cases be turned over to the States Attorney in the county of origin. In the last two years only two criminal complaints have been filed for a violation of Title 36. This section would give the Board authority to assess a civil penalty and provides for the opportunity for an administrative hearing.

8. Section 12 refers to livestock unfit for sale. Auction markets should not be a site for disposal of animals that are terminally ill. This is an effort to keep animals that are unfit for human consumption out of the trade channels and to keep the livestock industries free of any criticism about the treatment and care of animals.
9. Section 15 clarifies the need for a certificate of veterinary inspection for all animals entering North Dakota. Currently in the North Dakota Century Code (36-14-04 to 36-14-07), only domestic species are listed individually by species as being required to have a certificate of veterinary inspection. The North Dakota Administrative Code (48-02-01-01 through 48-02-01-11) outlines the import requirements for all animals entering North Dakota. The NDAC in 48-02-01-10 requires a certificate of veterinary inspection for "all other animals". This has been in affect since 1989. If individuals have been importing animals without a certificate of veterinary inspection since 1989, they have been doing so in violation of the NDAC.

A certificate of veterinary inspection is important because it means that a veterinarian has inspected the animals and they are showing no signs of clinical disease. It also provides legal documentation as to the origin of the animals in case there is a disease outbreak.

10. Sections 19 through 26 are an effort to expand the scope of Chapter 36-15 to apply to bison. Currently that statute applies only to cattle. The brucellosis and tuberculosis eradication programs group cattle and bison together. Our import requirements for both species are similar. The board has been frustrated in attempts to apply this to bison that have not met our import requirements.
11. Section 27 expands 36-21.1-06 to allow for the disposition of animals for which no public market exists for an animal that has been treated inhumanely.

We recently confiscated several starving dogs. One of these dogs was severely injured. NDCC 36-21.1-06 allows these animals to be sold but it does not offer the Board any other options for disposition of animals for which there is no market.

Sections that would be repealed:

1. The tuberculosis and brucellosis fund has not been funded recently. The NDCC 36-01-19 allows for the emergency commission to provide funds in case of any serious outbreak of any contagious, infectious, or epizootic disease in domestic animals or nontraditional livestock.

36-15-12. Bovine tuberculosis fund and brucellosis fund to be maintained. There must be maintained in the office of the state treasurer a bovine tuberculosis fund and a brucellosis fund for the purpose of carrying out the provisions of this

chapter. Such funds must consist respectively of the moneys appropriated thereto from time to time by the legislative assembly.

2. These sections would be included in the changes made in Section 15 .

36-14-04. Horses, mules, and asses imported into state to have certificate of veterinary inspection. Each horse, mule, and ass brought into this state must be accompanied by a certificate of veterinary inspection certifying that such animal has been examined within thirty days previous to the shipment and found to be free from all contagious and infectious diseases.

36-14-05. Cattle brought into state - Certificate of veterinary inspection required. All cattle brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of contagious, infectious, or communicable disease, except that no certificate of veterinary inspection is required for those cattle originating directly from a producer's premises and not diverted en route, if the cattle are delivered directly to a licensed auction market or other premises approved by the commissioner of agriculture.

36-14-06. Certificate of veterinary inspection required of sheep imported into state Contents. All sheep brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of contagious, infectious, or communicable diseases, except that no certificate of veterinary inspection is required for those sheep originating directly from a producer's premises and not diverted en route, if the sheep are delivered directly to a licensed auction market or other premises approved by the commissioner of agriculture.

36-14-07. Swine brought into state to have certificate of veterinary inspection -Contents. All swine brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of contagious, infectious, or communicable diseases, except that no certificate of veterinary inspection is required for those swine originating directly from a producer's premises and not diverted en route, if the swine are delivered directly to a licensed auction market or other premises approved by the commissioner of agriculture.

3. Tuberculosis has been combined with brucellosis in Section 21 and paratuberculosis has been eliminated from this Chapter.

36-15-08. Owner entitled to compensation for animal infected with tuberculosis or with paratuberculosis - Board of animal health may make rules governing payments. The owner of an animal adjudged by the board to be infected with tuberculosis or with paratuberculosis and appraised in accordance with the provisions of this chapter is entitled to the amount specified in this

chapter. Provided, that when in the discretion and judgment of the board of animal health, a herd of cattle is so seriously infected with bovine tuberculosis, as to warrant disposal of the entire herd, the board is hereby authorized to approve indemnity payments on all cattle in such herd whether reactors, infected, or not, in accordance with the limits set forth in section 36-15-09. The board may make reasonable rules governing the payment of such compensation within the limitations prescribed in this chapter.

SECTION ?. AMENDMENT. SECTION 36-01-00.1 AND SECTION 36-01-01 of the North Dakota Century Code is amended and reenacted as follows:

TITLE 36

LIVESTOCK

CHAPTER 36-01

STATE BOARD OF ANIMAL HEALTH

36-01-00.1. Definitions.

3. "Domestic animal" means *dog, cat, equine animal, bovine animal, sheep, goat, bison, camalid, or swine.*

5. "Companion animal" means any animal kept as a family pet in ones home or farm, is not used for food consumption or work (excludes sporting dogs etc.) such as but not limited to canine, feline, hamster, gerbil, ferret, mouse, rabbit, rat, guinea pig, chinchilla, hedgehog, reptiles, amphibians, birds and etc.

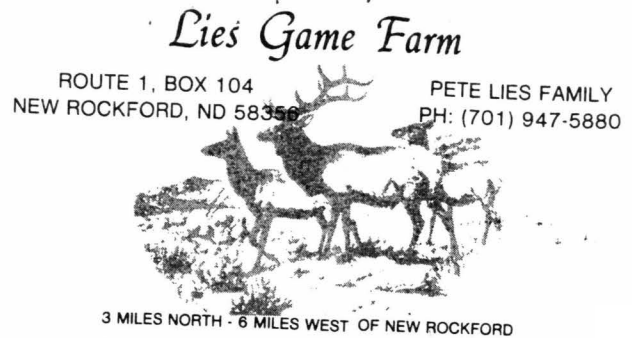
36-01-01. State board of animal health - Appointment - Terms -Qualifications. The state board of animal health consists of seven fourteen members, divide into 2 equal subcommittees, seven on a traditional ag livestock committee and seven on a companion animal committee, appointed by the governor for terms of seven years each with their terms of office so arranged that one term and only one, expires on the first day of August in each year from each committee. No person may be appointed to more than two 7-year terms on the board. Each member of such board must be a qualified elector of this state. Each member of the board immediately after his appointment shall take the oath of office required of civil officers. The traditional ag livestock committee shall govern on domestic animals and nontraditional ag livestock. The companion animal committee shall govern on the companion animals and nontraditional exotic pets. When issues cross over lines of control, the committees shall meet as a whole. Non traditional livestock shall be split up by the board as a whole as to which committee can best meet that species requirements. On the traditional ag livestock committee, one member of said board must be a person actively engaged and financially interested in the commercial beef cattle industry and shall represent said industry on said board; one member of said board must be a person actively engaged and financially interested in the registered purebred beef cattle industry and shall represent said industry on said board; one member of said board must be a person actively engaged and financially interested in the dairy cattle industry and shall represent said industry on said board; one member of said board must be a person actively engaged and financially interested in the swine industry and shall represent said industry on said board; one member of said board must be a person actively engaged and financially interested in the

sheep industry and shall represent said industry on said board; *and two members* one member of said board must be a competent veterinarian who are has graduated of a veterinary course in a recognized college or university; and one member of said board must be a person actively engaged and financially interested in agriculture non traditional livestock industry and shall represent said industry on said board. On the companion animal committee, one member of said board must be a person actively engaged and at a zoo within the state, have a degree in zoology from a college or university and shall represent said industry on said board; two members of said board must be people actively engaged and financially interested in the retail / wholesale pet industry, hold usda licensees or ND State Sales Tax Permits, and shall represent said industries on said board; two members of said board must be actively engaged and financially interested in companion animal breeding, hold usda licensees or ND State Sales Tax Permits, and shall represent said industry on said board; one member of said board must be a competent veterinarian who has graduated of a veterinary course in a recognized college or university; and one member of said board must be a person actively engaged and financially interested in exotic non traditional companion animals, hold a usda license and / or non traditional livestock permits, and shall represent said industry on said board. Vacancies occurring prior to the expiration of terms of office must be filled by appointment by the governor and must be for the balance of the unexpired term. Recommendations for appointment of member to said board as constituted under this section may be made to the governor by the following associations for the following stated industries, to wit: by the North Dakota stockmen's association for members representing commercial beef cattle, by various registered purebred beef cattle associations for members representing the registered purebred beef cattle, by the various dairy breed associations for members representing dairy cattle, by the North Dakota swine breeders association for the member representing swine, by the North Dakota wool growers association for the members representing sheep, by the state veterinary medical association for the two veterinarian members, by the zoo directors of North Dakota zoo's for the members representing zoos, by the North Dakota pet retailers for the members representing all companion animals in said industry, by various companion animal breeder associations to represent companion animal breeders, and by exotic nontraditional companion animal breeders representing exotic companion animals, and by such other associations within this state representing livestock industries as the governor may permit. Two recommendations must be submitted for each office to be filled.

March 11, 1999

Testify to Senate Ag. Committy
House Bill No. 1276

Senator Wanzek
Senator Kline
Senator Solberg
Senate Ag. Committee



I am Peter Lies . I have raised Non-traditional livestock all my life. My children and I raise animals from Mt. Lions to Bears, from chickens to Ostrich, from elk and deer to pigs.

I am here today to ask for a **DO PASS---WITH AN Amendment to H B 1276.** Stating that all provisions in the bill that have to do with Non-Traditional Livestock be eliminator and replaced with the command to the congress to set the Non-traditional Livestock Council (that was established by the Board of Animal Health, and is chaired by the assistant State Veterinarian as the Controlling ementy for Non--Traditional Livestock.

Where As ; the council has rep from all walkes of Gov. and has room for all groups of Non-Traditional Livestock.

Where As; The board of Animal Health has made it clear they do not wish to be bothered with N. L. problems.

Where As; the N. T. L. Producers after 8 yr. still have no control over their destiny and no representation with the controlling department (the Board of Animal Health).

Where As; the council is , for people with problems, a duplicate agency. They must come too us with their lawyer. Get a decision. Then go to the B. O. A. H. with their lawyer and go through it all over again.

Where As; Is the council working as it is ? No. Not because of th council, but because when we pass what the board wants we are a good council, If we pass something the board dose not want we are their only to advise the board.

Where As; I have been involved in the politics of N.T.L. from the beginning I have seen

numerous people leave the Industry because of the working of the B. O. A. H.

I have been living with a noose around my neck that keeps getting tighter and tighter. I had fashioned my farm, and my life style from conventional farming to the N. T. L. trail. Only to have my FUTURE, My PETS, My CHILDREN LEAVING THE FARM, My INCOME, My LIFE STYLE dry up because of no fair representation for my animals on the B. O. A. H..

As for the bill as is.

1.36-01-08 Duties-rules-fees. For the purpose of preventing the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests, the board may, BY RULE, quarantine any such animal, cause any such animal to be killed, regulate or prohibit the arrival in or departure from this state of any such animal, and at the cost of the owner thereof, the board may detain any animal found to be in violation of any rule or prohibition.

I read this to mean NO MORE GRAZING of any livestock outside of their fence. Or is this just another slam on unrepresented animals.

36-01-08.1. Nontraditional livestock license-fee. Five to ten, twenty to fifty, seventy five to one hundred twenty five. The fine should be illegal, as it is restricted to Non-Traditional Livestock producers and not all producers. Also the fee was discussed in all most all N T L C meetings but seldom even came to a vote, until in Nov. when it stormed and most producers were unable to attend the meeting.

36-01-08.4. primates, wolves and wolf hybrids. These animals are not banned from N. Dak. skunks and raccoons are. They should not then be lumped together. Or they will be one step closer to being regulated out of existence by the State without owner input.

SECTION 7 Completely full of B. S.

Section 15. This law is not even now being enforced. As far as pets (Dogs, cats, or rabbits, ect.) taken out of state then brought back in with out a health certificate.

Section 8 36-01-13 The board dose not contain many diseases such as Johnes's

Other things A. A lot of animals can not be proven heritage. Wolf . Pigs. ect.

B. The changing from \$2500 to \$5000 assessed against a person BY A BOARD. May be a court.

C. As I see it the board has treated like people differently.

D.If the board wishes it can take for ever to get producers on council,

E. The Board will not even come to the council if they think the member on the council will have a difference of opinion (pigs)

So I repeat I ask for a do pass only if amended to remove all that has to do with Nontraditional livestock, and the congress makes the Nontraditional Livestock Council the governing body for Nontraditional livestock.

Thank You

Peter Lies

Council Member for Dangerous type Animals

over

Governor stresses ideals of limited government role

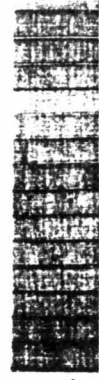
By Rochelle Olson
Associated Press

ST. PAUL — Gov. Jesse Ventura outlined his core beliefs for governing Tuesday in a sober State of the State address, returning repeatedly to themes of personal responsibility, limited government and an involved citizenry.

"We can't legislate against every stupid thing people will do, and yet the temptation is there to try time and time again," Ventura said.

Aides said before the speech the governor wants to be taken seriously and Ventura, who often shoots from the lip, delivered a deliberate 45-minute effort in which he read nearly every word from a TelePrompter. He made no jokes and showed little attitude.

See **VENTURA**, Back Page



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North Dakota lost 500 farms in 1998

BISMARCK (AP) — North Dakota lost 500 farms last year, the state Agricultural Statistics Service says.

The number of farms dropped from 31,500 in 1997 to 31,000 in 1998, the service reported Friday. In 1993, North Dakota had 33,000 farms.

The statistics service also reported a drop in farm acreage. It decreased 200,000 acres, from 39.7 million acres in 1997 to 39.5 million in 1998. The average farm size increased, as it has in previous years.

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"To date,
farmers haven't
receive relief,"
Agriculture
man, Larry
said. He said
the number of
farms in the
state has been
falling since
1990.

We, as members of the ~~3~~ ~~2~~
A. B. A. feel that we ~~are~~
are not represented fairly on
the Advisory Committee for the
Board of Animal Health -

We feel, ~~th~~ as one of the oldest
established organizations which
involve many types of exotic

animals, we need to have representa-
tion on this committee. This will
insure ^{correct-accurate} ~~proper~~ knowledge of
the care & treatment of exotic
animals.

Please notify me Wayne
Zaininger
RR 3 - Box 411 - Devils Lake, ND 58301
201-398-3212 no later than

July 15 1992 to discuss
this issue,

Rick Gueck