A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

19-07-01. Eggs to be graded—Exemption.

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

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

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

19-07-02. Rulemaking power.

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

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

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

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

Eggs to be graded - Exemption - Definition.

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

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

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

Eggs - Labeling and temperature rules.

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

SECTION 5. REPEAL. Chapter 19-07 of the North Dakota Century Code is repealed.
A BILL for an Act to repeal chapter 4-32 of the North Dakota Century Code, relating to the interstate compact on pest control.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 4-32 of the North Dakota Century Code is repealed.
1 A BILL for an Act

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

SECTION 1. AMENDMENT. Section 4-13.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4-13.2-01. Definitions. As used in this chapter, "poultry" means chickens, turkeys, domestic geese, and domestic ducks, domesticated fowl bred for the primary purpose of producing eggs or meat, or both, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, but excluding doves and pigeons.

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

SECTION 2. AMENDMENT. Section 4-13.2-02 of the North Dakota Century Code is amended and reenacted as follows:

4-13.2-02. Administration - Enforcement. Within the department of agriculture there must be a poultry division. The agriculture commissioner shall administer and enforce this chapter.

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

SECTION 3. AMENDMENT. Section 4-13.2-03 of the North Dakota Century Code is amended and reenacted as follows:

4-13.2-03. Purposes - Duties. The agriculture commissioner may adopt rules pursuant to chapter 28-32 to effectuate the purposes of this chapter, and the agriculture commissioner, or the commissioner's designee, shall enforce this chapter. The agriculture commissioner shall:
1. Work toward improving poultry breeding practices and cooperate with the board of animal health in controlling and eradicating communicable, contagious, or infectious diseases of poultry.

2. Act as the official state agency for North Dakota in cooperation with the bureau of animal industry, veterinary services, animal plant health inspection service, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan.

3. Act as the state agency to cooperate with the United States department of agriculture, to provide federal-state grading service for poultry and poultry products offered for sale at the retail level, to supervise the federal-state poultry grading service, and to enforce regulations at the retail level as to identification by grade of all poultry sold.

4. Promote generally the welfare and improvement of the poultry industry and the marketing of poultry and poultry products within the state through such means and in such manner as may be deemed by the commissioner conducive to such improvement.

5. Enforce the licensing and bonding requirements provided by this chapter.

6. Administer chapter 4.1-12, at the advice of the North Dakota turkey federation, and adopt rules under chapter 28-32 as necessary to effectuate the purposes of this chapter.

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

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

4-13.2-054. Licensing - Fees - Bonding.

A person may be licensed by the agriculture commissioner to engage in the business of poultry buyer, processor, packer, hatchery operator, baby chick jobber, or salesman, without first securing from the North Dakota department of agriculture a license to engage therein. All such licenses issued under this chapter expire on the first day of July of each year, and must be issued or renewed only upon payment to the department of the license fees set forth herein together with a fee of five dollars for each business activity subject to licensing and the furnishing of such the bond as may be.
Sixty-fifth
Legislative Assembly

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

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

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

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

1. Any person who violates any provision of this chapter or rule adopted under this
chapter is guilty of a class A misdemeanor.

2. Any person who violates any provision of this chapter or rule adopted under this
chapter may be subject to a civil penalty not to exceed one thousand dollars for each
violation. This penalty may be adjudicated by the courts or by the agriculture
commissioner through an administrative hearing conducted by an independent hearing
officer pursuant to chapter 28-32.

3. The agriculture commissioner may maintain an appropriate civil action in the name of
the state against any person violating this chapter or rule adopted under this chapter.

4. Any person who knowingly makes a false statement, representation, or certification in
any application, record, report, or other document is subject to the penalties provided
in this chapter guilty of a class A misdemeanor.

5. For purposes of this section, "person" means an individual, partnership, corporation,
limited liability company, association, cooperative, or any business entity.
A BILL for an Act to create and enact chapter 4.1-18 of the North Dakota Century Code, relating to licenses to grow or process industrial hemp for commercial or research purposes; and to repeal chapter 4-41 of the North Dakota Century Code, relating to licenses to grow or process industrial hemp for commercial or research purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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


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


1. Any person desiring to grow or process viable kernels of industrial hemp for commercial purposes or research shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner.

a. The application for a license must include the name and address of the applicant and the legal description of the land area to be used to produce or process industrial hemp.

b. Except for employees of the state seed department, the agricultural experiment station, or the North Dakota state university extension service involved in research and extension-related activities, the commissioner shall require each
applicant for initial licensure to submit to a statewide and nationwide criminal
history record check. The nationwide criminal history record check must be,
conducted in the manner provided in section 12-60-24. All costs associated with
the criminal history record check are the responsibility of the applicant.
c. Criminal history records provided to the commissioner under this section are
confidential. The commissioner may use the records only in determining an
applicant’s eligibility for licensure.
d. Any person with a prior criminal conviction may be denied licensure.
e. If the applicant has completed the application process to the satisfaction of the
commissioner, the commissioner shall issue the license, which is valid for a
period of one year.
f. Any person licensed under this section is presumed to be growing or processing
industrial hemp for commercial purposes or research.
g. A license required by this section is not conditioned on or subject to review or
approval by the United States drug enforcement agency.
h. This subsection does not apply to any person licensed by the United States drug
enforcement agency to conduct research.
i. An application for a license under this subsection may be filed with the
commissioner at any time.
2. a. Each licensee must file with the commissioner documentation indicating that the
seeds planted were of a type and variety certified to have no more than
three-tenths of one percent tetrahydrocannabinol and a copy of any contract to
grow industrial hemp.
b. Each licensee shall notify the commissioner of the sale or distribution of any
industrial hemp grown by the licensee, and the names of the persons to whom
the hemp was sold or distributed.
3. The commissioner shall adopt rules to allow the industrial hemp to be tested during
growth for tetrahydrocannabinol levels and to allow for supervision of the industrial
hemp during its growing, harvesting, and processing.
4. To provide sufficient funds to pay costs associated with monitoring and testing
industrial hemp in the state, the commissioner shall assess each applicant a fee of five
Sixty-fifth
Legislative Assembly

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

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

SECTION 2. REPEAL. Chapter 4-41 of the North Dakota Century Code is repealed.
1. A BILL for an Act

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

3. SECTION 1. AMENDMENT. Section 36-24-01 of the North Dakota Century Code is amended and reenacted as follows:

4. 36-24-014.1-31-01. Definitions.

5. In this chapter, unless the context otherwise requires:

6. 1. "Adulterated" means a whole carcass, part of a carcass, or meat food product:

7. a. That bears or contains includes a poisonous or harmful substance that may render it injurious to health;

8. b. That bears or contains includes a chemical pesticide that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];

9. c. That bears or contains includes a food or color additive that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];

10. d. That contains includes a filthy, putrid, or decomposed substance or is for any other reason unfit for human food;

11. e. That has been prepared, packed, or held under unsanitary conditions;

12. f. That is wholly or partly includes the product of an animal that has died in a manner other than slaughter or includes the product of an animal condemned by reason of disease that existed at the time of slaughter;

13. g. The container of which is wholly or partly composed of includes a poisonous or harmful substance that may make the contents harmful to health;

14. h. That has been intentionally subjected to radiation, unless the use of the radiation conformed with a regulation or exemption in effect under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
i. That is damaged or inferior and that damage or inferiority has been concealed; or
j. That has had a substance added to it or mixed or packed with it so as to increase
   its bulk or weight, or make it appear better than or of greater value than it is.

2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, horses,
   equines, bison, other large domesticated animals, and poultry.

3. "Commissioner" means the agriculture commissioner. "Carcass" includes all or any part
   of an animal carcass.

4. "Container" includes a can, pot, tin, canvas, or other means a receptacle containing a
   meat food product.

5. "Custom processing" means slaughtering, eviscerating, dressing, or processing an
   animal carcass or processing meat food products for the owner of the animal carcass
   or of the meat food products, if all meat food products derived from the custom
   operation are returned to the owner of the animal or of the meat products.

6. "Inspector" means an inspector appointed by the commissioner to perform duties
   under this chapter.

7. "Intrastate commerce" means commerce within this state.

8. "Meat food product" means a product usable as human food and made wholly or in-
   part from meat or a portion of which contains any part of an animal carcass. The term
   does not include any product that contains meat or other portions of the carcasses of
   animals any part of an animal carcass in a relatively small proportion or which
   historically have not been considered by consumers as a product of the meat food
   industry, and which is not represented as a meat food product.

9. "Poultry" includes domesticated chickens, ducks, geese, pheasants, quail, ratites, and
   turkeys fowl bred for the primary purpose of producing eggs or meat, or both, including
   chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds,
   but excluding doves and pigeons.

10. "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise
    manufactured or processed.

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

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

SECTION 2. AMENDMENT. Section 36-24-02 of the North Dakota Century Code is amended and reenacted as follows:


1. The commissioner shall appoint inspectors to examine and inspect meat food products prepared solely for intrastate commerce in a slaughtering, meat canning, salting, packing, or similar establishment. The inspections must take place at any time during which the slaughtering of animals or the preparation of meat food products is being conducted. Upon completing an inspection, the inspector shall mark, stamp, tag, or label the product "North Dakota inspected and passed" if it is unadulterated or as "North Dakota inspected and condemned" if the product is found to be adulterated.

2. The commissioner shall appoint inspectors to examine and inspect each slaughtering, meat canning, salting, packing, or similar establishment in which meat food products are prepared solely for intrastate commerce. The commissioner shall adopt rules of sanitation applicable to these establishments. If any facility does not meet the sanitary conditions required by the commissioner, the commissioner may not allow any meat food product from that facility not meeting the sanitary conditions required by those rules to be labeled, marked, stamped, or tagged as "North Dakota inspected and passed".

3. Meat food products inspected and passed under this chapter may be sold at retail in this state.

4. Neither the commissioner, nor any inspector appointed by the commissioner, may undertake any activity that is duplicative of an activity performed by meat inspectors of the United States department of agriculture.

SECTION 3. AMENDMENT. Section 36-24-03 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The commissioner and any authorized representative of the commissioner may enter and inspect:

   a. Any place where food or any other product, the manufacture, sale, use, or transportation of which is restricted, regulated, or prohibited by a law of this state,
Eighty-fifth
Legislative Assembly

1. If a meat food product which is inspected and marked "North Dakota inspected and passed" is being placed or packed in a container, the person preparing the product shall attach to the container, under supervision of an inspector, a label indicating that the product has been "North Dakota inspected and passed". An inspection under this chapter is not complete until the product has been sealed or enclosed in the container, under the supervision of an inspector.

2. A meat food product inspected under this chapter and found not to be adulterated must bear, directly or on its container, a legible label or official mark as required by the commissioner.

3. The commissioner shall prescribe by rule the style and size of type to be used in labeling meat under this chapter and standards of identity, composition, and fill of...
container for meat food products inspected under this chapter, but the standards must be consistent with those established under federal law.

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

36-24-054.1-31-05. False or misleading marks, labels, and containers.
A person may not sell in intrastate commerce any meat food product subject to inspection under this chapter under a name, mark, or label which is false or misleading, or in a container of a misleading form or size. If the commissioner has reason to believe that a mark, label, or container is false or misleading, the commissioner may direct that its use be withheld unless the mark, label, or container is modified in a manner approved by the commissioner. If the person using or proposing to use the mark, label, or container does not accept the determination of the commissioner, the person may request a hearing. The commissioner may direct that the mark, label, or container not be used pending a hearing and final determination by the commissioner. A determination by the commissioner is conclusive unless the person adversely affected appeals to the district court within thirty days after receiving the notice of final determination.

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

36-24-064.1-31-06. Prohibitions.
A person may not:
1. Slaughter an animal or prepare an article usable as human food at any establishment preparing articles solely for intrastate commerce, unless the person complies with this chapter;
2. Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce any article that is usable as human food and which is adulterated or misbranded or any article that has not been inspected and passed under this chapter; or
3. Alter an article that is usable as human food while the article is being transported in intrastate commerce or held for sale after transportation, if the alteration is intended to cause or has the effect of causing the article to be adulterated or misbranded.
SECTION 7. AMENDMENT. Section 36-24-07 of the North Dakota Century Code is amended and reenacted as follows:

36-24-07. Official marks and certificates - Required authorization.

A person may not:

1. Cast, print, or otherwise make a device containing an official mark, simulation of an official mark, label bearing a mark or simulation, or form of official certificate or simulation, without authorization from the commissioner;

2. Forge an official device, mark, or certificate;

3. Use a real or simulated official device, mark, or certificate, or alter, detach, deface, or destroy an official device, mark, or certificate, without authorization from the commissioner;

4. Fail to use an official device, mark, or certificate if appropriate;

5. Knowingly possess, without promptly notifying the commissioner, a counterfeit, simulated, forged, or improperly altered official certificate, device, or label, or a whole carcass or part of a carcass bearing a counterfeit, simulated, forged, or improperly altered official mark;

6. Knowingly make a false statement in a certificate; or

7. Knowingly represent falsely that an article has been inspected and passed, or exempted, under this chapter.

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

36-24-08. Horse meat - Requirements.

A person may not sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce whole carcasses or parts of carcasses of horses, mules, or other equines or meat food products derived from them, unless they are plainly and conspicuously marked, labeled, or otherwise identified to show the kinds of animals from which they were derived. The commissioner by rule may require that the preparation of whole equine carcasses, parts of equine carcasses, and equine meat food products take place in establishments separate from those in which cattle, sheep, swine, or goats are slaughtered or in which their carcasses, parts of their carcasses, or meat food products are prepared.
SECTION 9. AMENDMENT. Section 36-24-09 of the North Dakota Century Code is amended and reenacted as follows:


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

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

36-24-104.1-31-10. Individual and custom processing - Exemption from inspection requirements.

1. This chapter does not apply to an individual processing the individual's own animals and the individual's preparation and transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products provided the animals are for the exclusive use of the individual, members of the individual's household, the individual's nonpaying guests, and employees.

2. The provisions of this chapter requiring inspection of the slaughter of animals, the preparation of the carcasses and parts thereof, and meat and meat food products at establishments conducting such operations do not apply to the custom processing by a person of animals delivered by the owner for processing, and the preparation or transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products of the animals, provided that the products are to be used exclusively in the household of the animal's owner by the owner and members of the owner's household, nonpaying guests, and employees.

3. A custom processor may not engage in the business of buying or selling whole carcasses, parts of carcasses, or meat food products of animals, other than poultry, usable as human food unless the whole carcasses, parts of carcasses, or meat food products have been inspected and passed and are identified as inspected and passed by the commissioner or the United States department of agriculture.

4. The provisions of this chapter requiring inspection of the preparation of poultry carcasses and parts thereof, and poultry food products at establishments conducting those operations do not apply to any retailer with respect to poultry products sold in commerce directly to consumers in an individual retail store, provided that the retailer
Section 11. Amendment. Section 36-24-11 of the North Dakota Century Code is amended and reenacted as follows:

36-24-11. Storing and handling conditions.

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

Section 12. Amendment. Section 36-24-12 of the North Dakota Century Code is amended and reenacted as follows:

36-24-12. Articles not intended as human food.

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

Section 13. Amendment. Section 36-24-13 of the North Dakota Century Code is amended and reenacted as follows:


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

1. A person in the business of slaughtering animals or preparing, freezing, packaging, or labeling animal carcasses, parts, or products of carcasses for use as human or animal food.
2. A person buying, selling, transporting, or storing animal carcasses or parts or products of animal carcasses.
3. A person rendering or buying, selling, or transporting dead, dying, disabled, or diseased animals or parts of the carcasses of animals that died other than by slaughter.

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

36-24-144.1-31-14. Records - Examination.
Upon notice by the commissioner, any person subject to the recordkeeping requirements of this chapter shall give the commissioner and the United States department of agriculture access to the person's place of business at all reasonable times and an opportunity to examine the facilities, inventory, and records of the business, to copy business records, and to take reasonable samples of the person's inventory upon payment of the fair market value of the samples.

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

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

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

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

SECTION 17. AMENDMENT. Section 36-24-17 of the North Dakota Century Code is amended and reenacted as follows:
36-24-174.1-31-17. Dead, dying, disabled, or diseased animals - Rules.

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

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


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

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


1. For the length of time the commissioner considers necessary to carry out the purposes of this chapter, the commissioner may refuse to provide, or may withdraw, inspection services from an establishment if after a hearing the commissioner determines that the recipient or potential recipient is unfit to engage in any business requiring inspection under this chapter because the recipient, potential recipient, or anyone responsibly connected with the recipient or potential recipient has been convicted of:

   a. An offense determined by the commissioner to have a direct bearing on the person’s ability to serve the public in a business requiring inspection under this chapter, or the commissioner determines the person is not sufficiently rehabilitated under section 12.1-33-02.1;

   b. More than one violation of a law based on the acquisition, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food; or

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

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

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

1. An inspector may detain an article or animal for up to twenty days pending a hearing or notification of authorities having jurisdiction over the article or animal if the inspector finds a whole carcass, part of a carcass, or meat food product, a product exempted from the definition of a meat food product, or a dead, dying, disabled, or diseased animal on premises where it is held for purposes of, during, or after distribution in intrastate commerce, and the inspector reasonably believes that the:

   a. The article or animal is adulterated or misbranded and would otherwise be usable as human food, or that it;

   b. The article or animal has not been inspected, in violation of this chapter or federal law, or that the

   c. The article or animal has been or is intended to be distributed in violation of this chapter or federal law, the inspector may detain the article for up to twenty days pending a hearing or notification of federal authorities having jurisdiction over the article or animal.

2. Until it is released by the commissioner, a detained article or animal may not be moved by any person from the place at which it was located when detained, until released by the commissioner. The commissioner may require all official marks to be removed from the detained article or animal before it is released unless the commissioner is satisfied that the article or animal is eligible to retain the official marks.

NOTE: It appears that if an article or animal is "adulterated or misbranded" it could still be suitable for use as human food if the deficiency can be corrected. The section has been reorganized to simplify an unwieldy, excessively long sentence. The reference to "federal" authorities in subsection 1 is eliminated. State personnel would be the only authorities having jurisdiction.
SECTION 21. AMENDMENT. Section 36-24-21 of the North Dakota Century Code is amended and reenacted as follows:


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

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

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

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


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

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

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

If a decree of condemnation is entered against an article or animal and it is released under bond or destroyed, a court may award costs, fees, storage, and other reasonable expenses against any person intervening as a claimant of the article or animal. Either party to a proceeding may demand trial by jury of any issue of fact joined in the case, and all proceedings...
must be in the name of the state. Nothing in this section changes the authority for
condemnation or seizure otherwise conferred by law.

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


For the purposes of this chapter, the commissioner may:

1. Gather and compile information concerning and investigate the organization, business,
   conduct, practices, and management of a person in intrastate commerce and the
   person's relation to other persons.

2. Require that a person engaged in intrastate commerce file with the commissioner, in
   the form and manner prescribed by the commissioner, annual and special reports or
   written answers to specific questions, giving the commissioner the information the
   commissioner requires about the organization, business, conduct, practices,
   management, and relation to other persons, of the person filing the reports or
   answers.

3. Examine and copy documentary evidence of a person being investigated or being
   proceeded against. A person may not refuse to submit to the commissioner, for
   inspection and copying, any documentary evidence of a person subject to this chapter
   in the person's possession or control.

4. Fix the time of filing for a person required by this chapter to file an annual or special
   report may not fail to do so within the time fixed by the commissioner, and A person
   required by this chapter to file an annual or special report may not continue the failure
   for thirty days after notice of failure to file.

5. Adopt rules to implement this chapter, including establishing inspection fees for
   providing inspection services under this chapter.

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

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

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

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


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

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

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

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-08-01 of the North Dakota Century Code is amended and reenacted as follows:

4-08-0411-38-01. Extension work - County extension agent - Petition to authorize or discontinue levy - Submitting to vote - Election - Levy limitations.

Upon the filing with the county auditor at least sixty-four days before the date of a general election of a petition to authorize or discontinue a tax levy for extension work, containing the names of twenty percent of the qualified electors of the county as determined by the votes cast for governor in the county at the last preceding gubernatorial election, the board of county commissioners shall submit to the qualified electors at the next general election the question of providing or discontinuing a tax levy for extension work. Upon approval by a majority of qualified electors of the county voting on the question of authorizing a tax levy for extension work, the board of county commissioners may levy a tax of up to two mills as provided in subsection 2 of section 57-15-06.7. Upon approval by a majority of qualified electors of the county voting on the question of discontinuing a tax levy for extension work, the board of county commissioners shall terminate any levy or additional levy previously authorized under this chapter and may terminate county expenditures for extension work.

The board of county commissioners may submit to the electors at a primary or general election the question of approval of voter-approved additional levy authority for extension work for a period not exceeding ten years and if approved by a majority of the electors voting on the question the board of county commissioners may levy an additional tax not exceeding the limitation in subsection 2 of section 57-15-06.7. Voter-approved additional levy authority authorized by electors of a county before January 1, 2015, remains in effect through taxable...
Sixty-fifth
Legislative Assembly

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

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

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

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

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

The petition provided for in section 4-08-0411-38-01 must be in substantially the following form:

PETITION PROVIDING FOR REGARDING Levy FOR EXTENSION WORK

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

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

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

The question to be voted upon as provided in section 4-08-0411-38-01 must be submitted on a separate ballot and must be worded as follows:

1. For a petition to authorize a levy:
   For extension work ____________________________ ☐
   Against extension work ________________________ ☐

2. For a petition to discontinue a levy:
   For discontinuing the extension work levy ________ ☐
   Against discontinuing the extension work levy _____ ☐
SECTION 4. AMENDMENT. Section 4-08-04 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

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

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

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

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

SECTION 6. AMENDMENT. Section 4-08-06 of the North Dakota Century Code is amended and reenacted as follows:
4-08-06. Filing date of petitions for election.

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

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

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

4-08-0711-38-05. Discontinuance of extension agent work levy - Distribution of funds accumulatedTransfer of unobligated funds.

If a majority of the votes cast at an election held to discontinue authority for a tax levy under section 4-08-0511-38-01 are against continuing in favor of discontinuing authority for the levy for extension work, the tax levy and the services of the extension agent must be discontinued on the thirty-first day of December following the date of election. If the majority of the votes cast are for the support of extension work, the county commissioners shall continue the tax levy as provided in this chapter. Upon the discontinuance of extension work, accumulated and unobligated funds remaining in the treasury may be distributed to any other fund or funds deemed expedient by the board of county commissioners special fund for that purpose must be transferred to the county general fund and the special fund must be closed out.

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

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

4-08-08. Expending funds.

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

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

SECTION 9. AMENDMENT. Section 4-08-09 of the North Dakota Century Code is amended and reenacted as follows:
4-08-0911-38-06. Budgeting for extension agent work.

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

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

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

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

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

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

The extension agent shall submit monthly an accurate itemized account of all expenditures incurred by the agent in the regular conduct of duties to the North Dakota state university extension service for examination and audit. When charges are made by an extension agent for money expended in the performance of official duties and consistent with the approved budget, all items of one dollar or more expended and charged for expenditures must be covered by a subvoucher or receipt that must be signed by the person to whom the money was paid according to county policy for reimbursement. The subvoucher or receipt must show at what place, on what date, and for what the money expended was paid. The extension agent shall forward the subvouchers or receipts with the bill, claim, account, or demand against the
county. When charges are made for transportation expenses, they may not exceed the amounts provided by section 11-10-15, and must be in itemized form showing the mileage traveled, the days when and how traveled, and the purpose thereof, verified by affidavit.

The account must be transmitted and recommended for payment by the North Dakota state university extension service which shall audit the same and may approve or disallow any expense item therein. The state board of agricultural research and education and the president of North Dakota state university shall control and administer the North Dakota state university extension service subject to the supervision of the state board of higher education. Funds appropriated to the North Dakota state university extension service may not be commingled with funds appropriated to North Dakota state university. An appropriation request to defray expenses of the North Dakota state university extension service must be separate from an appropriation request to defray expenses of North Dakota state university. Subject to the availability of funds, the director of the North Dakota state university extension service may adjust or increase full-time equivalent positions in order to carry out activities to accomplish the mission of the extension service. All full- or part-time positions must be separate from North Dakota state university. Annually, the director of the North Dakota state university extension service shall report to the office of management and budget and to the budget section any adjustments or increases made pursuant to this section.

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

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

4-08-10.111-38-08. Achievement days - Premiums - Report of extension agent.

In July of each year the office of management and budget shall pay out of any moneys from funds appropriated for boys' and girls' clubwork a sum not to exceed five hundred dollars to the extension agent of each organized county within the state conducting boys' and girls' achievement days, to be used exclusively for the payment of premiums at the boys' and girls' achievement days. Within thirty days following the boys' and girls' achievement days, the extension agent shall refund to the office of management and budget any balance not expended, which must be remitted to the state treasurer and placed to the credit of the general fund.
SECTION 12. AMENDMENT. Section 4-08-12 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

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

**4-08-1311-38-13. Vacancies—How to be filled.**

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

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

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

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

If the North Dakota state university extension service or the board of county commissioners becomes dissatisfied with the performance of an extension agent or the level of funding support required, the dissatisfied entity shall arrange a joint meeting must be arranged at which detailed information as to the misconduct, negligence, or inefficiency dissatisfaction with the
performance of the agent or the level of funding support required must be presented and such
joint action taken as is justified by the evidence.

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

4-08-15. Extension work levy and funding—Additional levy with voter approval.

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

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

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

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

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


The state board of agricultural research and education and the president of North Dakota
state university shall control and administer the North Dakota state university extension service
subject to the supervision of the state board of higher education. Funds appropriated to the
North Dakota state university extension service may not be commingled with funds appropriated
to North Dakota state university. An appropriation request to defray expenses of the North
Dakota state university extension service must be separate from an appropriation request to
defray expenses of North Dakota state university. Subject to the availability of funds, the director
of the North Dakota state university extension service may adjust or increase full-time or
part-time equivalent positions to carry out the mission of the extension service. All full-time or
part-time positions must be separate from North Dakota state university. Annually, the director of
the North Dakota state university extension service shall report to the office of management and
budget and to the budget section any adjustments or increases made under this section.

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

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

2. A county levying a tax for extension work as provided in section 4-08-4511-38-01 may
   levy a tax not exceeding two mills and if a majority of the electors of the county have
   approved additional levy authority under section 4-08-4511-38-01, the county may levy
   a voter-approved additional tax not exceeding an additional tax of two mills.
A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

36-21-01. Regulations governing fraudulent representation of purebred livestock - Penalty.

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

Any[1] is a class B misdemeanor for a person who shall[2]:

1. Fraudulently represent any animal to be or be considered purebred;
2. Post or publish, or cause to be posted or published, any false pedigree or certificate;
3. Procure by fraud, false pretense, or misrepresentation, the registration of any animal which is to be used for service, sale, or exchange in this state, for the purpose of deception as to the animal's pedigree thereof;
4. Sell, or otherwise dispose of, any animal as a purebred when the person knows or has reason to believe that the animal is not the offspring of a regularly registered purebred sire and dam; or
5. Sell, or otherwise dispose of, any animal as a registered purebred by the use of a false pedigree or certificate of registration;

is guilty of a class B misdemeanor.

SECTION 2. AMENDMENT. Section 36-21-05 of the North Dakota Century Code is amended and reenacted as follows:
36-21-05. Skinning dead livestock—Restrictions governing.

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

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

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

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

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

1. When the person sees such animal in the act of killing, chasing, worrying, or damaging any livestock or poultry; or
2. When the person discovers such animal under circumstances which satisfactorily show evidence that the animal recently has been engaged in killing or chasing sheep.

A person who kills any dog, wolf, or coyote under conditions specified in this section is not liable in any civil action to the owner of such animal.

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

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

36-21-11. Owners of dogs liable for damages done to livestock—Procedure when damages done by pack of by dogs.

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

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

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

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

36-21-12. Killing of livestock by railroad is prima facie evidence of negligence.
The killing or damaging of any livestock by a railroad car or locomotive is prima facie
evidence of carelessness and negligence on the part of by the railway company or corporation.

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

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

36-21-13. Exemplary damages for wrongful injuries to domestic animals.
Exemplary damages may be given to the owner of any animal applied for any wrongful injury
there to when such injury into an animal committed willfully or by gross negligence.

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

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

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

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

36-21-18. Title to property to remain in market until settlement made.
Before any person, association, copartnership, firm, corporation, or limited liability company
may become a purchaser at any sale conducted by an auction market established under the
laws of this state, such the prospective purchaser must file, satisfactory evidence with the
operator of such the auction market, proof that any check, draft, or bill of exchange issued and
delivered to such the auction market in payment ef for any livestock purchased shall will be
honored by the drawee bank at the time of presentation for payment, and until Until such
check, draft, or other bill of exchange has been duly honored and paid, the title to the
purchased livestock so purchased is in the held by the auction market making such the sale.

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

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

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

1. For each equine processed at an equine processing facility in this state, the owner of
the facility shall submit to the agriculture commissioner, at the time and in the
manner directed by the commissioner, an assessment in the amount of five dollars.
The commissioner shall forward the assessment to the state treasurer for deposit of
the first fifty thousand dollars in the state general fund and any additional amount in
the equine processing fund.

2. All moneys in the equine processing fund are appropriated on a continuing basis to the
agriculture commissioner to be used as follows:

   a. The agriculture commissioner shall return to the state general fund the fifty-
      thousand dollars appropriated to the department of commerce for the equine-
      processing facility feasibility study.
   
   b. Upon completion of the requirement set forth in subdivision a, the commissioner
      shall:
      
      (1) Provide an annual grant equaling forty percent of any assessments
          collected to Dickinson state university in support of the equine management
          program; and

      (2)b. Provide an annual grant equaling forty percent of any assessments
            collected to North Dakota state university in support of the equine studies
            program; and
(3)c. Provide an annual grant equaling twenty percent of any assessments collected to public or private entities conducting equine research or offering hippotherapy to individuals with disabilities.

NOTE: The appropriation to the Department of Commerce was made in 2009. It appears unlikely the amount will be collected.
A BILL for an Act to create and enact chapter 4.1-15 of the North Dakota Century Code, relating to the northern crops institute; and to repeal chapter 4-14.2 of the North Dakota Century Code, relating to the northern crops institute.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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


1. The northern crops institute is established to be administered by and in conjunction with North Dakota state university.

2. A director must be appointed by the northern crops council, in consultation with the president of North Dakota state university, shall appoint the director of the northern crops institute and may remove the director for cause. The director shall manage the institute, hire and compensate necessary personnel within the limits of legislative appropriations, prepare a biennial budget, and serve as executive secretary to the northern crops council. The council shall fix the salary of the director, within the limits of legislative appropriations, and may remove the director for cause in consultation with the president of North Dakota state university.

3. The council shall provide the president of North Dakota state university with an opportunity to participate in the hiring of a director for the institute, including serving on search committees, advertising, and interviewing candidates, and negotiating with potential candidates.

4. Funds appropriated to the northern crops institute may not be commingled with funds appropriated to North Dakota state university. Appropriation requests to defray...
expenses of the northern crops institute must be separate from appropriation requests to defray expenses of North Dakota state university.


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

1. The council consists of:
   a. The agriculture commissioner or the commissioner's designee;
   b. The president of North Dakota state university of agriculture and applied science or the president's designee;
   c. The president and general manager of the North Dakota mill and elevator association;
   d. An individual selected by the North Dakota barley council;
   e. An individual selected by the North Dakota oilseed council;
   f. An individual selected by the North Dakota soybean council;
   g. An individual selected by the North Dakota wheat commission;
   h. No fewer than five nor more than seven individuals who produce northern crops, selected by the members referenced in subdivisions a through g; and
   i. No more than four representatives of industries that process northern crops, selected by the members designated in subdivisions a through g.

2. a. The term of office for each member of the council referenced in subdivisions d through i of subsection 1 is three years, and those members are limited to two 3-year terms.
   b. Each term of office begins with the first meeting after the date of the member's appointment.

3. Annually, the council members shall select one of the individuals referenced in subdivisions d through i of subsection 1 to serve as the chairman.

4. The council shall meet at least three times annually at such times and places as determined by the council and may meet in special meeting upon such call and notice as may be prescribed by rules adopted by the council.

5. If a member is unable to attend a meeting of the council, the member may be represented by an individual who has a written proxy from the member.
4-14.2-034.1-15-03. Purpose - Powers and duties.

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

1. In-plant consultations for the purpose of discussing regarding crop quality problems, product manufacturing, and possible purchasing methods and standards.
2. Short courses in product milling and processing, plant management, county elevator management, grain grading, and marketing of crops.
3. Educational and career and technical education training programs in milling, processing, manufacturing, purchasing methods, marketing procedures, product sales techniques, and other related subjects to be conducted for users of northern crops.
4. Short-term investigations, consultation, evaluation, and research to solve technical problems involved in the maintenance of quality and utilization of northern crops.
5. Annual surveys and quality analyses of new northern crops and monitoring of the quality and condition of commodities in market channels.
6. Research on northern crop damage problems and solutions.
7. Identification of problem areas in marketing northern crops abroad.


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

SECTION 2. REPEAL. Chapter 4-14.2 of the North Dakota Century Code is repealed.
A BILL for an Act to create and enact chapter 54-60.3 of the North Dakota Century Code, relating to the agricultural products utilization commission; and to repeal chapter 4-14.1 of the North Dakota Century Code, relating to the agricultural products utilization commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

54-60.3-01. Agricultural products utilization commission - Composition - Appointment.

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

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

1. The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or private sources.
2. The commission may administer grant programs including:
   a. A basic and applied research grant program;
   b. A utilization and marketing grant program;
   c. A cooperative marketing grant program;
   d. A nature-based tourism grant program;
   e. A technical assistance grant program for value-added businesses;
   f. A farm diversification grant program;
   g. An agricultural prototype development grant program;
   h. An agricultural technologies grant program; and
   i. A North American marketing grant program.

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

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

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

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

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

evaluating grant proposals.

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

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

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

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

SECTION 2. REPEAL. Chapter 4-14.1 of the North Dakota Century Code is repealed.
BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-30-01 of the North Dakota Century Code is amended
and reenacted as follows:

4-30-044.1-23-01. Definitions.

In this chapter, unless the context otherwise requires:

4. "Approved laboratory" means a laboratory in which the entire facilities and equipment
have been approved by the department as being adequate to perform the necessary
official tests in accordance with the North Dakota laws and the rules of the
department.

NOTE: "Approved laboratory" is a phrase not used anywhere in this chapter except in this
definition.

2. "Cheese factory" means a place where facility that makes cheese is made for
commercial purposes.

3. "Commissioner" means the agriculture commissioner or the commissioner's designee.

4. "Composite sample" means a mixture of single samples of milk or milk products taken
from different lots or deliveries, the amount taken each time being in proportion to the
amount of milk or milk products delivered. Composite samples are usually taken for
determining the butterfat content of a product and are tested at a frequency of not less
than once every fifteen days. Preservatives may be added.

NOTE: The words "composite sample" and the word "composite" are never used in this
chapter, except in this definition. In section 4-30-20, there is a description of samples to be
taken by a purchaser, but it does not match this unused definition. The sampling
requirement in Section 4-30-20 was revised in 1979, eliminating the use of the phrase
"composite sample", but this definition was not eliminated at that time. It is obsolete.
5.3. "Condensery" means a place where condensed or evaporated milk is produced or where milk is changed to a thick liquid by evaporation of a part of the water.

6.4. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.

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

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

8.6. "Dairy product" includes milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

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

7. "Department" means the department of agriculture.

9.8. "Distributor" means a person or company that provides storage, transportation, delivery, or distribution of milk and milk dairy products to any person who offers for sale or sells to any consumer milk or milk dairy products.

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

40.9. "Drying plant" means a place which manufactures dry milk products obtained by the removal of water from milk or milk products.

44.10. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended, or compounded with, any fat or oil, other than milkfat so that the resulting product is in-
imitation or semblance of any, to imitate a dairy product, including milk, cream, sour-cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim-milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed-cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk; provided, however, that this term shall. "Filled dairy products" may not be construed to mean or include:

a. Any distinctive proprietary food compound not readily mistaken for a dairy product, where such the compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

b. Any dairy product flavored with chocolate or cocoa, or the vitamin content of which has been increased, or both, whereif the fats or oils other than milkfat contained in such the product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredth per centum of the weight of the finished product, used as a carrier of such vitamins; or

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

c. Oleomargarine Margarine.

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

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

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

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

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

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

"Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:
a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.
b. The packaging used resembles the packaging used for milk or for a milk product.
c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.
d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.
e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.

"Milk hauler" means a person who owns vehicles used to transport raw milk from a dairy farm to a dairy facility.

"Milk plant or bottling plant" means a place facility where milk or milk products are collected, handled, processed, stored, and prepared for distribution.

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

"Overrun" means the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes.

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

"Pasteurization" as applied to milk or skim milk means the either:

a. The process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at such that temperature continuously for at least thirty minutes; or
b. Heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment.

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

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

NOTE: There is no dairy commissioner.

24-19. "Pasteurized Milk Ordinance" means the 2013 revision of the Grade "A" Pasteurized Ordinance issued by the United States food and drug administration and by the United States department of agriculture's public health service.

22-20. "Peddler" means a person who purchases milk or milk products and sells them directly to consumers at any place other than from a store, stand, or other fixed place of business.

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

23-21. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.

24-22. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner which changes the natural, physical, or chemical properties of the original product.

25-23. "Producer dairy" means a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing.
"Producer-processor" or "producer-distributor" means a producer who is also a processor or distributor.

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

"Raw milk or raw milk products" means products which have not been treated by the process of pasteurization as defined in this section.

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

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

"Retail" means the sale of milk or milk products directly to the consumer.

"Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use or raw milk or milk products from a dairy farm to a dairy facility.

"Sampling" means a procedure whereby taking a portion or specimen of milk or milk products is taken for the purpose of grading or testing.

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

a. Acquires an ownership interest in a milk-producing animal;

b. Agrees to pay another for, reimburse another for, or otherwise accept financial responsibility for the care and boarding of the milk-producing animal at the dairy farm; and

c. Is entitled to receive a proportionate share of the animal's raw milk production as a condition of the contractual arrangement.

"Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.


NOTE: It appears the 17th Edition, published 2004, is the most current publication.
Sixty-fifth
Legislative Assembly

35.2. "Testing" means an examination of milk or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof.

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

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

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

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

38.3. "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of resale.

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

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

4-30-024.1-23-02. Licenses required - Fees - Term.

Every

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

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

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

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

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

d. A person owning, operating, or leasing any other business engaged in the processing or manufacturing of milk or milk products and every
e. An organization acquiring milk or milk products on its own behalf or as an agent for sale on behalf of others and doing business within this state shall obtain the license required by this section for each such place of business.

2. Application for a license must be made to the commissioner upon forms as prescribed by the commissioner may require. Upon making an application for a license, it is implied that consent is given by the applicant constitutes the implied consent of the applicant for inspection by the department inspections. If the commissioner finds that the applicant conforms to the North Dakota laws and the rules and regulations of the department commissioner, the commissioner shall issue a license for conducting these operations listed on the application for the license.

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

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

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

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

6. The fee for license is twenty-five dollars.

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

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

SECTION 3. AMENDMENT. Section 4-30-02.1 of the North Dakota Century Code is amended and reenacted as follows:
4-30-02.4.1-23-03. Records release required. Financial records release authorization with application for licensure.

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

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


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

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

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

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

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

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

4-30-03.34.1-23.06. Surety bond, trustee agreement, other security or assurances.

In all cases where it appears that the financial condition of any applicant or licensee who
purchases milk from a dairy producer is not adequate to reasonably assure payment to dairy
producers when due for the milk to be purchased, or in lieu of annually filing with the
department an audited financial statement as required in section 4-30-03.24.1-23.05, the
department shall require from an applicant or licensee security or other assurances in one of
the following forms:

1. The filing of a surety bond acceptable to the department. The amount of the surety
   bond must be determined on the basis of average purchases of milk from dairy
   producers during the previous year. If payment for milk purchased from dairy
   producers is made on a weekly basis, the amount of the surety bond must be at least
   in an amount equal to the average weekly purchases of milk. If payment for milk
   purchased from dairy producers is made on a semimonthly basis, the amount of the
   surety bond must be at least in an amount equal to the average semimonthly
   purchases of milk. If the period of payment for milk purchased from dairy producers is
   made on a basis involving periods of time greater than semimonthly, the amount of the
   surety bond must be at least in an amount equal to the average purchases of milk for
   that greater period of time. The amount of the bond for each period of payment must
   also include an amount equal to at least the average purchases for three days
   following the close of the period of payment. The amount of the surety bond of any
   licensee who pays assignments to creditors of a producer of milk at a lesser frequency
   than the licensee pays the producer must also include an amount equal to the value of
   assignments from the prior payment period. The commissioner must be named as
   obligee, but the bond or draft must be held for the purpose of protecting, and for the
   benefit of, any dairy producer, and the full and complete payment to that dairy
   producer for all milk purchased by the licensee. The aggregate liability of the bonding
company or the department to all dairy producers must in no event may not exceed the
total amount of the bond.

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

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

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

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

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

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

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

4-30-03.44.1-23-07. Financial basis for license - Statement to producer - Notification
to department.

All milk purchasers licensed under section 4-30-024.1-23-02 shall inform producers
delivering milk of the financial basis on which the license was issued, including the type and
amount of security, if any, filed under section 4-30-03.34.1-23-06, by an annual written
statement to each producer patron at least once every year. No person may not receive milk
which will increase the amount due and accrued beyond the amount represented as a basis
for the issuance of a license without first notifying the department.
 SECTION 8. AMENDMENT. Section 4-30-03.5 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.54.1-23-08. Additional security.
Whenever the department determines that the value of milk purchased or received from producers has increased or that an increase may reasonably be anticipated, so that the total amount of security does not comply with the amount required by subsection 1 or 2 of section 4-30-03.34.1-23-06, the department shall require additional security as will afford producers the protection intended by section 4-30-03.34.1-23-06. The department may suspend or revoke any license if the licensee fails to provide the additional security required by the department pursuant to this section.

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

4-30-03.64.1-23-09. Filing of security before license year.
An applicant or licensee shall file bonds or other security for the license year with the department not later than the first day of the month before June immediately preceding the beginning of each license year. If any applicant or licensee who purchases or receives milk from dairy producers has not filed a surety bond or other security, and has not been relieved from filing a surety bond or other security, by the July first day of the month of the license year, the department shall notify producers selling milk to the applicant or licensee that the applicant or licensee has not filed any security or made other provisions for assuring payments for milk purchases, for the license year.

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

4-30-03.74.1-23-10. Failure to file security - Notice to producers.
Whenever an applicant or licensee fails to file a surety bond or other security within the time fixed by section 4-30-03.64.1-23-09 or the department fails to comply with a demand for additional security, the department shall publish in a newspaper or newspapers having circulation in the area or areas in which the producers whose milk is sold or delivered to the applicant or licensee reside, a notice stating that the:

1. The department made a demand or request for additional security from the applicant or licensee; that
Sixty-fifth
Legislative Assembly

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

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

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

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

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

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

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

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

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

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

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

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

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

4-30-03.10 Records and reports.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **4-30-084.1-23-18. Appeal or compromising of action by department.**
6 The department may prosecute an action for any claims arising under the provisions of this
7 chapter in any court, may appeal from any adverse judgment to the courts of last resort, and
8 may settle and compromise any such action whenever in its judgment it will be for
9 the best interests of the claimants. Upon payment to **the department** of the amount of any
10 compromise, or of the full amount of any required security, the department may exonerate the
11 person compromising or paying from further liability growing out of the action.

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

14 **4-30-094.1-23-19. Moneys collected on claims**
15 to be deposited in
16 Bank of North Dakota.
17
18 All moneys collected and received by the department as trustee must be deposited in
19 the Bank of North Dakota pending the marshalling of the fund.

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

22 **4-30-104.1-23-20. Department to file report upon recovery of trust**
23 **Trust fund report - Notice to claimants - Approving or modifying report.**
24 Upon recovery of the trust fund, or so much thereof as it is possible to recover, or as is
25 necessary to pay all outstanding claims, the department shall file its report in court showing
26 the amount payable upon each claim, after recognizing any proper liens or pledges thereon or
27 assignments thereof, or deductions therefrom, with legal interest thereon. If the fund proves
28 insufficient to redeem all claims in full, the fund must be prorated among the claimants in such
29 manner as the department deems fair and equitable. Thereupon, once the report is received
30 from the department, the court shall notify all claimants upon such notice by mail as it
31 prescribes to appear on a day fixed in the notice and show cause why such report
32 should not be approved and distribution of the fund made as outlined in the
33 report. Upon such hearing the court shall approve such report or modify the same report as
Sixty-fifth
Legislative Assembly

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

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

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

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

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

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

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

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

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


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

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


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

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

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

4-30-145.1-23-25. Suspension or revocation of license - Judicial review - Emergency
order.

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

Any person, firm, corporation, or limited liability company whose license is suspended is not
eligible during the period of the suspension to engage in activities that would be allowed by the suspended license either
personally, or indirectly by having a financial interest in the business.

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


The laboratory procedures, equipment, chemicals, and other apparatus or substances used
in the sampling, hauling, or testing of milk or milk products must conform to those described in
the Standard Methods, a copy of which must be kept on file in the department. Any
equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing
of milk or milk products which is not in conformance with the requirements of this chapter may not be sold or offered for sale. The commissioner, through the adoption of rules,
Sixty-fifth
Legislative Assembly

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

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

4-30-204.1-23-27. Sampling of milk.
Every purchaser of milk from a dairy producer shall collect a minimum sample of two
ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must
be collected and maintained in accordance with those procedures contained in the Standard
Methods. Records must be kept, which readily identify the sample, with those items used to
determine payment for the milk. Such items must include weight, butterfat content, protein,
solids-not-fat, and the total amount of money paid for the milk.

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

4-30-274.1-23-28. Standards for the production of manufacturing grade milk -
Commissioner to adoptMinimum standards of rules.
The commissioner may adopt rules governing the production and processing of milk for
manufactured dairy products. Rules shall, at a minimum, rules governing the production and
processing of milk for manufactured dairy products must comply with United States department
of agriculture minimum standards for manufacturing grade dairy products.

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

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

4-30-28. Farm certification.
The commissioner may promulgate rules and regulations concerning farm certification.

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

SECTION 30. AMENDMENT. Section 4-30-29 of the North Dakota Century Code is
amended and reenacted as follows:
Sixty-fifth
Legislative Assembly

4-30-29. Grades of milk for manufacturing purposes.
The commissioner may promulgate rules and regulations concerning grades of milk for manufacturing purposes.

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

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

4-30-30. Milk grading program.
The commissioner may promulgate rules and regulations concerning a milk grading program.

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

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

4-30-31. Rejection and exclusion of milk.
The commissioner may promulgate rules and regulations concerning rejection and exclusion of milk.

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

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

4-30-32. New producers - Transfer producers.
The commissioner may promulgate rules and regulations concerning new producers and transfer producers.

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

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

4-30-33, 1-23-29. Standards for dairy manufacturing or processing - Commissioner to adopt Minimum standards of rules.
The commissioner may adopt rules governing the approval of dairy processing and manufacturing plants and standards for grades of dairy products. Rules must, at a minimum, rules governing the approval of dairy processing and manufacturing plants and standards for grades of dairy products must comply with United States department of agriculture general...
specifications for approved dairy plants and standards for grades of dairy products. A plant may not be operated or any dairy products sold in violation of these rules.

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

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

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

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

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

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

4-30-35. Standards for manufactured dairy products.

The commissioner may promulgate rules and regulations establishing standards for manufactured dairy products.

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

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


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

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

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

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

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

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

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

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

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

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

4-30-37.4.1-23-34. Quality records to be kept - Term.

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

SECTION 42. AMENDMENT. Section 4-30-38 of the North Dakota Century Code is amended and reenacted as follows:
4-30-38. Transportation of milk for manufacturing, processing, or bottling purposes—Commissioner to adopt rules.

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

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

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

4-30-38.1. Milk haulers - License required - Commissioner to adopt rules.

No person shall own or operate any tank truck, bulk milk truck, or other vehicle used or designed to carry bulk raw milk without a license issued by the department. The commissioner shall adopt rules governing the operation, inspection, design, and licensure of such persons. The license of any person operating a vehicle in violation of this section or the rules of the department is subject to revocation or suspension in accordance with procedure established by law. A license to haul milk issued under this section may be issued in conjunction with or as part of any license to sample or test milk or milk products issued pursuant to section 4-30-124.1-23-22.

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

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


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

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

SECTION 45. AMENDMENT. Section 4-30-40 of the North Dakota Century Code is amended and reenacted as follows:
4-30-404.1-23-36. Adulterated, impure, or unwholesome milk or milk products not to be transported, stored, sold, or offered for sale.

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

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

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

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

NOTE: There is no dairy commissioner or department.

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

4-30-41.4.1-23-38. Exception for uses as directed by physicians.

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

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

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

This chapter does not prohibit the manufacture or sale of proprietary foods which are clearly not imitation milk, imitation milk products, or filled dairy products which do not contain imitation milk, imitation milk product, or filled dairy product and which are not conducive to
substitution, confusion, deception, and fraud upon the purchasers of milk, milk products, or filled
dairy products by their manufacture or sale.

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

4-30-41.4. Shared animal ownership agreement - Raw milk.

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

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

4-30-45.1. Labeling and identity standards.

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

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

4-30-46.1. Reports - Blanks - When made - Contents.

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

NOTE: There is no dairy commissioner.

SECTION 52. AMENDMENT. Section 4-30-47 of the North Dakota Century Code is
amended and reenacted as follows:
4-30-474.1-23-43. Dispute over test—Official test made—By whom—Other tests—

Fees

Test results disputes.

If a disagreement between a seller and a buyer or the legal representatives of both or either arises over the percentage of butterfat contained in any quantity of milk sold or offered for sale at the request of the owner and in the owner's presence, a sample of such milk obtained as provided in section 4-30-204.1-23-27 and mutually agreed upon by the interested parties as being a representative sample must be sealed satisfactorily and mailed by the buyer to the office of the dairy commissioner. Each sample mailed to the commissioner must include a statement giving the name and address of the seller and the buyer of the milk in question, the net weight thereof, the percentage and amount of butterfat contained therein, the price per pound [.45 kilogram] for butterfat, and the amount of money paid or offered in payment for the same and bearing the signature of the seller and the buyer.

The commissioner or the commissioner's agent shall determine the percentage of butterfat contained in the sample and shall make a report of the result in triplicate, the original to be filed in the commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk.

The percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the making of the official butterfat test and any other tests required must be in such amount as set by regulation of the dairy commissioner, considering the actual costs of making the test, and such fee must be mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat or other test.

NOTE: There is no dairy commissioner.

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

4-30-484.1-23-44. Failure to agree on sample for official test—Procedure to be followed—Test sample disputes.

Whenever it is impossible to secure or mutually agree upon a sample of milk as provided in section 4-30-474.1-23-43, then the party selling or offering for sale such milk may require that the buyer or prospective buyer forward to the department to forward the sample in compliance with section 4-30-204.1-23-27. Each sample so forwarded must be accompanied by a statement in the form of include an affidavit from the buyer or prospective buyer, stating that the sample was taken in compliance with the provisions
of section 4-30-294.1-23-27, and the statement also must contain all information required in
section 4-30-474.1-23-43, except that the signature of the seller is not required thereon. Each
sample must be tested and reported on as prescribed in section 4-30-474.1-23-43, and the
percentage of butterfat so determined and reported constitutes the "official butterfat test" and is
the basis on which final settlement must be made.

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

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

The standards set forth in this chapter must be considered as constitute only minimum standards only. Nothing in this chapter may be construed to prevent any municipality from providing, by ordinance, more stringent or comprehensive standards than are contained herein. Nothing in this chapter or in the rules and regulations of the department to commissioner may be construed to prevent any person concerned with dairying the dairy business from using standards, inspections, or other practices or procedures which are more stringent or comprehensive.

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

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

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

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

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

Any milk or cream offered for sale and which is in violation of any provision of this chapter or the rules and regulations of the department commissioner, must be colored with a harmless food coloring and returned to the owner=seller. In addition, any milk or milk product which is in violation of any provision of this chapter or the rules of the department commissioner may be seized or ordered held by the commissioner and must be disposed of as any other illegal food or drug as outlined provided in chapter 19-02.1.
SECTION 57. AMENDMENT. Section 4-30-53 of the North Dakota Century Code is
amended and reenacted as follows:

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

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

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

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

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

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

4-30-554.1-23-50. Rules for enforcement of chapter.

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

NOTE: This section provides rulemaking authority for anything addressed in the chapter.
SECTION 60. AMENDMENT. Section 4-30-55.2 of the North Dakota Century Code is amended and reenacted as follows:


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

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

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

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

4-35-01. Title.

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

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

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

4-35-03. Enforcing agency.

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

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

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

4-35-04. Declaration of purpose.

The legislative assembly hereby finds that pesticides are valuable to our state’s agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment. The purpose of this chapter is to regulate, in the public interest, the distribution, storage, transportation, disposal, and use and application of pesticides to control pests as hereinafter defined. New pesticides are continually being discovered or synthesized which are valuable for the control of-
pests, and for use as defoliants, desiccants, plant regulators, and for related purposes. The dissemination of accurate scientific information as to the proper use or nonuse of any pesticide is vital to the public health and welfare and the environment, both immediate and future.

Therefore, it is deemed necessary to provide for regulation of their use and application.

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

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

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

As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Applicator" means any person who applies a pesticide to land.
3. "Certified applicator" means any individual who is certified under this chapter to purchase or use a restricted use pesticide.
4. "Commercial applicator" means a person who by contract or for hire engages in the business of applying pesticides for compensation.
5. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
7. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than human and other than bacteria, virus, or other micro-organism on or in living humans or other living animals, but not including equipment used for the application of pesticides when sold separately from pesticide.
8. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
9. "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships that exist among them.
10. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, inhabiting, or stored on or in
such land. The term does not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making the pestcide application.

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

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

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

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

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

16. "Nematode" means invertebrate animals of the phylum nemathelmintes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
17. "Pest" means any insect, rodent, nematode, fungus, or weed; or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals.

18. "Pesticide" means:
   a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
   b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

19. "Pesticide dealer" means any person, other than a pesticide wholesaler, distributing pesticides.

20. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

21. "Private applicator" means an individual who is required to be a certified applicator to buy or use a restricted use pesticide on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

22. "Public applicator" means an applicator who applies pesticides, other than ready-to-use pesticides, as an employee of:
   a. A governmental agency, municipal corporation, or public utility; or
   b. A hospital, privately owned golf course, nursery, or greenhouse.

23. "Ready-to-use pesticide" means a pesticide other than a restricted use pesticide which is applied directly from its original container consistent with label directions, and includes aerosol spray cans, ready-to-use spray containers, bait packs, and other types of containers that do not require mixing or loading before application.
"Restricted use pesticide" means any pesticide formulation that is classified as restricted use by the United States environmental protection agency or the agriculture commissioner under section 49-18-054.1-35-06.

"Rinsate" means a diluted mixture of pesticide obtained from triple rinsing or pressure rinsing pesticide containers or from rinsing the inside and outside of spray equipment.

"Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.

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

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

"Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including mammals, birds, and aquatic life.

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

4-35-024.1-34-02. Creation of pesticide control board - Enforcement by agriculture commissioner.

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

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

The members of the board must be compensated for their expenses in performing their duties under this chapter at the same rate as other state officials and the board's expenses must be paid from funds provided to the agriculture commissioner for the administration of this chapter. The board may act through the office of the agriculture commissioner, and one person on the commissioner's staff may be specifically responsible to...
Sixty-fifth
Legislative Assembly

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

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

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

4-35-064.1-34-03. Pesticide control board to administer chapter and adopt regulations.

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

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

   (2) Wildlife in the adjoining or nearby areas.

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

   (4) Persons, animals, or beneficial insects.

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

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

3. Rules adopted under this chapter may not permit any pesticide use which is prohibited by the federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.] or regulations or orders issued thereunder.
4. In order to comply with section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the board may make such reports to the United States environmental protection agency in such form and containing such information as that agency may from time to time require.

5. Rules to implement this chapter may provide for:

a. The collection, examination, and reporting of samples of pesticides.

b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.

c. The identification of pests under this chapter when the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

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

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

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

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

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

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

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

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

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

The board may classify commercial certificates to be issued under this chapter. The classifications may include pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be
specified as to ground, aerial, or manual methods used by any applicator to apply pesticides or
to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each
classification of certification may be subject to separate testing procedures and training
requirements, provided that a person may be required to pay an additional fee if the person
desires to be certified in one or more of the classifications provided for by the board under this
section.

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

4-35-09. Commercial and public applicator's certification.
1. A commercial or public applicator may not purchase, use, or supervise the use of a
pesticide without first complying with the certification standards and requirements of
this chapter, or other restrictions as may be determined by the board.

2. An individual may be certified as a commercial or public applicator within a
classification if the individual successfully completes an examination for the
classification as prescribed by the board and administered by the North Dakota state
university extension service or the service’s designee. An application for certification
must be on a form prescribed by the board and accompanied by a reasonable
examination fee set by the board.

3. If the North Dakota state university extension service, or its designee, finds, after
examination as the board requires, the applicant qualified to apply pesticides in the
classifications for which the applicant has applied, after examination as the board
requires, and the applicant meets all other requirements of this chapter, the North
Dakota state university extension service shall issue a commercial or a public
applicator's certificate limited to the classifications in which the applicant is qualified.

4. If certification is not to be issued as applied for, the North Dakota state university
extension service, or its designee, shall inform the applicant in writing of the reasons
for not issuing the certification.

SECTION 11. AMENDMENT. Section 4-35-10 of the North Dakota Century Code is amended and reenacted as follows:
4-35-104.1-34-08. Expiration of certification - Renewal.

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

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

4-35-114.1-34-09. Nonresident application - Designation of agent for service of process.

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

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

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

The extension service is allowed such fees therefor for service as a registered agent as provided by law for designating resident agents. The nonresident must be furnished with a copy of the designation of the extension service or of a resident agent. The copy must be duly certified by the extension service.
SECTION 13. AMENDMENT. Section 4-35-09.1 of the North Dakota Century Code is amended and reenacted as follows:


1. A commercial applicator certificate may not be issued unless the applicant furnishes proof of financial responsibility. Financial responsibility must be maintained in the amount of one hundred thousand dollars, and financial responsibility may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. When requested by the agriculture commissioner, a commercial applicator immediately shall furnish proof of compliance with this section. If the applicator is unable to furnish the required proof, the commissioner may stop a pesticide application and not allow resumption until the applicator furnishes proof of compliance. The agriculture commissioner shall immediately suspend the certification of a commercial applicator who fails to maintain the financial responsibility standards of this section. If there is any recovery against the commercial applicator, the applicator shall demonstrate continued compliance with the requirements of this section. An application for reinstatement of a certificate suspended under this section must be accompanied by proof that any judgment previously rendered against the applicant has been satisfied.

2. This section does not apply to:
   a. A rancher who must obtain a commercial applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
   b. A grazing association and its members if either the association or any member must obtain a commercial applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
   c. A person who must be certified in the right-of-way category.
d. A commercial applicator who controls noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.

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

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

**4-35-124.1-34.11. Pesticide dealer certification - Employees - Requirements for purchase.**

1. It is unlawful for a pesticide dealer to distribute restricted use pesticides or act as a restricted use pesticide dealer, without first having obtained certification from the North Dakota state university extension service, or the service’s designee. During business hours, a certified person is required to be at any location or outlet from which restricted use pesticides are distributed. Any manufacturer or distributor that has no pesticide dealer outlet within this state and which distributes such pesticides directly into this state shall obtain a pesticide dealer certificate for its principal out-of-state location or outlet.

2. Application for a certificate must be on a form prescribed by the board accompanied by an examination fee set by the board. The application must also include the address of each outlet, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board.

3. The board shall require each pesticide dealer to demonstrate to the North Dakota state university extension service or the service’s designee knowledge of pesticide laws and regulations; pesticide hazards to humans, animals, and the environment; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination or meeting other requirements as prescribed by the board within each classification for which certification is sought as prescribed by the board.

4. Each pesticide dealer is responsible for the acts of each person employed by the dealer in the solicitation and sale of restricted use pesticides and all claims and
recommendations for use of such pesticides. The dealer's certification is subject to
suspension or revocation, after a hearing, for any violation of this chapter, whether-
committed by the dealer, or by the dealer's officer, agent, or employee.

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

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

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

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

1. a. An individual who would be a private applicator, if certified, may not buy any
   restricted use pesticide unless the individual first complies with the certification
   requirements established by the board.
   b. An individual who would be a private applicator, if certified, may not use any
      restricted use pesticide unless the individual:
         (1) Complies with the certification requirements established by the board; or
         (2) Is under the direct supervision of a certified applicator.

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

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


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

1. Make false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertise a pesticide without reference to its classification.

2. Make a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.

3. Apply materials known by that person to be ineffective or improper.

4. Operate faulty or unsafe equipment.

5. Operate in a faulty, careless, or negligent manner.

6. Neglect, or, after notice, refuse to comply with this chapter, the rules adopted to implement this chapter, or any lawful order of the commissioner.

7. Refuse or neglect to keep and maintain the records required by this chapter or to make reports when and as required.

8. Make false or fraudulent records, invoices, or reports.

9. Apply pesticide to the property of another, without the permission of the owner or lessee, unless the application is made under the direction of a governmental entity.

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

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


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

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


The North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to buy, distribute, or use restricted use pesticides under a plan substantially similar to this chapter and after the applicant has paid a fee, set by the board, not greater than the fee or charge authorized under section 4-35-094.1-34-07, 4-35-124.1-34-11, or 4-35-144.1-34-12 if the applicant would have taken the appropriate examination. Such a certification may be suspended or revoked in the same manner and on the same grounds as certifications pursuant
SECTION 19. AMENDMENT. Section 4-35-19 of the North Dakota Century Code is amended and reenacted as follows:


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

2. The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides or to a doctor of medicine or a doctor of veterinary medicine applying a pesticide as a drug or as medication during the course of normal practice.

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

4-35-204.1-34-17. Discarding and storing of pesticides, pesticide containers, and rinsate.

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

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

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

4-35-21.3. Pesticide application - Alleged property damage - Notification of
applicator.

1. a. Before a person may file a civil action seeking reimbursement for property
damage allegedly stemming from the application of a pesticide, the person shall
notify by certified mail the pesticide applicator of the alleged damage within the
earlier of:
   (1) Twenty-eight days from the date the person first knew or should have known
       of the alleged damage; or
   (2) Before twenty percent of the crop or field allegedly damaged is harvested or
       destroyed.
   b. Subdivision a does not apply if the person seeking reimbursement for property
damage was the applicator of the pesticide.

2. Upon notifying the applicator as required under subsection 1, the person seeking
reimbursement for the alleged property damage shall permit the applicator and up to
four representatives of the applicator to enter the person's property for the purpose of
observing and examining the alleged damage. If the person fails to allow entry, the
person is barred from asserting a claim against the applicator.

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

4-35-22. Subpoenas.

The commissioner may issue subpoenas to
compel the attendance of witnesses or production of books, documents, and records pertaining
to pesticide applications, sales, and purchases in the state in any hearing to enforce this
chapter.
SECTION 23. AMENDMENT. Section 4-35-23 of the North Dakota Century Code is amended and reenacted as follows:

4-35-234.1-34-20. Penalties.

1. Any person other than a private applicator who knowingly violates this chapter is guilty of a class A misdemeanor.

2. Any private applicator who knowingly violates this chapter is guilty of a class B misdemeanor.

3. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

4. A person who violates this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter.

5. After providing an opportunity for a hearing, the commissioner may deny, suspend, revoke, or modify the provision of any certification issued under this chapter, if the commissioner determines that the applicant for certification or the holder of a certificate has violated this chapter or any rules adopted under this chapter.

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

4-35-244.1-34-21. Enforcement.

1. The commissioner shall enforce the requirements of this chapter and any rules adopted under this chapter.

2. The commissioner may bring an action to enjoin the violation or threatened violation of this chapter, or any rule adopted under this chapter, in the district court of the county in which such violation occurs or is about to occur.
3. If any person violates this chapter, the commissioner may issue an order requiring the
person to cease and desist from the unlawful activity. If the violator fails to obey, the
commissioner will cause the appropriate criminal complaint to be filed.

4. The commissioner may enter upon any public or private premises at reasonable times,
in order to:

   a. Inspect any equipment subject to this chapter and the premises on which the
equipment is stored or used.

   b. Inspect or sample lands actually or reported to be exposed to pesticides.

   c. Inspect storage or disposal areas.

   d. Inspect or investigate complaints of injury to humans or property.

   e. Draw samples of a reasonable amount of tank mix pesticides and tank mixes
   without compensation to the owner for values less than three dollars.

   f. Observe the use and application of a pesticide.

   g. Inspect any place where pesticides or devices are stored or held for distribution,
sale, or use, and obtain samples of any pesticides packaged, labeled, and
released for shipment and samples of any containers or labeling for the
pesticides.

5. a. At any reasonable time, the commissioner has access to records pertaining to the pesticide application, sales, purchases, and repackaging by any person. The commissioner may copy or make copies of the records for the purpose of this chapter. These records are confidential. However, the commissioner may use these records in any way to enforce this chapter. Any record that the commissioner uses as an exhibit in an enforcement action is no longer a confidential record.

   b. If an individual alleges exposure to pesticides and if the individual's medical
provider requests that the commissioner reveal the name of the pesticide, the
commissioner may reveal the name of the pesticide to the individual making the
request, together with the registration number assigned by the United States
environmental protection agency. The commissioner may require that a request
under this section be made in writing.
Sixty-fifth
Legislative Assembly

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

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

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

Whenever the commissioner has reason to believe on the basis of inspection or tests that
any pesticide or device is in violation of any provision of this chapter, or when the registration of the pesticide has been canceled or suspended by the state or United States environmental protection agency, the commissioner may issue a written or printed "stop-sale, use, or removal" order to any person who owns, controls, or has custody of the pesticide or device, and after receipt of the order, no person may sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

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

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

4-35-25.1. Information and instruction.
The board may, in cooperation with private, local, state, or federal agencies, publish information and conduct short courses of instruction in the areas of knowledge required by this chapter.

SECTION 27. AMENDMENT. Section 4-35-27 of the North Dakota Century Code is
amended and reenacted as follows:
Sixty-fifth
Legislative Assembly

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

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

1. Secure uniformity of regulations.
2. Enter into cooperative agreements with and submit plans to the environmental protection agency for approval to issue experimental use permits under the authority of this chapter and the **Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]**.
3. Cooperate in the enforcement of the federal pesticide control laws and state laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs.
4. Enter into contracts with other agencies, including federal agencies, for the purpose of training pesticide applicators, managers, dealers, and pesticide consultants.
5. Gain assistance in implementation of this chapter.
6. Regulate certified applicators.
7. Comply with other purposes prescribed by regulation rules of the commissioner.

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

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

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

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

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

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

1. The crop protection product harmonization and registration board consists of:
   a. The governor or the governor’s designee;
   b. The agriculture commissioner or the commissioner’s designee;
Sixty-fifth
Legislative Assembly

c. The chairman of the house agriculture committee or the chairman's designee;
d. The chairman of the senate agriculture committee or the chairman's designee;
e. A member of the house or senate agriculture committee who is not a member of
the faction in which the committee chairman is a member, appointed by the
legislative management chairman;
f. A crop protection product dealer in the state appointed by the governor from a list
of three nominees submitted by the North Dakota agricultural association;
g. A consumer of crop protection products appointed by the governor from a list of
three nominees submitted by the North Dakota grain growers association;
h. A consumer of crop protection products appointed by the governor from a list of
three nominees submitted by the North Dakota oilseed council;
i. A representative of the crop protection product manufacturing industry appointed
by the chairman of the legislative management; and
j. The director of the North Dakota state university agricultural experiment station.

2. The representative of the crop protection product manufacturing industry and the
director of the agricultural experiment station shall serve as nonvoting members. The
governor or the governor's designee shall serve as chairman of the board.

3. The board shall:

a. Identify and prioritize crop protection product labeling needs;
b. Explore the extent of authority given to this state under the Federal
Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a et seq.];
c. Identify the data necessary to enable registration of a use to occur in a timely
manner;
d. Determine what research, if any, is necessary to fulfill data requirements for
activities listed in this section;
e. Request the agriculture commissioner to pursue specific research funding
options from public and private sources;
f. Request the North Dakota state university agricultural experiment station to
pursue specific research to coordinate registration efforts; and
g. Pursue any opportunities to make more crop protection product options available to agricultural producers in this state through any means the board determines advisable.

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

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

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

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

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

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

  The crop protection product harmonization and registration board may accept funds received for expenses paid relating to the registration of pesticides or donations offered to or for the benefit of the board. All moneys received under this section must be deposited in the minor
use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. The board shall attempt, whenever possible, to recover funds expended relating to the registration of pesticides and shall adopt rules to administer this section.

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

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

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

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

**19-18-02.1-34-29.** Environment and rangeland protection fund.

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

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

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

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

**49-18-024.1-35-01.** Definitions.

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

1. "Active ingredient" means:
   a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, any ingredient that will prevent, destroy, repel, or mitigate pests.
b. In the case of a plant regulator, any ingredient that, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.

c. In the case of a defoliant, any ingredient that will cause the leaves or foliage to drop from a plant.

d. In the case of a desiccant, any ingredient that will artificially accelerate the drying of plant tissue.

2. "Adulterated" applies to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

3. "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

4. "Commissioner" means the agriculture commissioner and includes any employee or agent designated by the commissioner.

5. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

7. "Device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating pests but does not include equipment used for the application of pesticides when sold separately therefrom, or rodent traps.

8. "Environment" means air, water, land, and all plants and man and other animals living therein and the interrelationships that exist among these.


10. "Fungi" means all non-chlorophyll-bearing thallophytes, that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals, and those on or in processed food, beverages, or pharmaceuticals.
11. "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

12. "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

13. "Inert ingredient" means an ingredient that is not an active ingredient.

14. "Ingredient statement" means:
   a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or
   b. A statement of the name of all active ingredients in the order of their predominance in the product, together with the name of each and total percentage of any inert ingredients, if any, in the pesticide, except subdivision a applies if the preparation is highly toxic to man, determined as provided in section 49-18-054.1-35-06, and in addition to subsections 1 and 2 of section 49-18-054.1-35-06. In cases the pesticide contains arsenic in any form, a statement must contain the percentages of total and water-soluble arsenic, each calculated as elemental arsenic.

15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

16. "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects that may be present in any environment whatsoever.

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

18. "Labeling" means all labels and other written, printed, or graphic matter:
   a. Upon the pesticide or device or any of its containers or wrappers;
   b. Accompanying the pesticide or device at any time; or
Sixty-fifth
Legislative Assembly

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

19. "Misbranded" applies:

a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular; and

b. To any pesticide:

(1) If it is an imitation of or is offered for sale under the name of another pesticide;

(2) If its labeling bears any reference to registration under this chapter;

(3) If the labeling accompanying it does not contain directions for use which are necessary and, if complied with, adequate to protect health and the environment;

(4) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to protect health and the environment;

(5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, the outside container or wrapper does not have affixed a correct copy of the required labeling information from the immediate container or does not contain an opening through which the ingredient statement on the immediate container cannot be clearly read, of the retail package that is presented or displayed under customary conditions of purchase; except that a pesticide is not misbranded under this subsection if:

(a) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part that is presented or displayed under customary conditions of purchase; and
(b) The ingredient statement appears prominently on another part of the
immediate container, or outside container or wrapper, permitted by the
commissioner;

(6) The labeling does not contain a statement of the use classification under
which the product is registered if the product is a restricted use pesticide;

(7) There is no label information affixed to its container, and to the, if there is,
an outside container or wrapper of the retail package, if there is one, there is
no label information affixed to the outside container or wrapper and the
outside container or wrapper does not contain an opening through which the
required label information on the immediate container cannot be clearly
read; a label bearing. The label information must include:

(a) The name and address of the producer, registrant, or person for
whom produced;

(b) The name, brand, or trademark under which the pesticide is sold; and

(c) The net weight or measure of the content;

(8) The pesticide contains any substance or substances in quantities highly
toxic to humans, unless the label bears, in addition to any other matter
required by this chapter:

(a) The skull and crossbones;

(b) The word "poison" prominently in red on a background of distinctly
contrasting color; and

(c) A statement of a first aid or other practical treatment (first aid or
otherwise) in case of poisoning by the pesticide;

(9) If any word, statement, or other information required by or under the
authority of this chapter to appear on the labeling is not prominently placed
thereon with such conspicuousness, as compared with other words,
statements, designs, or graphic matter in the labeling, and in such terms as
to render it likely to be read and understood by the ordinary individual under
customary conditions of purchase and use;

(10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when
used as directed or in accordance with commonly recognized practice, it is
injurious to living man or other vertebrate animals or vegetation, except weeds to which it is applied, or to the person applying the pesticide; or
(11) If a plant regulator, defoliant, or desiccant when used as directed is injurious to man or other vertebrate animals, or the vegetation to which it is applied; provided, that the physical or physiological effect on plants or parts thereof may not be deemed injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with label claims and recommendations.

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

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

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

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

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

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

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

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

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

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

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

30. "Snails or slugs" includes all harmful agricultural mollusks.

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

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

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


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

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

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

A person may not distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

1. Any pesticide that has not been registered pursuant to the provisions of section 49-18-044.1-35-03, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration, provided, that in the discretion of the commissioner, may allow a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

2. Any pesticide unless it is in the:
   a. The registrant's or the manufacturer's unbroken immediate container, or in a
   b. A container repackaged by a facility or person with a federal environmental protection agency issued establishment number, and there is affixed to such container, and to any outside container or wrapper of the retail package, if there be one, a correct copy of the required labeling information from the immediate container or there is in the outside container or wrapper an opening through which the required labeling information on the immediate container cannot be clearly read.

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

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

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

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

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

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

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

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

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

a. Give the name and address of each manufacturer or distributor.

b. Give the name and brand of each product to be registered.

c. Be accompanied by a current label of each product to be registered.

d. Be accompanied by a registration fee of three hundred fifty dollars for each
product to be registered. At the close of each calendar month, the commissioner
shall transmit to the state treasurer all moneys received for the registrations. The-
state treasurer shall credit the registration fee for each registered product to the
environment and rangeland protection fund.

e. Be accompanied by a material safety data sheet for each product to be
registered.

NOTE: This subsection relates to contents of applications. Provisions for deposit of fees
are moved to a new subsection 5 and noted in the caption.

2. The commissioner may require an applicant or registrant to provide efficacy, toxicity,
residue, and any other data necessary to determine if the pesticide will perform its
intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product.

3. Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom which it is issued to another ownership. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

4. This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

5. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations under this section. The state treasurer shall credit the registration fees to the environment and rangeland protection fund.

SECTION 37. AMENDMENT. Section 19-18-04.1 of the North Dakota Century Code is amended and reenacted as follows:

Upon request of the commissioner, a registrant shall report the amount and type of each registered pesticide sold, offered for sale, or otherwise distributed in the state. The report must be filed within thirty days after receiving the commissioner’s request. The information required must include the brand name, amount, and formulation of each pesticide sold, offered for sale, or otherwise distributed in the state. However, specific brand names may not be identified in any report or otherwise made public.

NOTE: This section does not provide the time period to be covered by the report.

SECTION 38. AMENDMENT. Section 19-18-04.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Requirements. In submitting data required by this chapter, the applicant may:
   a. Clearly mark any portions that in the applicant's opinion are trade secrets or commercial or financial information; and
   b. Submit the marked material separately from other material.

NOTE: Subsection 2 says this is a request. Suggest language added to make the submission under subsection 1 be a "request."

2. Information revealed. After consideration of the applicant's request submitted under subsection 1, the commissioner may not make any information public which in the commissioner's judgment contains or relates to trade secrets or to commercial or financial information obtained from an applicant. When necessary, information relating to formulas of products may be revealed to any state or federal agency consulted with similar protection of trade secret authority and may be revealed at a public hearing or in findings of facts issued by the commissioner.

3. Notification. If the commissioner proposes to release information that the applicant or registrant believes to be protected from disclosure under this section, the commissioner shall notify the applicant or registrant by certified mail. The commissioner may not make the information available for inspection until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under this section.

SECTION 39. AMENDMENT. Section 19-18-05 of the North Dakota Century Code is amended and reenacted as follows:


The commissioner, after opportunity for a hearing, may:

1. Declare as a pest any form of plant or animal life or virus which is injurious to plants, man, or domestic animals, articles, or substances.

2. Determine whether pesticides are highly toxic to man or their use thereof should be restricted.
3. Determine standards of coloring or discoloring for pesticides and to subject pesticides to the requirements of subsection 3 of section 19-18-034.1-35-02. The commissioner may adopt appropriate rules for carrying out this chapter, including rules providing for the collection and examination of samples of pesticides or devices, and The commissioner also may adopt such rules, applicable to and in conformity with the primary standards established by this chapter, as have been or may be prescribed by the United States environmental protection agency with respect to pesticides in order that there may be to provide uniformity between among the requirements of the several states and the federal government.

NOTE: The kind of hearing is not stated. Presumably, the hearing is subject to Section 28-32-21(3).

SECTION 40. AMENDMENT. Section 19-18-06 of the North Dakota Century Code is amended and reenacted as follows:

19-18-06. Enforcement.

The examination of pesticides or devices must be made under the direction of the commissioner for the purpose of determining whether the shall examine pesticides or devices comply with the requirements of for compliance with this chapter. If it appears from the after examination that a pesticide or device fails to comply with the provisions of this chapter and the commissioner contemplates instituting intends to initiate criminal proceedings against any person, the commissioner shall cause appropriate notice to be given to the person. Any person so notified must be given an opportunity to present the person's views, either orally or in writing, with regard to the contemplated proceedings and if thereafter in the opinion of the commissioner it appears that the chapter has been violated by the person, then the commissioner shall refer the facts to the state's attorney for the county in which the violation has occurred with a copy of the results of the analysis or the examination of the article. This chapter does not require the commissioner is not required to report for prosecution or for the institution of libel proceedings minor violations of this chapter whenever if the commissioner believes that the public interests will be best served by a suitable written notice of warning in writing. Each A state's attorney to whom any violation is reported under this section shall without delay cause appropriate proceedings to be instituted and prosecuted in the proper court of jurisdiction without delay. The commissioner, by publication in the manner the commissioner prescribes, shall give notice of all judgments entered in actions instituted under the authority of this chapter.
SECTION 41. AMENDMENT. Section 19-18-06.1 of the North Dakota Century Code is amended and reenacted as follows:

The commissioner may issue and enforce a stop-sale order to the owner or custodian of any pesticide when the commissioner finds that the product is being offered for sale in violation of the provisions of this chapter, and the order must direct that the product be held at a designated place until released in writing by the commissioner. The owner or custodian of the product has the right to petition a court of competent jurisdiction in the county where the product is found for an order releasing the product for sale in accordance with the findings of the court.

SECTION 42. AMENDMENT. Section 19-18-07 of the North Dakota Century Code is amended and reenacted as follows:

The penalties provided for violations of section 19-18-034.1-35-02 do not apply to:

1. Any carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the commissioner to copy all records showing the transactions in and movement of the articles.

2. Public officials of this state and or the federal government engaged in the performance of their official duties.

3. The manufacturer or shipper of a pesticide for experimental use only:
   a. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or
   b. By others if the pesticide is not sold and if the pesticide container thereof is plainly and conspicuously marked "For experimental use only - not to be sold", together with the manufacturer's name and address.

4. A person using, distributing, selling, or offering for sale an unregistered pesticide for which the United States environmental protection agency has granted an emergency exemption for at least one use in North Dakota under section 18 of the federal Act. An article may not be deemed in violation of this chapter when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter apply.
SECTION 43. AMENDMENT. Section 19-18-13 of the North Dakota Century Code is amended and reenacted as follows:


1. Section 49-18-034.1-35-02 does not apply to any person who distributes, sells, or offers for sale within this state or delivers for transportation or transports in intrastate commerce or between points within this state through any point outside this state a minimum-risk pesticide exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act [Pub. L. 100-532; 102 Stat. 2654; 7 U.S.C. 136 et seq.], provided the person has obtained a certificate of exemption from the commissioner.

2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an application with the commissioner. The application must include:
   a. The name and address of the product’s manufacturer or distributor;
   b. The name and brand name of the product;
   c. A current label for the product; and
   d. A fee equal in amount to the fee set under section 49-18-044.1-35-03 for the registration of a pesticide.

3. The commissioner shall remit any fees collected under this section to the state treasurer for deposit in the environment and rangeland protection fund.

4. Each exemption from registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year.

SECTION 44. AMENDMENT. Section 19-18-08 of the North Dakota Century Code is amended and reenacted as follows:


Any person violating this chapter is guilty of an infraction. In any case in which a registrant was issued a warning by the commissioner pursuant to this chapter, the registrant is, upon violating this chapter, other than subsection 1 of section 49-18-034.1-35-02, that registrant is guilty of a class A misdemeanor, and the registration of the article with reference to which the violation occurred terminates automatically. A pesticide, for which the registration of which has been terminated, may not again be registered unless the pesticide, its labeling, and
Sixty-fifth
Legislative Assembly

other material required to be submitted appear to the commissioner to comply with all the
requirements of this chapter. In addition to any criminal sanctions that may be
imposed, a person found guilty of violating this chapter or the rules adopted under this
chapter is subject to a civil penalty not to exceed one thousand dollars for each violation. The
civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an
administrative hearing pursuant to chapter 28-32.

SECTION 45. AMENDMENT. Section 19-18-09 of the North Dakota Century Code is
amended and reenacted as follows:


Any pesticide or device that is distributed, sold, or offered for sale within this state or
delivered for transportation or transported in intrastate commerce or between points within this
state through any point outside this state is liable to be proceeded against in any proper court of
jurisdiction in any county of the state where it may be found and seized for confiscation by
process of libel for condemnation:

1. In the case of a pesticide:
   a. If it is adulterated or misbranded;
   b. If it has not been registered under the provisions of section 19-18-044.1-35-03;
   c. If it fails to bear on its label the information required by this chapter; or
   d. If it is a white powder pesticide and is not colored as required under this chapter.

2. In the case of a device, if it is misbranded.

If the pesticide is condemned, it must, after entry of decree, be disposed of by
destruction or sale as the court may direct and any proceeds, if such pesticide is sold, less
legal costs, must be paid to the state treasurer. The pesticide may not be sold contrary to the
provisions of this chapter. Upon payment of cost and execution and delivery of a good and
sufficient bond conditioned that the pesticide shall not be disposed of unlawfully, the court may
direct that said pesticide be delivered to the owner thereof for relabeling or reprocessing as
the case may be. When a decree of condemnation is entered against the pesticide, court costs
and fees and storage and other proper expenses must be awarded against any person, if
intervening as claimant of the pesticide.

SECTION 46. AMENDMENT. Section 19-18-10 of the North Dakota Century Code is
amended and reenacted as follows:
All authority vested in the commissioner by virtue of this chapter may with like force and
effect be executed by the employees of the commissioner as the commissioner may from time-
to-time designate for this purpose.

NOTE: Defining commissioner in section 4.1-35-01 to include an employee or agent
designated by the commissioner eliminates the need for this section.

SECTION 47. AMENDMENT. Section 19-18-11 of the North Dakota Century Code is
amended and reenacted as follows:

The commissioner may cooperate with, and enter into agreements with, any other agency
of this state or of the federal government or any other state or agency thereof for the purpose of
carrying out this chapter and securing uniformity of regulations.

SECTION 48. AMENDMENT. Section 19-18-12 of the North Dakota Century Code is
amended and reenacted as follows:

Provided if the state is authorized by the administrator of the environmental protection
agency to issue experimental use permits, the commissioner may:

1. Issue an experimental use permit to a person applying for a permit if the
commissioner determines that the applicant requires the permit to accumulate
information necessary to register a pesticide use. An application for an experimental
use permit may be filed at the time of or before or after when an application for
registration is filed or before or after filing the application.

2. Prescribe terms, conditions, and the period of time for use under the experimental use
permit.

3. Revoke an experimental use permit, at any time, if the commissioner finds that its
terms or conditions are being violated or that its terms and conditions are inadequate
to avoid unreasonable adverse effects to human health or the environment.

SECTION 49. AMENDMENT. Section 19-18-13 of the North Dakota Century Code is
amended and reenacted as follows:

1. Section 49-18-034.1-35-02 does not apply to any person who distributes, sells, or
offers for sale within this state or delivers for transportation or transports in intrastate
commerce or between points within this state through any point outside this state a
minimum-risk pesticide exempt from registration under the Federal Insecticide,
et seq.], provided the person has obtained a certificate of exemption from the
commissioner.

2. To obtain a certificate of exemption for a minimum-risk pesticide, a person shall file an
application with the commissioner. The application must include:
   a. The name and address of the product's manufacturer or distributor;
   b. The name and brand name of the product;
   c. A current label for the product; and
   d. A fee equal in amount to the fee set under section 19-18-04 for the registration of
      a pesticide.

3. The commissioner shall remit any fees collected under this section to the state
treasurer for deposit in the environment and rangeland protection fund.

4. Each exemption from registration covers a designated two-year period beginning
   January first of each even-numbered year and expiring December thirty-first of the
   following year.

   NOTE: The following sections will become a new Chapter 4.1-36, relating to chemigation.

SECTION 50. AMENDMENT. Section 4-35.1-01 of the North Dakota Century Code is
amended and reenacted as follows:

4-35.1-044.1-36-01. Definitions.

As used in this chapter:

1. "Chemigation" means any process by which chemicals, including pesticides and
   fertilizers, are applied to land or crops through an irrigation system.

2. "Commissioner" means the agriculture commissioner and includes any employee or
   agent designated by the commissioner.

3. "Fertilizer" means any fertilizer as defined by section 49-20.1-024.1-40-01.

4. "Pesticide" means that term defined in section 4-35.054.1-34-01.

5. "State engineer" means the state engineer appointed by the state water commission
   under section 61-03-01.

SECTION 51. AMENDMENT. Section 4-35.1-02 of the North Dakota Century Code is
amended and reenacted as follows:
Sixty-fifth Legislative Assembly

4-35.1-024.1-36-02. Statement of compliance

Compliance with rules.

For the purposes of this chapter, farm irrigation systems used for chemigation which are designed, constructed, and operated as specified in the administrative rules adopted under this chapter so as to minimize the possibility of ground or surface water contamination, are considered to be in compliance with this chapter.

SECTION 52. AMENDMENT. Section 4-35.1-03 of the North Dakota Century Code is amended and reenacted as follows:

4-35.1-034.1-36-03. Rules - Standards for application through irrigation system chemigation, installation, maintenance, and modifications.

The agriculture commissioner shall adopt rules regulating chemigation through irrigation systems in this state to minimize the possibility of chemical, pesticide, fertilizer, or other contamination of irrigation ground or surface water supply and other rules as necessary to implement this chapter. The commissioner may establish by rule standards for application of pesticides and fertilizers through irrigation systems; for installation and maintenance of all equipment and devices used for chemigation purposes; for modifications or changes in design, technology, or irrigation practices; or for other purposes relating to the use or placement of equipment or devices. The commissioner may adopt rules requiring periodic calibration and inspection of equipment and system operation during periods of chemigation.

SECTION 53. AMENDMENT. Section 4-35.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4-35.1-044.1-36-04. Inspections - Assistance of state engineer.

The state engineer shall cooperate with the commissioner in the inspection of any irrigation system using chemigation. The state engineer shall inform the commissioner of any violation of this chapter that is discovered in the course of the state engineer's regular inspections of irrigation systems using chemigation.

SECTION 54. AMENDMENT. Section 4-35.1-05 of the North Dakota Century Code is amended and reenacted as follows:

4-35.1-054.1-36-05. Enforcement.

1. The commissioner shall enforce this chapter and any rules adopted under this chapter.
2. The commissioner may seek an injunction in the district court in the county in which the violation occurs or may issue a cease and desist order to any person for any alleged violation of this chapter or any rules adopted under this chapter.

3. For the purpose of carrying out the provisions of this chapter, the commissioner and the state engineer may enter upon any public or private premises at reasonable times in order to:
   a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which the equipment is stored or used.
   b. Inspect or sample lands actually, or reported to be, exposed to pesticides or fertilizers through chemigation.
   c. Inspect storage or disposal areas.
   d. Inspect or investigate complaints of injury to humans or animals.
   e. Sample pesticides and fertilizers and pesticide or fertilizer mixes being applied or to be applied.
   f. Observe the use and application of a pesticide or fertilizer through chemigation.
   g. Have access for the purpose of inspecting a premise or other place where equipment or devices used for chemigation are held for distribution, sale, or for use.

SECTION 55. AMENDMENT. Section 4-35.1-06 of the North Dakota Century Code is amended and reenacted as follows:

4-35.1-06. Penalties.
1. Any person who violates a provision of this chapter or any rule adopted under this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing the provisions of this chapter or any rules adopted under this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
3. Any person found to have violated a provision of this chapter or rule adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil
proceeding or by the commissioner through an administrative hearing under chapter 28-32.

NOTE: The following sections will become a new Chapter 4.1-37, relating to the pesticide and pesticide container disposal program.

SECTION 56. AMENDMENT. Section 4-35.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4-35.2-044.1-37-01. Pesticide and pesticide container disposal program - Pesticide container management - Compensation.

1. The definitions contained in section 4-35-054.1-34-01 apply to this section.

2. In consultation with an advisory board consisting of the state health officer, director of the North Dakota state university extension service, two individuals selected by the agriculture commissioner representing agribusiness organizations, and two individuals selected by the agriculture commissioner representing farm organizations, all of whom must be selected by the agriculture commissioner, the commissioner shall continue to implement the project authorized by section 1 of chapter 77 of the 2001 Session Laws, which is known as project safe send. The purpose of the project is to:

a. Collect and either recycle or dispose of unusable pesticides and unusable pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the pesticides and pesticide containers.

b. Promote proper pesticide container management. In consultation with the director of the North Dakota state university extension service, the commissioner shall evaluate and promote proper methods of pesticide container management, including information on the variety of pesticide containers available.

3. Any entity collecting pesticide containers or unusable pesticides shall manage and dispose of the containers and pesticides in compliance with applicable federal and state requirements. When called upon, any state agency shall assist the commissioner in implementing the project.

4. For services rendered in connection with the design and implementation of this project, the advisory board members selected by the commissioner are entitled to reimbursement for mileage and travel expenses in the same manner and for the same
amounts provided for state employees and officials. Compensation and expense
reimbursement must be paid from the environment and rangeland protection fund.

SECTION 57. AMENDMENT. Section 4-35.2-02 of the North Dakota Century Code is
amended and reenacted as follows:

4-35.2-024.1-37-02. Project scope and evaluation.
The project described in section 4-35.2-044.1-37-01 must occur in areas to be determined
by the agriculture commissioner in consultation with the advisory board under subsection 2
of described in section 4-35.2-044.1-37-01.

SECTION 58. AMENDMENT. Section 4-35.2-03 of the North Dakota Century Code is
amended and reenacted as follows:

4-35.2-034.1-37-03. Project safe send pesticide and pesticide container collection -
User fees.
The agriculture commissioner, in consultation with the advisory board for the project safe
send pesticide and pesticide container disposal program, may charge a fee for collection of
rinsate. The fees must be established at a level that will generate enough revenue to cover the
cost of disposal associated with the rinsate that is collected. Collections from this fee must be
deposited in the environment and rangeland protection fund.

SECTION 59. AMENDMENT. Section 4-35.2-04 of the North Dakota Century Code is
amended and reenacted as follows:

4-35.2-044.1-37-04. Report on pesticide container disposal program.
The agriculture commissioner shall submit a biennial report to a joint meeting of the house
of representatives and senate agriculture committees on the status of the pesticide container
disposal program.
A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.2-01 of the North Dakota Century Code is amended and reenacted as follows:


The agriculture commissioner shall adopt rules necessary to implement this chapter and adopt the 1989 American national standard safety requirements for the storage and handling of anhydrous ammonia, except sections 2.5, 5.2.1, 5.2.2.1, and 5.2.2.2. Sections 2.5, 5.2.1, 5.2.2.1, and 5.2.2.2 of the 1989 American national standard safety requirements are adopted as follows:

1. (2.5) Refers to paragraphs U-68, U-69, U-200, or U-201 of section VIII of the boiler and pressure vessel code of the American society of mechanical engineers, 1949 edition, or to section VIII division I of the boiler and pressure vessel code of the American society of mechanical engineers, 1950 edition, through the current edition including addenda and applicable code case interpretations.

   Where referenced in this standard only section VIII division I of the American society of mechanical engineers code applies except that paragraphs UG-125 through UG-135 and paragraph UW-2 do not apply.

2. (5.2.1) Containers used with systems covered in sections 6, 9, 11, and 12 must be made of steel or other material compatible with ammonia and tested in accordance with the current American society of mechanical engineers code. An exception to the American society of mechanical engineers code requirements is that construction under table UW-12 at a basic joint efficiency of under eighty percent is not authorized.
3. (5.2.2.1) For new containers installed or purchased after January 1, 1996, the entire container must be post-weld heat treated after completion of all welds in or to the shells and heads. The method employed must be as prescribed in the American society of mechanical engineers code. It is recommended that post-weld heat treatment be performed in a furnace of a size sufficient to accommodate the entire container. Welded attachments to pads may be made after post-weld heat treatment. An implement of husbandry does not require post-weld heat treatment if the implement is fabricated with hot formed heads or with cold formed heads that have been stress relieved.

4. (5.2.2.2) Steels used in fabricating pressure containing parts of a container may not exceed a specified tensile strength of seventy thousand pounds per square inch [482636 kilopascals], as noted in the American society of mechanical engineers code, section II, part D, except that this does not apply to sections 8, 9, and 10. An implement of husbandry may be fabricated from steel having a specified tensile strength of seventy-five thousand pounds per square inch [517110 kilopascals].

NOTE: It appears that the American National Standards Institute updated their safety requirements for the storage and handling of anhydrous ammonia in 1999. The Agriculture Commissioner has adopted updated references to national standards in the anhydrous rules in North Dakota Administrative Code Chapter 7-12-01. However, it would be appreciated if the Agriculture Department would review the references in this section for correctness and matching references to the most current version of the boiler and pressure vessel code of the American Society of Mechanical Engineers.

Except for future amendments to federal income tax laws, a statute may not adopt future amendments to standards adopted by reference (Article X, Section 3, of the Constitution of North Dakota). It appears this section attempts to adopt ongoing changes to codes, which is not valid.

SECTION 2. AMENDMENT. Section 19-20.2-01.1 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-01.1. Definition.

"Anhydrous As used in this chapter, "anhydrous ammonia storage facility" means a bulk anhydrous ammonia storage facility with a capacity exceeding six thousand gallons [22712.47 liters] which is owned or operated by a user or vendor of anhydrous ammonia.

SECTION 3. AMENDMENT. Section 19-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:
19-20.2-02. License required—Existing anhydrous ammonia storage facilities.

Any user or vendor of anhydrous ammonia owning or operating an anhydrous ammonia storage facility shall apply for an operator's license to the agriculture commissioner and the board of county commissioners of the county in which the facility is located. Any permanent anhydrous ammonia storage facility constructed before July 1, 1985, is exempt from the siting requirements of this chapter and may receive a license under this chapter regardless of noncompliance with the siting requirements. The commissioner may deny a license for failure to remit the proper fee with the application or failure to comply with the rules adopted pursuant to this chapter. The license is valid indefinitely but may not be transferred.

NOTE: This section is eliminated but language is moved to Section 4 of this draft regarding applications and the siting exemption for facilities constructed before July 1, 1985. Language regarding indefinite duration and nontransfer of licenses is moved to Section 5 of this draft.

SECTION 4. AMENDMENT. Section 19-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:


The owner or operator of an anhydrous ammonia storage facility shall apply to the agriculture commissioner and to the board of county commissioners for a license to site and operate the facility. An anhydrous ammonia storage facility may not be operated without a license issued by the agriculture commissioner and the board of county commissioners of the county in which the facility is constructed. An application for a license to site and operate an anhydrous ammonia storage facility must be made to the agriculture commissioner and to the board of county commissioners. Any permanent anhydrous ammonia storage facility constructed before July 1, 1985, is exempt from the siting requirements of this chapter and may receive a license under this chapter regardless of noncompliance with the siting requirements. The commissioner or the board may deny a license for failure to remit the proper fee to the agriculture commissioner, for failure to comply with the siting requirements of this chapter and rules adopted pursuant to this chapter if constructed after June 30, 1985, or for failure to comply with local siting requirements. The agriculture commissioner also may deny a license if the facility does not meet the initial inspection standards required by this chapter and by any rules adopted pursuant to this chapter. In order to obtain a license, an individual applicant shall submit with the application two sets of drawings or photographs and—
Sixty-fifth
Legislative Assembly

signed affidavits stating and showing, and two signed affidavits stating, the facility has been measured and meets the siting requirements along with the application for license. The drawings or photographs must show the proposed location of the tank, the locations, and the surroundings in all directions. One set of drawings or photographs is must be provided to the agriculture commissioner and the other is for set must be provided to the board of county commissioners.

NOTE: "Constructed" was replaced with "located" to maintain consistency with the language of the chapter.

SECTION 5. AMENDMENT. Section 19-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:


The agriculture commissioner shall charge a one-time twenty-five dollar fee for a license for each anhydrous ammonia storage facility. The licensing fee is twenty-five dollars for an anhydrous ammonia storage facility and an additional one hundred dollars for each retail and storage site. Expansion of an existing anhydrous ammonia storage facility, including the expansion of a facility constructed before July 1, 1985, does not require reapplication for licensing, but all siting requirements must be met. When the license is valid indefinitely but may not be transferred. A new license is required when an anhydrous ammonia storage facility changes ownership, the new owner shall obtain a license.

SECTION 6. AMENDMENT. Section 19-20.2-05 of the North Dakota Century Code is amended and reenacted as follows:


For facilities constructed after June 30, 1985:

1. Any anhydrous ammonia storage facility with a container nominal capacity of less than one hundred thousand gallons [378541.2 liters] must be located at least:

   a. Fifty feet [15.24 meters] from the line of any adjoining property, which may be built upon, or any highway or railroad mainline.

   b. Four hundred fifty feet [137.16 meters] from any place of public assembly or residence, other than the company's business office.

   c. Seven hundred fifty feet [213.36 meters] from any institutional residence.
2. Any anhydrous ammonia storage facility with container nominal capacity of one hundred thousand gallons [378541.2 liters] or more must be located at least:
   a. Fifty feet [15.24 meters] from the property line of adjoining property, which may be built upon, or any highway or railroad mainline.
   b. Six hundred feet [182.88 meters] from any place of public assembly or residence, other than the company’s business office.
   c. One thousand feet [300.48 meters] from any institutional residence.

3. Upon relocation of any permanent storage container to an anhydrous ammonia storage facility, the container must be hydrostatically pressure tested at the maximum allowable working pressure of the vessel or wet fluorescent magnetic particle tested, also referred to as black light tested. Before the container may be put into service and before licensing may occur, proof of testing must be supplied to the board of county commissioners and the agriculture commissioner.

4. All valves and other appurtenances to any anhydrous ammonia storage facility must be protected against physical damage. All shutoff valves must be kept closed and locked when not in use and when the facility is unattended.

5. Any anhydrous ammonia storage facility relocated or constructed after August 1, 1995, may not be located within city limits, unless approved by the city.

SECTION 7. AMENDMENT. Section 19-20.2-06 of the North Dakota Century Code is amended and reenacted as follows:

49-20.2-064.1-38-06. Transfer hose requirements.

The following requirements apply to any transfer hose utilized at an anhydrous ammonia storage facility:

1. Any liquid transfer hose that is not drained of liquid upon completion of transfer operations must be equipped with an approved shutoff valve at the discharge end.

2. A hydrostatic relief valve or equivalent must be installed in each section of hose or pipe in which liquid ammonia can be isolated between shutoff valves to relieve the pressure that could develop from the trapped liquid. If an equivalent pressure relief device is used, the maximum accumulated pressure possible within the system may not exceed the limits of the system. A hydrostatic relief valve must be installed
between each pair of valves in which liquid is trapped. The start-to-discharge pressure
setting of the relief valve must not be less than three hundred fifty pounds per square
inch [2413.18 kilopascals] gauge nor more than four hundred pounds per square inch
[2757.92 kilopascals] gauge.

3. A transfer hose must have etched, cast, or impressed on the outer coating all of
the following:
   a. The words "ANHYDROUS AMMONIA".
   b. The maximum working pressure of the transfer hose.
   c. The name of the manufacturer of the hose.
   d. The date of manufacture or the expiration date of the hose.

4. A transfer hose which is cut, scraped, cracked, or weathered so that the inner white
cord is visible must be replaced. A transfer hose with an expiration date printed on the
hose must be replaced prior to that date. Transfer hoses without an expiration date
must be replaced as follows:
   a. Rayon hoses must be replaced within two years of the date of manufacture.
   b. Nylon hoses must be replaced within four years of the date of manufacture.
   c. Steel-reinforced hoses must be replaced within six years of the date of
      manufacture.

Notwithstanding the replacement dates determined under this subsection for transfer
hoses with or without an expiration date, an additional year must be allowed for
replacement of transfer hoses in order to take into account delays in the original
installation of transfer hoses.

SECTION 8. AMENDMENT. Section 19-20.2-06.1 of the North Dakota Century Code is
amended and reenacted as follows:

Bulk storage containers constructed according to the American society of mechanical
engineers code, and all nurse tanks, must be equipped with pressure relief valves constructed
according to the American society of mechanical engineers code and capacity certified by the
national board of boiler and pressure vessel inspectors. A pressure relief valve using
nonmetallic seats must be replaced every five years with a new valve meeting the standards
specified in this section. A pressure relief valve using metallic seats must be tested.
Sixty-fifth
Legislative Assembly

and repaired if deemed necessary, every five years in lieu of replacement, and repairs, if
deemed necessary. Repairs deemed necessary must be made by the valve manufacturer or by
a safety valve repair organization having a valid "VR" certificate of authorization for the repairs
from the national board of boiler and pressure vessel inspectors.

SECTION 9. AMENDMENT. Section 19-20.2-07 of the North Dakota Century Code is
amended and reenacted as follows:

49-20.2-074.1-38-08. Inspection.

1. The agriculture commissioner shall develop and implement an initial and periodic
inspection program for anhydrous ammonia storage facilities.

2. The agriculture commissioner shall inspect each anhydrous ammonia storage facility
at least once every five years and may inspect any farm transportation wagon or
vehicle conveyance designed to apply anhydrous ammonia which is in the vicinity of an
anhydrous ammonia storage facility.

3. The agriculture commissioner may inspect any anhydrous ammonia storage facility
where the commissioner has reason to believe violations of the safety standards under
this chapter exist.

4. The agriculture commissioner may revoke or suspend the license of any anhydrous
ammonia storage facility violating for a violation of a provision of this chapter or the
rules adopted under this chapter. The commissioner may order the discontinuance of
use of any farm transportation wagon or implement of husbandry conveyance designed
to apply anhydrous ammonia which is found unsafe or hazardous.

SECTION 10. AMENDMENT. Section 19-20.2-07.1 of the North Dakota Century Code is
amended and reenacted as follows:

49-20.2-07.14.1-38-09. Reinstalled and secondhand anhydrous ammonia storage
containers - Requirement.

1. Before anhydrous ammonia may be stored in a reinstalled or secondhand container,
including a nurse tank, the person intending to store the anhydrous ammonia in a
reinstalled or secondhand container, including a nurse tank, shall furnish the
agriculture commissioner with:

a. Evidence that the container is registered with the national board of boiler and
pressure vessel inspectors; or
Sixty-fifth
Legislative Assembly

b. The manufacturer's data report for the container.

2. Subsection 1 is not only applicable to the owner of an anhydrous ammonia storage container installed in this state before November 1, 1987, unless the storage container is reinstalled at another location.

NOTE: The 1987 date was put in place in 1997. Consideration should be given to whether this is still appropriate.

SECTION 11. AMENDMENT. Section 19-20.2-08 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-08.1. Promotion of safety - Use of excess fees - Safety promotion - Administration - Inspections.

All fees collected under this chapter must be used by the agriculture commissioner to promote safety in anhydrous ammonia use and storage, in the administration of the program, and in the inspection of facilities.

NOTE: There is usually a reference to deposit of fees in a fund. Is there a fund where the fees are held for use?

SECTION 12. AMENDMENT. Section 19-20.2-08.2 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-08.2. Prohibitions.

The following actions are prohibited:

1. Filling a nurse tank directly from a railcar;

2. Filling or using a nurse tank that has an outdated hose;

3. Filling or using a nurse tank that has outdated relief valves;

4. Towing more than two nurse tanks on a public road;

5. Filling department of transportation transport containers not meeting the requirements of the department of transportation; or

6. Filling anhydrous ammonia storage containers not meeting the requirements of this chapter.

SECTION 13. AMENDMENT. Section 19-20.2-08.3 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-08.3. Anhydrous ammonia - Bulk delivery.

Upon obtaining a commercial driver's license with an endorsement for hazardous materials, an individual may transport anhydrous ammonia in a bulk delivery vehicle and may fill.
Sixty-fifth Legislative Assembly

from the bulk delivery vehicle; nurse tanks with anhydrous ammonia from the bulk delivery vehicle.

SECTION 14. AMENDMENT. Section 19-20.2-08.4 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-08.44.1-38-13. Hydrostatic test procedures.

Any hydrostatic test conducted under section 19-20.2-054.1-38-05 must comply with the requirements of the national board inspection code (ANSI-NB 23) and be conducted in a manner approved by the agriculture commissioner.

SECTION 15. AMENDMENT. Section 19-20.2-08.5 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-08.54.1-38-14. Wet fluorescent magnetic particle test procedures.

Any wet fluorescent magnetic particle test of a pressure vessel weld conducted under section 19-20.2-054.1-38-05 must comply with the requirements of the society for nondestructive testing SNT-TC-1A standard and must be conducted by a person certified as a level II technician by the society.

SECTION 16. AMENDMENT. Section 19-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:


1. The agriculture commissioner shall enforce the requirements of this chapter and any rules issued under it.

2. The commissioner may bring an action to enjoin the violation or threatened violation of this chapter, or any rule issued pursuant to this chapter, in the district court of the county in which the violation occurs or may occur.

3. The agriculture commissioner may issue a cease and desist order to any person allegedly violating this chapter. If any person violates the cease and desist order, the commissioner shall file the appropriate criminal complaint.

4. For the purpose of carrying out this chapter, the agriculture commissioner may enter upon any public or private premises at reasonable times to:

   a. Inspect any equipment subject to this chapter and the premises on which the equipment is stored or used;

   b. Inspect or investigate complaints; or
c. Inspect any premises or other place where anhydrous ammonia or related devices are held for distribution, sale, or use.

5. If a civil penalty pursuant to section 19-20.2-10 is imposed under section 4.1-38-16 by the agriculture commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by initiate a civil action in any appropriate court. Additionally, the commissioner may suspend or revoke a license issued pursuant to under this chapter for failure to pay a civil penalty within thirty days after a final determination is made.

SECTION 17. AMENDMENT. Section 19-20.2-10 of the North Dakota Century Code is amended and reenacted as follows:


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

2. When construing and enforcing this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person is deemed to be the act, omission, or failure of the person as well as that of the person employed.

3. In addition to the criminal sanctions that may be imposed, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an administrative hearing.

SECTION 18. AMENDMENT. Section 19-20.3-01 of the North Dakota Century Code is amended and reenacted as follows:

NOTE: The following 3 sections would move a contingent Chapter 19-20.3 into this new chapter but retain the contingent effective date.

49-20.3-014.1-38-17. (Contingent effective date - See note.) Risk management program - Anhydrous ammonia.

In order to determine compliance with the risk management program requirements set forth in section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30, 2011, the agriculture commissioner may:

1. Request information from any person that:
   a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
   b. Is required to comply with the risk management program requirements;
2. Conduct inspections of any person that:
   a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
   b. Is required to comply with the risk management program requirements; and
3. Obtain and review risk management plans required under 40 Code of Federal
   Regulations, part 68, as amended through June 30, 2011, and other records
   applicable to any person that:
   a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
   b. Is required to comply with the risk management program requirements.

SECTION 19. AMENDMENT. Section 19-20.3-02 of the North Dakota Century Code is
amended and reenacted as follows:

19-20.3-02. (Contingent effective date - See note.) Risk management
program - Enforcement authority.

   If the agriculture commissioner determines that there is noncompliance on the part of any
   person that sells, stores, or handles anhydrous ammonia for agricultural purposes and that is
   required to comply with the risk management program requirements referenced in section
   19-20.3-01, the agriculture commissioner may:
   1. Bring an action to enjoin a violation or a threatened violation;
   2. Issue a cease and desist order; and
   3. Impose a civil penalty through an administrative hearing in an amount not exceeding
      ten thousand dollars per day for each violation.

SECTION 20. CONTINGENT EFFECTIVE DATE. Sections 18 and 19 of this Act are
effective on the date that the governor certifies to the legislative council that the agriculture
commissioner has been delegated by the administrator of the United States environmental
protection agency to implement and enforce the risk management program as it pertains to the
sale, storage, and handling of anhydrous ammonia for agricultural purposes, in accordance with
section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30,
2011.
A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-06.2 of the North Dakota Century Code is amended and reenacted as follows:


The crop protection product harmonization and registration board may accept funds received for expenses paid relating to the registration of pesticides or donations offered to or for the benefit of the board. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. The board shall attempt, whenever possible, to recover funds expended relating to the registration of pesticides and pesticide. The board shall adopt rules to administer this section.

NOTE: This section was also included in Section 30 of bill draft 17.0038.01000 as part of the rewrite on pesticides. The committee may decide whether this section is better left in that bill or as part of the crop protection bill.

SECTION 2. AMENDMENT. Section 4-35-30 of the North Dakota Century Code is amended and reenacted as follows:


1. The crop protection product harmonization and registration board consists of:
   a. The governor or the governor's designee;
   b. The agriculture commissioner or the commissioner's designee;
   c. The chairman of the house agriculture committee or the chairman's designee;
d. The chairman of the senate agriculture committee or the chairman's designee;

e. A member of the house or senate agriculture committee who is not a member of
   the faction in which the committee chairman is a member, appointed by the
   legislative management chairman;

f. A crop protection product dealer in the state appointed by the governor from a list
   of three nominees submitted by the North Dakota agricultural association;

g. A consumer of crop protection products appointed by the governor from a list of
   three nominees submitted by the North Dakota grain growers association;

h. A consumer of crop protection products appointed by the governor from a list of
   three nominees submitted by the North Dakota oilseed council;

i. A representative of the crop protection product manufacturing industry appointed
   by the chairman of the legislative management; and

j. The director of the North Dakota state university agricultural experiment station.

2. The representative of the crop protection product manufacturing industry and the
   director of the agricultural experiment station shall serve as nonvoting members. The
   governor or the governor's designee shall serve as chairman of the board.

3. The board shall:

   a. Identify and prioritize crop protection product labeling needs;

   b. Explore the extent of authority given to this state under the federal Insecticide,
      Fungicide, and Rodenticide Act [7 U.S.C. 136a];

   c. Identify the data necessary to enable registration of a use to occur in a timely
      manner;

   d. Determine what research, if any, is necessary research to fulfill the data
      requirements for activities listed in this section;

   e. Request the agriculture commissioner to pursue specific research funding
      options from public and private sources;

   f. Request the North Dakota state university agricultural experiment station to
      pursue specific research to coordinate registration efforts; and

   g. Pursue any opportunities to make more crop protection product options available
      to state agricultural producers in the state through any means the board
determines advisable.
4. The board may contract with a consultant to conduct research or provide studies or provide information regarding crop protection product registration and labeling needs.

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

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

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

NOTE: This section was also included in Section 29 of bill draft 17.0038.01000 as part of the rewrite on pesticides. The committee may decide whether this section is better left in that bill draft or as part of the crop protection bill draft.

SECTION 3. AMENDMENT. Section 4-40-01 of the North Dakota Century Code is amended and reenacted as follows:


The agriculture commissioner, with the advice and consent of the appropriate agricultural commodity group, may authorize the sale and use in this state of a crop protection product that has a Canadian label, if the commissioner determines that a crop protection product having an American label contains substantially similar active ingredients and that the importation and...
use of the product with a Canadian label does not violate federal law. The commissioner shall require an applicator to possess the American label and apply the product in accordance with the American label provisions.

SECTION 4. AMENDMENT. Section 4-40-02 of the North Dakota Century Code is amended and reenacted as follows:


The agriculture commissioner, in cooperation with the environmental protection agency, shall use tolerance data established or obtained in North America in pursuing special local needs exemptions for crop protection products under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

SECTION 5. AMENDMENT. Section 4-40-03 of the North Dakota Century Code is amended and reenacted as follows:


The governor and the agriculture commissioner shall work with all appropriate public and private entities to foster the development of a single, uniform process for the joint North American labeling of crop protection products not available for sale and use in this state as of April 19, 1999.

SECTION 6. AMENDMENT. Section 4-40-04 of the North Dakota Century Code is amended and reenacted as follows:

4-40-044.1-39-06. Crop protection products - Request to petition for registration.

On the written request of any agricultural commodity group, the agriculture commissioner shall petition the environmental protection agency for the American registration of a crop protection product approved for use in Canada.
A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:


When used in this chapter:

1. "Brand" means a term, design, or trademark, used in connection with one or several grades of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, or plant amendments.

2. "Bulk" means in a nonpackaged form.

3. "Compost" means a material derived primarily or entirely from biological decomposition of vegetative organic matter or animal manure that does not have inorganic fertilizer added other than to promote decomposition.

4. "Deficiency" means that amount of plant nutrient or active ingredient found by analysis to be less than the amount guaranteed, resulting from a lack of plant nutrient or active ingredients, or from lack of uniformity.

5. "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends or who sells or offers for sale fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments, or who sells or offers for sale fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments in this state.

6. "End user" means a person who uses a fertilizer, fertilizer materials, micronutrients, specialty fertilizers, soil amendment, or plant amendment in a manner for which the product was intended.
7. "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products excluded by rule of the commissioner.

8. "Fertilizer material" means a fertilizer which:
   a. Contains no more than one of the primary plant nutrients;
   b. Has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound; or
   c. Is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration.

9. "Grade" means the percentages of total nitrogen, available phosphate, and soluble potassium or soluble potash stated in the same terms, order, and percentages as in the "guaranteed analysis".

10. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed.

11. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer, soil amendment, or plant amendment.

12. "Label" means all written, printed, or graphic materials upon or accompanying any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment and any printed material or media announcements used in promoting their sale.

13. "Licensee" means any person licensed by the commissioner to distribute a fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment.

14. "Manipulated" means to have manufactured, blended, or mixed fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments that are manufactured, blended, or mixed, or to have treated in any manner any animal or vegetable manures that have been treated in any manner, including
mechanical drying, grinding, pelleting, and other means, or by adding other chemicals or substances.

"Micronutrient" means a fertilizer that contains only essential chemical elements that are required at low levels for normal plant growth.

"Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments.

"Official sample" means any sample of fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment, taken by the commissioner and designated as "official" by the commissioner.

"Organic" in reference to fertilizer nutrients, refers to naturally occurring substances, generally recognized as the hydrogen compounds of carbon and their derivatives or synthetic products of similar composition with a water insoluble nitrogen content of at least sixty percent of the guaranteed total nitrogen.

"Percent" or "percentage" means the percentage by weight.

"Plant amendment" means a substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants except fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient, or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.

"Plant nutrient" means a nutrient substance generally recognized as beneficial for plant growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.

"Primary plant nutrients" means nitrogen, phosphate, and potash.

"Registrant" means the person who registers fertilizers, soil amendments, or plant amendments under the provisions of this chapter.

"Sell" when applied to fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments includes:

a. The act of selling or transferring ownership—through a sale, exchange, gift, or distribution; or
b. The offering for sale, exchange, or distribution.

c. Giving away.

d-b. Receiving, accepting, holding, or possessing for sale, exchange, gift or distribution.

24-25. "Soil amendment" means any substance that is intended to improve the characteristics of the soil except fertilizers, unmanipulated animal manures, unmanipulated vegetable manures, and pesticides. The term includes fertilizer if, and fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.


26-27. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

SECTION 2. AMENDMENT. Section 19-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03. Product registration - Fees.

1. Each brand and grade of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, and plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state.

2. The application for registration must be submitted to the commissioner on a form furnished by the commissioner and must be accompanied by:

   a. A current product label; and

   b. A fee of fifty dollars per product.

3. Each brand and grade registration is effective for a two-year period beginning July first and ending June thirtieth of each even-numbered year.

4. Any request for a registration renewal received after July thirty-first must be assessed a penalty of one hundred dollars per product.

5. a. This section does not require a distributor to register any product listed in subsection 1 if that product is already registered under this-
chapter by another person, providing the label complies with the issued registration.

b. This section does not require the registration of compost that is transferred between parties without compensation does not require registration.

6. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

SECTION 3. AMENDMENT. Section 19-20.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.1. Distributor’s license - Fees.

1. A person may not distribute any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the commissioner.

2. A license is required for each location or mobile mechanical unit used by a distributor in the state.

3. The application for a license must be submitted on a form furnished by the commissioner and must be accompanied by a fee of one hundred dollars.

4. A license is effective for a two-year period beginning July first and ending June thirtieth of each even-numbered year.

5. Any license renewal applications received after July thirty-first must be assessed a penalty of one hundred dollars per location.

6. Any license issued under this section:
   a. Is not transferable;
   b. Must be conspicuously posted at each location used by the distributor; and
   c. Must be carried in each mobile mechanical unit operated by the distributor in the state.

7. The requirements of this section do not apply to persons that distribute only:
   a. Specialty fertilizers; or
   b. Seed inoculants.

8. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.
SECTION 4. AMENDMENT. Section 19-20.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:


The commissioner may require proof of claims made for any product covered by this chapter and may require proof of value when used as directed or recommended. The commissioner must rely on data from scientifically designed and reported studies conducted under conditions similar to those in this state under which the product is intended to be used. The commissioner may accept or reject other sources of proof as additional supplemental evidence.

SECTION 5. AMENDMENT. Section 19-20.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

49-20.1-03.44.1-40.05. Guaranteed analysis.

1. Guaranteed analysis must be claimed as follows:
   a. Total Nitrogen (N) _____ percent;
   b. Available Phosphate (P₂O₅) _____ percent; and
   c. Soluble Potash (K₂O) _____ percent.

2. In the total phosphate or degree of fineness, or both, may also be guaranteed, in the case of unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphate or degree of fineness, or both, may also be guaranteed.

3. Rules implemented under this chapter may allow or require guarantees for plant nutrients other than nitrogen, phosphorus, and potassium.
   a. Guarantees under this subsection must be expressed in the form of the element.
   b. The commissioner may require that the sources of other nutrients, including oxides, salt, and chelates, be stated on the application for registration and included as a parenthetical statement on the label.
   c. Other beneficial substances or compounds, determinable by laboratory methods, may be guaranteed with permission of the commissioner after consultation with the director of the North Dakota state university extension service.
4. When any guaranteed plant nutrients or other substances, or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and rules prescribed by the commissioner.

5. a. The commissioner, by rule, may require potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36 kilograms] per ton [907.18 kilograms].

b. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition, including the percentages of each ingredient. If the product is a microbiological product, the number of viable micro-organisms per milliliter for a liquid or the number of viable micro-organisms per gram for a dry product must also be listed.

SECTION 6. AMENDMENT. Section 19-20.1-04 of the North Dakota Century Code is amended and reenacted as follows:


Any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment distributed in this state must be labeled.

1. If the product is in a container, the label must be plainly printed in English and conspicuously placed on or attached to the container. The label must include:

a. The net weight of the product;

b. The brand;

c. The grade, unless no primary nutrients are claimed;

d. The guaranteed analysis; and

e. The name and address of the registrant.

2. If the product is distributed in bulk, a document providing the same information required in subsection 1 must accompany the delivery and be provided to the end user at the time of delivery.

3. A fertilizer formulated according to specifications that are furnished by a consumer prior to mixing must be labeled to show the net weight, the guaranteed analysis or amount of each plant nutrient it contains in pounds [kilograms], and the name and address of the registrant.
SECTION 7. AMENDMENT. Section 19-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:


1. a. An inspection fee in the amount of ten dollars or twenty cents per ton [907.18 kilograms], whichever is greater, must be paid to the commissioner on all fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendments, and plant amendments distributed in this state. The inspection fee may not be less than ten dollars.

   b. This subsection does not apply to:

      (1) Manufacturers, distributors, or exchanges of product between them; manufacturers and distributors; or

      (2) Individual fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less.

NOTE: The wording of this paragraph would exempt distributors from inspection fees in all cases. Was that intended?

2. a. On or before January thirty-first, each licensed person who distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment to an end user in this state shall:

      (1) File with the commissioner a form stating the number of net tons [kilograms] of each listed product distributed in this state during the preceding calendar year; and

      (2) Submit to the commissioner the inspection fee required by this section.

   b. If a person fails to submit an inspection fee, at the time and in the manner required by this section, the commissioner may impose a penalty equal to of ten dollars or ten percent of the amount due, whichever is greater. The penalty must be equal to at least ten dollars.

3. a. On or before January thirty-first, each licensed person that distributes a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment to a licensed entity in this state shall file with the commissioner a form stating the number of net tons [kilograms] of each listed product distributed in this state during the preceding calendar year.
b. If a person fails to file the form, at the time and in the manner required by this subsection, the commissioner may impose a late fee of thirty-five dollars.

4. Each distributor shall keep all records regarding purchases and sales for a period of three years. The records may be examined by the commissioner upon request.

5. The agriculture commissioner shall forward all fees received under this section to the state treasurer for deposit in the environment and rangeland protection fund.

SECTION 8. AMENDMENT. Section 19-20.1-08 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-08. Inspection, sampling, analysis.

1. In order to determine compliance with this chapter and rules implemented under this chapter, the commissioner may enter upon real property during regular business hours and access any structure and/or personal property, during regular business hours, to sample, inspect, make analyses of, and test fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed in this state.

2. The commissioner shall adopt methods of analysis and sampling must be those adopted by the commissioner from reputable sources such as the Journal of the AOAC. In cases not covered by these methods, or if methods are available in which improved applicability has been demonstrated, the commissioner may adopt appropriate methods from other sources.

NOTE: The Journal of the AOAC appears to be nonexistent.

3. A single package may constitute an official sample. In determining for administrative purposes whether any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment is deficient, the commissioner must be guided solely by shall only consider the commissioner's analysis of the official sample.

4. If the results of the commissioner's official analysis indicate that a fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment may be the subject of a penalty or other legal action, the commissioner shall forward the analysis to the registrant at least ten days before the report is submitted to the purchaser. If during that ten-day period no adequate evidence to the contrary is made available to the commissioner by the registrant, the report becomes official.
5. The commissioner shall retain any official samples found to be deficient for thirty days from following the issuance of the analytical report.

6. Upon request, the commissioner shall furnish to the registrant a portion of any sample found to be the subject of a penalty or other legal action.

SECTION 9. AMENDMENT. Section 19-20.1-10 of the North Dakota Century Code is amended and reenacted as follows:


1. A person may not distribute a misbranded fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment. For purposes of this section:

   a. False or misleading statements concerning the product are disseminated in any manner or by any means;

   b. The product label carries a false or misleading statement on the label;

   c. The product is distributed under the name of another product;

   d. The product is not labeled as required by this chapter or rules implemented under this chapter; or

   e. The product purports to be or is inaccurately represented as a fertilizer, or is inaccurately represented as containing a plant nutrient or fertilizer unless the plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed in rule by the commissioner.

2. In adopting rules, the commissioner shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials.

SECTION 10. AMENDMENT. Section 19-20.1-11 of the North Dakota Century Code is amended and reenacted as follows:


The commissioner may publish:

1. Information concerning the distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments; and
Sixty-fifth
Legislative Assembly

2. Results of analyses based on official samples of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments distributed within the state as compared with the analyses guaranteed under sections 49-20.1-034.1-40-05 and 49-20.1-044.1-40-06.

SECTION 11. AMENDMENT. Section 19-20.1-12 of the North Dakota Century Code is amended and reenacted as follows:


For the enforcement of this chapter, the commissioner may adopt and enforce rules relating to investigational allowances, definitions, records, licensing, inspection, analysis, labeling, storage, and distribution of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, and plant amendments.

SECTION 12. AMENDMENT. Section 19-20.1-13 of the North Dakota Century Code is amended and reenacted as follows:


1. A product is deficient if one:
   a. One or more of its guaranteed primary plant nutrients or falls below the investigational allowances and compensations established by rule;
   b. One or more other guaranteed active ingredients falls below the investigational allowances and compensations as established by rule; or if the overall index value of the fertilizer is shown below the level established by rule.

2. A nonuniformity deficiency in an official sample of mixed fertilizer resulting from nonuniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.

3. To determine the commercial index value to be applied, the commissioner shall determine at least annually the values per unit of nitrogen, available phosphate, and soluble potash in fertilizers in this state.

4. If any fertilizer, fertilizer material, micronutrients, specialty fertilizer, soil amendment, or plant amendment in the possession of the consumer is found by the commissioner to be short in weight, the registrant of the product shall result in the assessment of a penalty to the registrant of the product within thirty days after
Sixty-fifth
Legislative Assembly

official notice from the commissioner, the registrant of the product shall pay to the consumer a penalty equal to four times the value of the actual shortage to the consumer.

SECTION 13. AMENDMENT. Section 19-20.1-14 of the North Dakota Century Code is amended and reenacted as follows:


1. The commissioner, upon compelling evidence that a registrant, licensee, or distributor used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any implemented rule, may cancel:
   a. Cancel the registration of any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment;
   b. Cancel the license of any distributor;
   c. Refuse to register any brand of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, and may refuse;
   d. Refuse to license any distributor, upon satisfactory evidence that the registrant, licensee, or distributor used fraudulent or deceptive practices in the evasions or attempted evasions of this chapter or any rules implemented under this chapter.

2. The commissioner may not refuse a registration or revoke a license without first providing an opportunity for a hearing prior to refusing a registration or revoking a license.

SECTION 14. AMENDMENT. Section 19-20.1-15 of the North Dakota Century Code is amended and reenacted as follows:


The commissioner may issue a "stop-sale, use, or removal" order to the owner or custodian of any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, if the commissioner finds that the product is being offered for sale in violation of this chapter or any implemented rule implemented under this chapter. The order must remain in effect until the commissioner:

1. Determines that the violation has been corrected;
2. Has given written authorization for the disposal of the product; or
3. Has given written authorization for the product to be offered for sale.
SECTION 15. AMENDMENT. Section 19-20.1-16 of the North Dakota Century Code is amended and reenacted as follows:


1. Any lot of fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment, not in compliance with this chapter or the rules implementing this chapter, is subject to seizure upon the filing of a complaint by the commissioner with the district court of the county in which the product is located.

2. If the court finds the product to be in violation of this chapter or any rule implementing this chapter and orders its condemnation, the product must be disposed of in any manner consistent with the quality of the product and the laws of the state.

3. Before ordering the disposition of a product, a court may not order disposition of the product without first giving the claimant an opportunity to apply for the release of the product or for permission to process or relabel the product in order to bring it into compliance with this chapter and the rules implementing this chapter.

SECTION 16. AMENDMENT. Section 19-20.1-17 of the North Dakota Century Code is amended and reenacted as follows:


1. If it appears from the examination of any fertilizer, fertilizer material, micronutrient, specialty fertilizer, soil amendment, or plant amendment that this chapter or the rules implementing this chapter have been violated, the commissioner shall cause notice of the violations to be given to the registrant, licensee, manufacturer, distributor, or possessor from whom the sample was taken of the violation. Any person so notified must be given an opportunity to be heard. If it appears after the hearing, either in the presence or absence of the person so notified, the commissioner may certify the facts to the proper prosecuting attorney if evidence exists that this chapter or the rules implementing this chapter have been violated, the commissioner may certify the facts to the proper prosecuting attorney.
2. Any person that violates this chapter or the implemented rules implementing this chapter or that impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the commissioner in the performance of the commissioner's duty under this chapter is guilty of a class A misdemeanor.

3. All prosecutions under this chapter involving the composition of a lot of fertilizers, fertilizer material, micronutrients, specialty fertilizers, soil amendments, or plant amendments, require a certified copy of the official analysis signed by the person performing the analysis or that person's assigned agent must be. The certified and signed copy of the official analysis shall be accepted as prima facie evidence of the composition.

4. The commissioner is not required to report for prosecution or institute prosecution or seizure proceedings for minor violations of the chapter if the commissioner believes that the public interest will be best served by a suitable written warning.

5. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any implemented rule implementing this chapter, notwithstanding the existence of other remedies at law. An injunction under this section must be issued without bond.

SECTION 17. AMENDMENT. Section 19-20.1-17.1 of the North Dakota Century Code is amended and reenacted as follows:


Any person that violates this chapter or an implemented rule implementing this chapter is subject to a civil penalty in an amount up to two thousand five hundred dollars per violation. The civil penalty may be imposed by a court or by the agriculture commissioner in an administrative hearing.

SECTION 18. AMENDMENT. Section 19-20.1-18 of the North Dakota Century Code is amended and reenacted as follows:


Nothing in this chapter may be construed to restrict or avoid sales or exchanges of fertilizers, fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments to each other by importers, manufacturers, or manipulators who mix fertilizers,
Sixty-fifth Legislative Assembly

1 fertilizer materials, micronutrients, specialty fertilizers, soil amendments, or plant amendments
2 for sale or as preventing the free and unrestricted shipments of fertilizer, fertilizer materials,
3 micronutrients, specialty fertilizers, soil amendments, or plant amendments to manufacturers or
4 manipulators who have registered their brands as required by this chapter.
A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

A state fair association, to be known as the North Dakota state fair association, is hereby created for the purpose of conducting an annual North Dakota state fair and for the purpose of exhibiting at such fair, including exhibition of the agricultural, stockbreeding, horticultural, mining, mechanical, industrial, and other products and resources of this state. The North Dakota state fair shall be held at Minot, North Dakota, at a site to be selected by the state fair association. No other fair may be designated as, nor may any other fair call itself, the state fair; in the state may include in its name the words "state fair".

SECTION 2. AMENDMENT. Section 4-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-02. Organization of state fair association - Initial members.
For the purpose of organizing the state fair association, three residents from each county in the state shall compose the initial membership in the state fair association. One member must be selected by the county fair board, one member by the board of county commissioners, and one member by the county agent of each county. In cases where a county does not have a county agent or county fair board, the board of county commissioners shall select the resident that either the county agent, or county fair board, would normally have been entitled to select as a member of the state fair association. Within thirty days after July 1, 1965, the names of the persons selected to serve as the initial members of the state fair association must be forwarded to the agriculture commissioner by the agencies making such selection.
Sixty-fifth Legislative Assembly

commissioner shall compile a list of all such members and forward a copy to each member. 

Within three months of their selection the initial members of the state fair association shall meet 
at a time and place agreed upon by them for the purpose of adopting bylaws, electing a 
temporary board of directors for one-year terms or until successors are chosen and qualified, 
and generally organizing the state fair association pursuant to the provisions of this chapter. The 
initial members of the state fair association shall serve one-year terms of office or until 
successors are chosen and qualified, but this provision does not prohibit such initial members 
from succeeding themselves as regular members of the fair association pursuant to the 
provisions of this chapter. The initial members and the board of directors selected therefrom 
shall have all the powers, and be subject to all the laws, as is provided in this chapter, except 
that the board of directors shall serve only one-year terms of office. The first annual meeting of 
the state fair association must be held at the call of the initial board of directors. A permanent 
board of directors, elected pursuant to the provisions of this chapter, must be selected at the 
first annual meeting and new or additional members of the association must be received into 
the state fair association according to the provisions of this chapter. The state fair association 
shall initiate plans at the first annual meeting for the purpose of conducting a state fair in the 
year 1966.

NOTE: The initial membership provision is no longer necessary. The following section 
provides for continuation of the terms and replacement of members.

SECTION 3. AMENDMENT. Section 4-02.1-03 of the North Dakota Century Code is 
amended and reenacted as follows:

4-02.1-0354-66-02. Permanent members of state fair association members.

The state fair association, after the expiration of the term of the initial members, must have 
a membership selected in the following manner:

1. Three members must be chosen annually from each of the counties of the 
state, such members to be residents of such the county, with From each 
county, one member must be selected by the county fair board, one member 
selected by the board of county commissioners, and one member selected by the 
county agent. A majority of the members must be selected under this subsection.

2. Such by a two-thirds vote at an annual meeting, the directors may elect individuals 
who, by reasons as nonvoting honorary life members in recognition of eminent services 
in agriculture, horticulture, or in the associated arts and sciences connected therewith,
er-of； long and faithful service in the association； or of benefits conferred upon it, may--
by two-thirds vote of the directors at any annual meeting, be elected as honorary-
member the association.

3. Members may be elected by societies, corporations, limited liability companies, or
associations as determined allowed in the association bylaws, except that a majority of
the members must always be selected in accordance with subsection 1.

The election and selection of members must be made and certified to the state fair
association on or before each annual meeting. The term of all members, except honorary-
members, must be for a one-year term. Each member, except honorary life members, begins
at the opening of the annual meeting after being chosen under subsection 1 or elected under
subsection 3 and continues until the opening of the succeeding annual meeting after such-
members have qualified as members, except that each. Each member shall hold office
until that member’s successor is chosen and qualified and a member shall remain a member until
through that member’s term of office as director is terminated.

Honorary members shall continue as such for life. The election and selection of members must
be made and certified to the state fair association on or before each annual meeting. Each-
member is entitled to one vote on each matter submitted to a vote of the members, except
honorary members may not vote. Any member may resign from membership by filing a written
resignation with the secretary of the association but memberships are not transferable or
assignable. The board of directors, by affirmative vote of the majority vote of all members of the
board, may suspend or expel a member for cause.

SECTION 4. AMENDMENT. Section 4-02.1-04 of the North Dakota Century Code is
amended and reenacted as follows:

4-02.1-0454-66-03. Meetings - Time and place - Notice.

1. The annual meeting of the members of the state fair association must be held as
provided in the bylaws of the association. The annual meeting must be held for
the purpose of electing directors and for the transaction of such
other business as may come before the meeting of the association. If the election of
directors is not held on the day designated for any the annual meeting or at any
adjournment thereof of the annual meeting, the board of directors shall cause the
election to be held at a special meeting of the members as soon thereafter as may be.
convenient. The failure to hold the annual meeting at the designated time does not
work result in a forfeiture or dissolution of the association.

2. A special meeting of the members may be held at any time upon the call of the
president or by order of the board of directors, and it is the duty of the president
todel call such a special meeting whenever requested to do upon request by ten
percent or more of the association members of the association.

3. The president or board of directors, whichever calls the meeting, may designate any
place within the state as the place of an annual or special meeting for any annual-
meeting or for any special meeting called by the board of directors.

4. Written or printed notice stating the place, day, and hour of any meeting of
members of the association must be delivered either personally or by mail to each
member entitled to vote at such meeting, not less than ten, nor more than fifty, days
before the date of such meeting by, or at the direction of, the president or the secretary
or the officers or persons calling the meeting. In case of a special meeting, or when
required by law or the bylaws, the purpose or purposes for which the meeting is called
must be stated in the notice. If mailed, the notice of the meeting must be deemed to be
delivered when deposited in the United States mail, addressed to the member at the
member's address as it appears on the records of the association with postage
thereon prepaid.

SECTION 5. AMENDMENT. Section 4-02.1-05 of the North Dakota Century Code is
amended and reenacted as follows:


Each member of the board of directors is entitled to receive compensation in the amount of
one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for
state officers while attending meetings or performing duties directed by the board. The board of
directors may pay to members rendering unusual or special services to the association special
compensation appropriate to the value of the services.

SECTION 6. AMENDMENT. Section 4-02.1-06 of the North Dakota Century Code is
amended and reenacted as follows:
4-02.1-0654-66-05. Board of directors - Meetings - Notice.

The affairs of the state fair association must be managed by its board of directors, which must consist of nine members unless changed by an amendment to otherwise provided in the association bylaws, except that a decrease in the number of directors may not affect the term of any incumbent director. Each director shall hold office for a term of three years, and until that director's successor has been elected and qualified. The terms of the directors elected at the first annual meeting must be staggered so that three directors are elected annually thereafter.

The directors must be members of the state fair association and residents of the state.

SECTION 7. AMENDMENT. Section 4-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-0754-66-06. Annual meeting - Directors to call special meetings.

A regular annual meeting of the board of directors must be held without other notice than that provided for the annual meeting of the state fair association, immediately after and at the same place as the annual meeting of the association. Notice of the regular annual meeting of the board of directors must be included in the notice of the annual meeting of the state fair association. The board of directors may provide by resolution the time and place for the holding of additional regular meetings of the board without other notice than such resolution.

Special meetings of the board of directors may be called by the president whenever the president deems it necessary or upon the written request of two of the directors. The president shall fix the time and place for the holding of any special meeting of the board of directors.

Notice of any special meeting of the board must be given to each director at least three days previously before the meeting by written notice delivered personally or sent by mail or telegram to each director at the address as shown by the records of the association, or sent by electronic mail directed with verification of receipt to an electronic mail address at which the director has consented to receive notice. If mailed, such notice is deemed to be delivered when the same is deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice is deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting constitutes a waiver of notice of such meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the
Sixty-fifth Legislative Assembly

business to be transacted, nor the purpose of any regular or special meeting of the board of
directors, need be specified in the notice or waiver of notice of such meeting.

SECTION 8. AMENDMENT. Section 4-02.1-08 of the North Dakota Century Code is
amended and reenacted as follows:

4-02.1-0854-66-07. Quorum to transact business.
A majority of the board of directors constitutes a quorum for the transaction of business at
any meeting of the board, but if, if less than a majority of the directors are present at such a
meeting, a majority of those present may adjourn the meeting from time to time without further
notice. The act of a majority of the directors present at a meeting at which a quorum is present
is the act of the board of directors unless the act of a greater number is required by law or by
the bylaws.

SECTION 9. AMENDMENT. Section 4-02.1-09 of the North Dakota Century Code is
amended and reenacted as follows:

4-02.1-0954-66-08. Vacancies and special compensation of board members.
Any vacancy occurring on the board of directors must be filled by the board of directors for
the unexpired term of the vacancy. The board of directors may contract for and pay directors
rendering unusual or exceptional services to the association special compensation appropriate
to the value of such services.

SECTION 10. AMENDMENT. Section 4-02.1-10 of the North Dakota Century Code is
amended and reenacted as follows:

4-02.1-1054-66-09. Officers - Removal - Vacancies.
The officers of the association must be a president, vice president, secretary, treasurer, and
such other officers as may be created by the board of directors from time to time. All officers, An
officer of the association shall perform the duties of the office as may be prescribed by law,
the bylaws, or by the board of directors. Any two or more offices may be held by the same
person, individual except the offices of president and secretary. The president, vice president,
secretary, and treasurer must be elected annually by the board of directors, and any other
officers. Any office created by the board may be filled by appointment at any meeting of the
board. Each elected officer holds office until that officer's successor has been duly elected and
qualified. Any officer elected or appointed may be removed by the persons authorized to elect or
appoint such officer, whenever in their judgment the best interests of the association shall be-
Sixty-fifth
Legislative Assembly

served thereby board. The removal of any officer is without prejudice to the any contractual
rights, if any, of the officer. Election or appointment of an officer or agent does not of itself create
contractual rights. Vacancies A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

SECTION 11. AMENDMENT. Section 4-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-1154-66-10. Officers - Duties.

1. The president is the principal executive officer of the association and shall, in general, supervise and control all of the business and affairs of the association and shall preside at all meetings of the members association and of the board of directors. The president may sign, with the secretary, or any other proper officer of the association authorized by the board of directors, any deeds, mortgages, bonds, contracts, or other instruments which the board of directors has authorized to be executed, except in cases when the signing and direction thereof is expressly delegated by the board of directors or by the bylaws, or by law to some other officer or agent of the association, and, in general, the president shall perform all duties incident to the office of president and such other and duties as may be prescribed by the board of directors from time to time.

2. In the absence, inability, or refusal to act of the president or in the event of the president’s inability or refusal to act, the vice president, or in the event there be more than one vice president through appointment by the board, the vice presidents in the order of their election, shall perform the duties of the president and when so acting has all the power of and is subject to all the restrictions upon the president. If there is more than one vice president, the vice president elected or appointed earliest in time shall perform the duties of the president. Any vice president shall perform such other duties as from time to time may be assigned to the vice president by the president or by the board of directors.

3. If required by the board of directors, the treasurer shall give a bond for the faithful discharge of the treasurer’s duties in such sum with such surety or sureties as determined by the board shall determine. The treasurer shall have charge of and
custody of and be responsible for all funds and securities of the association received, and give receipts for moneys due and payable to the association from any source whatsoever, and deposit and manage all moneys as prescribed by this chapter. The treasurer shall perform all the duties incident to the office of the treasurer and such other duties as from time to time the board of directors may delegate to the treasurer:

a. Keep accurate financial records for the association;
b. Deposit all money, drafts, and checks in the name of and to the credit of the association in the depositories designated by the board;
c. Endorse for deposit all notes, checks, and drafts received by the association as directed by the board, making proper vouchers;
d. Disburse association funds and issue checks and drafts in the name of the association, as directed by the board;
e. Give to the president and the board, when requested, an account of all transactions by the treasurer and of the financial condition of the association; and
f. Perform other duties assigned by the board or the president.

4. The secretary shall keep the minutes of the meetings of the members and of the board of directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of the bylaws or as required by law; be custodian of the association records; keep a register of the post-office address of each member which shall be furnished to the secretary by such the member; and, in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to the secretary assigned by the president or by the board of directors.

5. Any other officers created by the board of directors may be required to give bonds for the faithful discharge of their duties in such sum and with such sureties as determined by the board of directors may determine, and shall perform such duties as may be assigned to them by the treasurer, secretary, president, or board of directors.

SECTION 12. AMENDMENT. Section 4-02.1-12 of the North Dakota Century Code is amended and reenacted as follows:
**4-02.1-4254-66-07. Director's liability limited.**

The individual members of the board of directors of the state fair association are not liable for the negligence of any person, firm, corporation, or limited liability company staging any show, race, or other amusement at the state fair, nor for the negligence of any person employed by them.

**SECTION 13. AMENDMENT.** Section 4-02.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**4-02.1-4354-66-11. Bylaws, rules, regulations.**

The state fair association may make all bylaws, ordinances, rules, and regulations, not inconsistent with law, which it may deem necessary or proper in carrying out the provisions of its responsibilities under this chapter and for the government of the state fair grounds on which the state fair is to be held, and for all fairs held thereon, and for the protection, health, safety, and comfort of the public. Such bylaws, ordinances, rules, and regulations are in effect from the time of filing with the secretary of the association.

**SECTION 14. AMENDMENT.** Section 4-02.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**4-02.1-4454-66-12. Appointment of necessary employees.**

The president, or any other person delegated such authority by the board of directors, shall appoint and employ such deputies and other subordinates, and such contractors, architects, builders, clerks, accountants, and other experts, and agents and servants as required to carry out the functions of the state fair association. Salaries and other compensation must be set by the president and board of directors and any expenses incurred in the performance of employment must be reimbursed in the same manner and for the same amounts as is provided for officials and employees of the state.

**SECTION 15. AMENDMENT.** Section 4-02.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**4-02.1-4554-66-13. State fair operating fund - Maintained in state treasury - ExpendituresContinuing appropriation.**

A special fund for the North Dakota state fair association to be known as the state fair operating fund must be maintained in the state treasury, and all income, fees, rents, interest, moneys which may be appropriated by the legislative assembly from time to time, and any other
Sixty-fifth
Legislative Assembly

moneys, from whatever source derived by the state fair association, shall be placed in a
such must be deposited in that fund for the use of the North Dakota state fair association;
provided, however, that moneys which may be appropriated by the legislative assembly must
only be transferred from the general fund appropriation, and placed in the state fair operating
fund by the state treasurer, upon order of the office of management and budget whenever the
balance in such fund falls so low as to require supplementation. Any moneys or income in the
state fair operating fund shall not revert or be canceled according to the provisions of. Moneys
credited to the fund are appropriated as a standing appropriation for the purposes provided in
this chapter. The fund is not subject to section 54-44.1-11. All expenditures of the state fair-
association from the state fair operating fund must be made upon vouchers signed by the
secretary, or other person authorized by the board of directors, and approved by the office of
the budget, upon warrant checks prepared by the office of management and budget. The
directors of the North Dakota state fair association may, not more than fifteen days in advance
of the opening of any state fair, submit to the office of the budget a proposed budget of
expenditures for operating the state fair, together with a signed voucher or vouchers for the
withdrawal from the state fair operating fund of the total amount of the proposed expenditures.
Upon approval of such proposed budget of expenditures by the office of the budget, the director
of the office of management and budget shall prepare and issue a warrant check or checks in
such approved amount payable to the state fair association. Such warrant checks must be
deposited to the account of the North Dakota state fair association in the Bank of North Dakota
or a Minot area bank selected by a majority vote of the state fair board of directors and
qualifying in accordance with law as a public depository, and are subject to being withdrawn by
check for the payment of prizes and costs of operation of the state fair. Not later than sixty days
after the closing day of the state fair, the association shall file with the office of the budget a
detailed and itemized statement of expenditures together with copies of all checks issued, and
shall immediately close such account at the Bank of North Dakota or Minot area bank and
transfer any remaining balance to the state treasurer for deposit in the state fair operating fund.
The treasurer, or other officer delegated such authority by the office of the budget, shall remit
monthly all income, fees, rents, interest, or other moneys received by the state fair association,
to the state treasurer who shall credit the same to the state fair operating fund and such-
moneys credited to the fund are hereby appropriated as a standing appropriation for the purposes provided in this chapter.

**NOTE:** Our office has reviewed this section with the Office of Management and Budget staff. Much of what is provided in this section no longer complies with fiscal practice. The state fair operating fund is the fund used by the association as its business account. General fund appropriations are not deposited in that fund. Warrant checks are archaic. The association does not obtain expenditure approval from the Office of the Budget. The state fair operating fund is not subject to turn back but general fund appropriations may be, depending on the provisions of the appropriation measure.

**SECTION 16. AMENDMENT.** Section 4-02.1-16 of the North Dakota Century Code is amended and reenacted as follows:


The state fair association possesses all of the rights, privileges, and liabilities pertaining to corporations under the corporation laws of this state except as may be limited or specified by this chapter. The association may purchase, hold, lease, exchange, trade, or sell real estate for the purpose of promoting and conducting a state fair. Buildings and real estate controlled by the state fair association may be leased, subleased, rented, or used for other than fair purposes other than the conducting of the fair during such times when the property is not needed for fair purposes. The state fair association may contract in its own name, but as an agency of the state, and shall make all of its purchases pursuant to the purchasing laws of the state through the office of management and budget, except as may be exempted therefrom by the director of the office of management and budget as provided by law.

**SECTION 17. AMENDMENT.** Section 4-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-1754-66-15. Name in which business conducted and titles taken - Execution of written instruments.

All business of the association shall be conducted under the name of "North Dakota state fair association". Title to property obtained in regard to the operation of the association must be obtained and conveyed in the name of the state of North Dakota, doing business as the North Dakota state fair association. Written instruments must be executed in the name of the state of North Dakota.

**SECTION 18. AMENDMENT.** Section 4-02.1-18 of the North Dakota Century Code is amended and reenacted as follows:

The state fair association shall submit annually to the governor and the legislative audit and fiscal review committee an audit report prepared by a certified public accountant based upon an audit of all records and accounts of the association.

SECTION 19. AMENDMENT. Section 4-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-1954-66-17. Attorney general to act as legal adviser.

The attorney general shall appoint an assistant attorney general or a special assistant attorney general to provide legal assistance to the state fair association. The appointment is revocable at the pleasure of the attorney general. The provisions of this section do not prohibit the state fair association from employing any other attorney to carry out the legal functions of the association or provide additional legal services, other than those provided through the office of the attorney general, necessary for the proper administration of the state fair association.

SECTION 20. AMENDMENT. Section 4-02.1-20 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-2054-66-18. Law enforcement - Arrangements with local law enforcement agencies.

The state fair association shall make arrangements with local law enforcement agencies for the provision of law enforcement personnel. For the purpose of enforcing any state and local laws, rules, regulations, bylaws, and ordinances of the state fair association, negotiations may be entered into with local law enforcement agencies for the use of such law enforcement personnel or the deputizing of employees of the state fair association. The cost of providing such law enforcement personnel is the responsibility of the state fair association, except in the case of law enforcement officials who are functioning in their normal capacity as agents of the state or its political subdivisions. Law enforcement personnel shall wear appropriate badges of office while acting as such.

SECTION 21. AMENDMENT. Section 4-02.1-21 of the North Dakota Century Code is amended and reenacted as follows:


In any action or proceeding upon a claim arising out of the conducting of the state fair, service of process may be made as provided for in section 53-05-04.
SECTION 22. AMENDMENT. Section 4-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-2254-66-20. Exhibition date of fair to be filed.

By May first, the secretary or other designated officer delegated such duty shall file the dates on which the state fair will be held in that year with the agriculture commissioner, on or before May first of each year, the date on which the state fair will be held.

NOTE: Is this of any significance? The dates of the fair are generally made public long before May 1.

SECTION 23. AMENDMENT. Section 4-02.1-23 of the North Dakota Century Code is amended and reenacted as follows:


The state fair association shall regulate all shows, exhibitions, performances, establishments, and privileges carried on during the state fair and ensure that such enterprises are properly licensed according to local and state laws. The state fair association may license any enterprises not required to be licensed by state or local laws, and is charged with the responsibility of seeing that shows, exhibitions, performances, establishments, and exercise of fair privileges are conducted in compliance with all state and local laws and all rules and regulations of the state fair association are complied with by such shows, exhibitions, performances, establishments, or those granted fair privileges.

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


The state is not liable for any of the debts or liabilities of the state fair association except as appropriations are made therefor from time to time for that purpose by the legislative assembly and transferred to the state fair operating fund.

NOTE: General fund appropriations generally are not deposited in the operating fund.

SECTION 25. AMENDMENT. Section 4-02.1-26 of the North Dakota Century Code is amended and reenacted as follows:


The secretary or other officer charged with the duty to compile an annual report of the proceedings of the state fair association and its financial condition for the preceding fiscal
Sixty-fifth
Legislative Assembly

year by the annual meeting shall file a copy in the office of the agriculture commissioner. The
commissioner shall include it, in whole or in part, in the commissioner's biennial report to the
governor and the secretary of state.

NOTE: North Dakota Century Code Section 54-06-04 requires a biennial report to the
Governor and Secretary of State from 21 listed officers and agencies, including the
Agriculture Commissioner.

SECTION 26. AMENDMENT. Section 4-02.1-27 of the North Dakota Century Code is
amended and reenacted as follows:

The grandstand constructed by the state fair association on the state fairgrounds during the
2009-11 biennium is designated the Iverson grandstand.

SECTION 27. REPEAL. Chapter 4-02.1 of the North Dakota Century Code is repealed.
A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-02-08 of the North Dakota Century Code is amended and reenacted as follows:

4-02-0811-38-01. Organization. County fair association organization under nonprofit corporation laws.

A county fair association may be organized by three or more persons as in the case of other corporations, with all the rights, privileges, and liabilities pertaining to corporations under the nonprofit corporation laws of this state, including, in addition to the powers and duties of nonprofit corporations under the laws of this state, a county fair association has the rights and privileges specified in sections 4-02-04 and 4-02-05 of this chapter.

NOTE: Section 4-02-04 currently requires an association to be not for profit. Corporations only require one person to be an incorporator.

SECTION 2. AMENDMENT. Section 4-02-26 of the North Dakota Century Code is amended and reenacted as follows:

4-02-2611-38-02. County fairs—Association. Fair association - County funding.

A county fair association may be organized in any county. The executive officers and directors must be residents of the county or, if the association is to conduct a multicounty fair, residents of one of the participating counties. The association may make written application to the board of county commissioners of the county for a grant to aid in the erection of suitable buildings and other improvements to accommodate its patrons and exhibits suitable to conduct the fair and to pay premiums and expenses that may be awarded on fair exhibits. An application must state evidence that the incorporation of the association is incorporated in this state as a nonprofit corporation, the names and places of residence of all its executive officers and
Sixty-fifth
Legislative Assembly

directors, and the evidence of ownership or right to use of sufficient real property in the county
sufficient in area for the purpose of it to conduct the fair.

The board of county commissioners may not provide county funding or official county fair
authorization under this chapter to more than one fair association or to any association
organized for profit.

If the board of county commissioners is satisfied that the statements in the application are
true and that the association intends in good faith to annually hold a fair within the county
annually for the exhibition of agricultural, livestock, horticultural, mining, mechanical, industrial,
and manufactured products of the county, and of such articles as are usually exhibited at fairs,
and other public displays of human art, industry, and skill, it may provide it official county fair
authorization and funding from revenues derived from the county general fund levy authority. If
the funding is approved, the county treasurer shall pay to the secretary of the association, by
the following July thirty-first, the amount of funding approved and shall take the receipt of the
association for the payment.

Any amount received by the county fair association must be deposited by the secretary of
the association in a special fund to be known as the "county fair fund".

To promote holding a county fair, the board of county commissioners may purchase or lease
in the name of the county not to exceed two hundred forty acres [97.12 hectares] of real estate
and construct buildings and improvements for the conduct of a county fair. The board of county
commissioners may issue bonds in the name of the county if approved by electors of the county
in accordance with sections 21-03-06 and 21-03-07 to purchase, not to exceed two hundred
forty acres [97.12 hectares], of real estate and construct buildings and improvements for the
conduct of a county fair.

The board of county commissioners may continue to provide funding under this section
after the first year's grant of aid upon the board's own motion.

The authority of this section may be used by a county to join in formation and funding of a
multicounty fair association under terms of an agreement with one or more other counties.

NOTE: A fair association may or may not own land...this section and other provisions of the
chapter provide for the county to purchase land and buildings for a fair.

The county fair fund was eliminated as a special fund when the levy for that purpose was
consolidated into the county general fund by 2015 Senate Bill No. 2144.
Sixty-fifth Legislative Assembly

In this chapter, there is reference to forfeiture of official authorization as a county fair. The reference is added to make clear that the county grants that authorization and is limited to one such authorization at a time.

SECTION 3. AMENDMENT. Section 4-02-30 of the North Dakota Century Code is amended and reenacted as follows:

4-02-3011-38-03. Tax County fair association funding to be submitted to vote.

If the board of county commissioners has voted and ordered a tax levied in aid of an agricultural county general fund funding for a fair association and a petition is addressed to the board and filed with the county auditor, asking the discontinuance of the tax funding and containing the signatures of the qualified electors of the county in a number equal to twenty percent or more of the total vote cast in the county at the last preceding general election, and the petition is filed in the office of the county auditor, the board shall submit to the qualified electors of the county at the next succeeding general election the question of whether or not the levying of the tax funding shall be continued. The ballot must be in the following form:

Shall the board of county commissioners continue the annual levy of a tax funding in aid of a county fair? Yes ☐ No ☐

If a majority of all the ballots cast on the question at the election is in favor of discontinuing the tax funding, the board of county commissioners may not thereafter levy any tax providing funding in aid of a county fair under this chapter until the question of resuming the annual levy and collection of the tax funding is submitted to a vote of the qualified electors of the county. The ballots to be used at the election ballot must be in the following form:

Shall the board of county commissioners resume the annual levy of a tax funding in aid of a county fair? Yes ☐ No ☐

If a majority of all of the ballots cast on the question at the election is in favor of resuming the tax funding, the board of county commissioners shall resume the annual levy as long as the provisions of section 4-02-29 are complied with and until otherwise directed as herein provided funding subject to the other provisions of this chapter.

Before every election, the county auditor shall certify and give notice of the submission of the question as provided by law.

NOTE: After 2015 legislative changes, there is no longer a dedicated tax for county fairs. This was replaced by authority to provide "funding" from the county general fund. The auditor is already required to give notice of ballot contents under Section 16.1-13-05 so the final sentence is unnecessary.
SECTION 4. AMENDMENT. Section 4-02-26.1 of the North Dakota Century Code is amended and reenacted as follows:

4-02-26.111-38-04. County fair authorization - Forfeiture.

Any county fair association which fails to hold a county fair for ten consecutive years shall forfeit its official authorization. After such time a forfeiture, another fair association may organize within a county and apply, or the forfeiting organization may reapply, to the board of county commissioners for official county fair authorization and aid as provided by this chapter.

NOTE: Ten years of not holding a fair results in forfeiture of county fair authorization. The word "consecutive" is added. Language is added to allow an association that forfeits authorization to reapply.

The ten-year forfeiture provision should be considered in light of the two-year and five-year sale of property and fund transfer provisions in the following section.

SECTION 5. AMENDMENT. Section 4-02-27.3 of the North Dakota Century Code is amended and reenacted as follows:

4-02-27.311-38-05. Disposition of property.

Any property used for county fair purposes may be sold by the board of county commissioners and held in the name of the county upon such terms and conditions as set by the board shall determine, and the proceeds of such sale shall be placed in the county fair general fund and used exclusively for county fair purposes.

If the county fair association fails to hold a fair within the county for two successive years, the board of county commissioners may direct that any county property on hand may be sold and the proceeds of such the sale, together with any other and any unexpended balance in the county fair fund, at the discretion of the board of county commissioners, may be transferred to the county general fund.

The board of county commissioners of any county in which a county fair has not been held if the county fair association fails to hold a fair within the county for five consecutive years, the board of county commissioners shall direct the transfer of any funds in the special fund for the county fair fund or funds budgeted for county fairs to the county general fund to be used for general county purposes. The funding from revenues derived from the county general fund levy authority authorized by section 4-02-26, expenditures of these proceeds, and the
conduct of the fair shall be governed by sections 4-02-07 through 4-02-31 to the extent such sections are consistent with section 4-02-26 and this section.

NOTE: Sale of property authority has language added so it is limited to county property. After five years of no fair, this section makes it mandatory for the county commission to empty the county fair fund and cancel county funding. This should be considered in light of the 10-year forfeiture of county fair authorization in the previous section.

SECTION 6. AMENDMENT. Section 4-02-28 of the North Dakota Century Code is amended and reenacted as follows:

4-02-28. Associations entitled to aid.

The aid provided for by this chapter shall not be granted to more than one agricultural association in any one county or to any association organized for profit.

NOTE: The requirements of this section are included in other sections.

SECTION 7. AMENDMENT. Section 4-02-29 of the North Dakota Century Code is amended and reenacted as follows:

4-02-2911-38-06. Levy of taxesCounty funding to cease when fair not held - Misappropriation of funds.

The board of county commissioners shall refuse to make a further levy of taxes provide funding for any county fair association failing to hold a fair within the county in any year for which it has received funding from the county. In such a case, the board of county commissioners shall inquire into the disposition of moneys paid by the county to the association after its last annual report, and if there has been any misappropriation it shall institute proceedings at once to recover the sum misappropriated. For any such misappropriation, the officers, trustees, or directors of the association shall be liable personally to the county.

SECTION 8. AMENDMENT. Section 4-02-31 of the North Dakota Century Code is amended and reenacted as follows:

4-02-31. Purchase or lease of land—Election required.

The board of county commissioners in any county in the state may submit, or when petitioned by at least five percent of the qualified electors of the county in at least one half of the voting precincts, based upon the votes cast in the county for secretary of state at the last general election, shall submit, to the qualified electors of the county at any general election the proposition of purchasing or leasing not more than eighty acres [32.37 hectares] of land in the name of the county to be used for county fair purposes. If a majority of the qualified electors voting on the question at the election vote in favor of purchasing or leasing land for such
purposes, the board of county commissioners shall purchase or lease, in conformity with this-
chapter, a tract of land not to exceed eighty acres [32.37 hectares], in the name of the county.
The board of county commissioners shall construct such buildings and improvements on the-
land as it shall deem necessary for the operation and management of the fair. The election on-
the purchase or lease of land must be conducted and the votes counted as at other elections.

NOTE: Section 4-02-26 currently allows the board of county commissioners to purchase or
lease in the name of the county not to exceed 240 acres of land for a fair. The section
requires voter approval for bonding such a purchase. It appears unlikely that a county
would use the authority of this section.

SECTION 9. AMENDMENT. Section 4-02-36 of the North Dakota Century Code is amended
and reenacted as follows:

4-02-36. Chapter not applicable to state fair association.
The provisions of this chapter shall not be applicable to the holding of the state fair and
shall not apply to the North Dakota state fair association.

NOTE: This chapter could not be interpreted to apply to the state fair. It is not necessary to
state this.

SECTION 10. AMENDMENT. Section 4-02-01 of the North Dakota Century Code is
amended and reenacted as follows:

4-02-01. Power to make regulations governing premises.
Fair associations may make rules, regulations, and provisions necessary and proper for the
government, management, and control of the premises used by them for the holding of fairs and
expositions and for the regulation of the use of such the premises by and deportment of the-
public thereon.

SECTION 11. AMENDMENT. Section 4-02-02 of the North Dakota Century Code is
amended and reenacted as follows:

4-02-02. Director's liability limited. The individual members of the board of directors of any fair association are not
liable from civil liability for any act or omission relating to service as a director for the
negligence of any person, firm, corporation, or limited liability company staging any show, race,
or other amusement at any county or municipal fair, nor for the and are immune from civil
liability for any negligence of any person employed by the board of directors or the association
conducting such fair.
Sixty-fifth
Legislative Assembly

SECTION 12. AMENDMENT. Section 4-02-04 of the North Dakota Century Code is amended and reenacted as follows:

4-02-04. Income and expenses—Membership in association and terms thereof.

An agricultural fair association may not be conducted for profit and may not have capital stock. The bylaws of the association must provide for charges to the public for admission to the grounds, fees for concessions, charges to exhibitors, and rental of the association's property, and the amounts thereof may not be greater than is sufficient to discharge the association's debts for real estate and improvements thereon, to defray the current expenses of fairs, to carry on the business of the association, and to create a sinking fund in an amount not exceeding twenty thousand dollars. However, if the association is receiving property tax levy funds, the association with the consent of the board of county commissioners may establish a sinking fund in excess of twenty thousand dollars. The method of acquiring membership in the association, and the term of such membership, must be provided in the association's bylaws.

NOTE: Nonprofit status is required by section 1 of this draft. The only provision here that may be worth retention is the limit of $20,000 sinking fund balance unless the board of county commissioners approves a higher amount. The $20,000 limit has been in place since 1985 and may not be a realistic number at this time.

SECTION 13. AMENDMENT. Section 4-02-05 of the North Dakota Century Code is amended and reenacted as follows:

4-02-05. Real property—District associations—Limitations on holding.

Any district fair association may purchase, hold, or lease any quantity of land, with the buildings and improvements erected thereon, and may sell, lease, or otherwise dispose of the same at pleasure. The real estate shall be held for the purpose of erecting buildings and making other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactures, stockraising, and general domestic industry.

NOTE: As a nonprofit corporation, a multicounty fair association has the authority described in this section.

SECTION 14. AMENDMENT. Section 4-02-07 of the North Dakota Century Code is amended and reenacted as follows:

4-02-07.11-38-09. Treasurer to give bond - Duty of officers and directors.

The officers and directors of any fair association shall require the treasurer thereof of the association to give a sufficient bond to such officers and directors, conditioned for the faithful keeping of such money as may come into the treasurer's hands as such treasurer.
Sixty-fifth
Legislative Assembly

shall be received by the treasurer may not receive funds of a fair association until the treasurer is properly bonded.

SECTION 15. AMENDMENT. Section 4-02-10 of the North Dakota Century Code is amended and reenacted as follows:

4-02-10. Purpose of fair associations.

An association conducting a fair under any provision of this chapter shall exhibit agricultural, livestock, horticultural, mining, mechanical, industrial, and other products and resources of the state of North Dakota, including proper exhibits of the arts and sciences, and may exhibit other public displays of human art, industry, and skill.

NOTE: Section 4-02-26 requires exhibition of agricultural, horticultural, mechanical, and manufactured products of the county, and of such articles as are usually exhibited at fairs. Some of the language from this section has been blended into that section in this draft.

SECTION 16. AMENDMENT. Section 4-02-12 of the North Dakota Century Code is amended and reenacted as follows:

4-02-1211-38-10. Nonliability of state for debts - Exception.

The state shall not be liable for any of the debts or liabilities of a fair association except to the extent appropriations are made therefor from time to time for that purpose by the legislative assembly.
A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-015-12.1-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Agricultural experiment station" means the North Dakota state university main research center, the Dickinson research extension center, the Williston research extension center, the Langdon research extension center, the central grasslands research extension center, the Carrington research extension center, the Hettinger research extension center, the north central research extension center, the agronomy seed farm, and any other department or agency designated by the state board of higher education.

2. "Center director" means the administrator in charge of a research or research extension center.

3. "Station director" means the administrator of the agricultural experiment station.

SECTION 2. AMENDMENT. Section 4-05.1-02 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-0215-12.1-02. Agricultural experiment station.

The state board of agricultural research and education and the president of North Dakota state university shall control and administer the North Dakota agricultural experiment station subject to the supervision of the state board of higher education. Funds appropriated to the agricultural experiment station may not be commingled with funds appropriated to North Dakota state university. Appropriation requests to defray expenses of the agricultural experiment station...
Sixty-fifth Legislative Assembly

must be separate from appropriation requests to defray expenses of North Dakota state university.

NOTE: Under Article VIII, Section 6, of the Constitution of North Dakota, the State Board of Higher Education controls and administers the Agricultural Experiment Station. These statutory provisions delegate control and administration to the State Board of Agricultural Research and Education and the President of North Dakota State University under the supervision of the State Board of Higher Education.

SECTION 3. AMENDMENT. Section 4-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-0315-12.1-03. Center directors - Research and research extension centers - Records and information.

The station director has jurisdiction over the research and research extension centers of the agricultural experiment station are under the jurisdiction of the station director. Each center director shall administer each research or research extension center must be administered by a center director who shall report to the station director. Each research or research extension center shall keep detailed records of all research activities and information for the benefit of this state.

SECTION 4. AMENDMENT. Section 4-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-0415-12.1-04. Reports.

Each center director shall submit an annual report to the station director as directed by the state board of agricultural research and education. Each report must set forth in detail the investigations and experiments made during the preceding year, recommendations for the welfare of the center, the financial condition of the center, how all moneys have been expended during the preceding year, and the results of all experiments that have been completed during the preceding year. The station director shall submit these reports, with a report of the North Dakota state university main research center, to the state board of agricultural research and education and the state board of higher education on or before the first day of September first of each year.

SECTION 5. AMENDMENT. Section 4-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:
The North Dakota state university main research center must be located on the campus of North Dakota state university of agriculture and applied science. The center is the administrative location of the agricultural experiment station. The center shall conduct research and coordinate all research activities of the agricultural experiment station. The research must have, as a purpose, the development and dissemination of technology important to the production and utilization of food, feed, fiber, and fuel from crop and livestock enterprises. The research must provide for the enhancement of the quality of life, sustainability of production, and protection of the environment. Subject to the availability of funds, the station director may adjust or increase full-time equivalent positions in order to carry out activities to accomplish the mission of the agricultural experiment station, subject to the availability of funds. All full or partial positions must be separate from North Dakota state university. Annually, the station director shall report annually to the office of management and budget and to the budget section any adjustments or increases made pursuant to this section. The center may conduct baseline research, including production and processing in conjunction with the research and extension centers of the state, regarding industrial hemp and other alternative industrial use crops. The center may collect feral hemp seed stock and develop appropriate adapted strains of industrial hemp which contain less than three-tenths of one percent tetrahydrocannabinol in the dried flowering tops. The agriculture commissioner shall monitor the collection of feral hemp seed stock and industrial hemp strain development and shall certify appropriate stocks for licensed commercial cultivation.

SECTION 6. AMENDMENT. Section 4-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-0615-12.1-06. Dickinson research extension center.

The Dickinson research extension center must be located or near Dickinson in Stark County. The center shall conduct research on:

1. On increasing the carrying capacity of native rangeland, with emphasis on conservation and preservation for future generations. The center shall conduct research on:
Sixty-fifth
Legislative Assembly

2. On grass production to determine how to best compensate for the vagaries of the weather as it influences forage production in the agriculture of western North Dakota.

   The center shall conduct research at:

3. At the ranch location in Dunn County with beef cattle and swine on breeding, feeding, management, and disease control for the benefit of livestock producers of western North Dakota and the entire state. The center shall conduct research designed; and

4. Designed to increase productivity of all agricultural products of the soil by maintaining or improving the soil resource base in the agricultural region of southwestern North Dakota by:

   a. The identification of adapted crop species and superior crop cultivars;

   b. Propagation and distribution of selected seed stock; and

   c. Development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources.

**SECTION 7. AMENDMENT.** Section 4-05.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**4-05.1-07.** Williston research extension center.

   The Williston research extension center must be located at or near Williston in Williams County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the agricultural region of northwestern North Dakota by:

   1. The identification of adapted crop species and superior crop cultivars; propagation

   2. Propagation and distribution of selected seed stocks; and development

   3. Development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources.

**SECTION 8. AMENDMENT.** Section 4-05.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**4-05.1-08.** Langdon research extension center.

   The Langdon research extension center must be located at or near Langdon in Cavalier County. The center shall conduct research designed to increase productivity of all agricultural
Sixty-fifth
Legislative Assembly

products of the soil while maintaining or improving the soil resource base in the agricultural
region of northeastern North Dakota by the:

1. The identification of adapted crop species and superior crop cultivars; propagation
2. Propagation and distribution of selected seed stocks; and development
3. Development of profitable cropping systems that achieve the necessary balance
   between profitability and conservation of all natural resources.

SECTION 9. AMENDMENT. Section 4-05.1-09 of the North Dakota Century Code is
amended and reenacted as follows:

4-05.1-09. Central grasslands research extension center.
The central grasslands research extension center must be located within an area bounded
by the Missouri River on the west and the James River on the east. The center shall conduct
research designated:

1. Designed to fulfill needs within an area bounded by the Missouri River on the west and
   the James River on the east. Research objectives must be to; and
2. To increase the range-carrying capacity of native range, with emphasis on:
   a. The conservation and preservation for future generations;
   b. The stabilization of grass production to discover how to best compensate for the
      vagaries of the weather and precipitation as it influences forage production in
      agriculture;
   c. The identification of the impact of different management systems upon beef
      production in the central region of the state; and
   d. The exploration of increased use of crop residues and byproducts for the
      maintenance of the cowherd.

SECTION 10. AMENDMENT. Section 4-05.1-10 of the North Dakota Century Code is
amended and reenacted as follows:

4-05.1-10. Carrington research extension center.
The Carrington research extension center must be located at in or near Carrington in Foster
County. The center shall conduct research designed to determine:

1. Determine the potential of irrigated agriculture in the region proposed for irrigation
   development in the state which must be related to both crop and livestock production;
Sixty-fifth
Legislative Assembly

2. Increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the agricultural region of east central North Dakota by the:
   a. The identification of adapted crop species and superior crop cultivars; propagation
   b. Propagation and distribution of selected seed stocks; and development
   c. Development of profitable cropping and integrated crop and livestock systems that achieve the necessary balance between profitability and conservation of all natural resources.

SECTION 11. AMENDMENT. Section 4-05.1-11 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-1115-12.1-11. Hettinger research extension center.
   The Hettinger research extension center must be located at or near Hettinger in Adams County. The center shall develop the best available technology in breeding, feeding, management, and disease control pertinent to the production of sheep in the state. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in southwestern North Dakota by the:
   1. The identification of adapted crop species and superior crop cultivars; propagation
   2. Propagation and distribution of selected seed stocks; and development
   3. Development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources.

SECTION 12. AMENDMENT. Section 4-05.1-12 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-1215-12.1-12. North central research extension center.
   The north central research extension center must be located at or near Minot in Ward County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the agricultural region of north central North Dakota by the:
   1. The identification of adapted crop species and superior crop cultivars; propagation
   2. Propagation and distribution of selected seed stocks; and development
Sixty-fifth
Legislative Assembly

3. Development of profitable cropping systems which achieve the necessary balance between profitability and conservation of all natural resources.

SECTION 13. AMENDMENT. Section 4-05.1-15 of the North Dakota Century Code is amended and reenacted as follows:


The state treasurer, at the direction of the center director of the agronomy seed farm with the approval of the station director, shall provide for the investment of available moneys in the agronomy seed farm reserve income fund. The state treasurer shall credit the investment income to the agronomy seed farm reserve income fund. The moneys in the fund may be spent only within the limits of legislative appropriation.

SECTION 14. AMENDMENT. Section 4-05.1-16 of the North Dakota Century Code is amended and reenacted as follows:


1. The state board of agricultural research and education consists of:
   a. The president of North Dakota state university or the president's designee;
   b. The vice president of agricultural affairs at North Dakota state university, who serves in an ex officio nonvoting capacity;
   c. The administrator of the agricultural experiment station, who serves in an ex officio nonvoting capacity;
   d. The five persons appointed to the agricultural consultation board by the ag coalition;
   e. The five persons appointed to the agricultural consultation board by the extension service's multicounty program units;
   f. The agriculture commissioner, who serves in an ex officio nonvoting capacity;
   g. The director of the North Dakota state university extension service, who serves in an ex officio nonvoting capacity; and
   h. Two members of the legislative assembly appointed by the chairman of the legislative management. The chairman shall appoint one member from each political faction. The terms of members are for two years; and members may be
reappointed. The legislative council shall pay the compensation and expense reimbursement for the legislative members.

2. a. The initial five members appointed by the ag coalition shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.

b. The initial five members appointed by the extension service’s multicounty program units shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.

3. At the completion of each initial term, the term of office for each member is four years, beginning on July first. An individual may be reappointed to a second four-year term.

4. a. At least ninety days before the term of a member appointed by the ag coalition expires, the ag coalition shall provide to the state board of higher education a list of one or more names from which the state board of higher education shall appoint a successor. The state board of higher education shall ensure that four out of the five seats are held by agricultural producers.

b. At least ninety days before the term of a member appointed by the extension service’s multicounty program units expires, the units through their advisory groups shall provide to the state board of higher education a list of one or more names from which the state board of higher education shall appoint a successor. The state board of higher education shall ensure that four out of the five seats are held by agricultural producers.

5. If an appointed position becomes vacant, the vacancy must be filled for the unexpired portion of the term in the same manner as the initial appointment except that the ninety-day requirement is waived. An individual appointed under this subsection is eligible to serve two full terms after completing the unexpired term for which the individual was appointed.

SECTION 15. AMENDMENT. Section 4-05.1-17 of the North Dakota Century Code is amended and reenacted as follows:

Each appointed member of the state board of agricultural research and education is entitled to receive one hundred thirty-five dollars per day as compensation for the time actually spent devoted to the duties of office and is entitled to receive necessary expenses in the same manner and amounts as state officials for attending meetings and performing other functions of office.

SECTION 16. AMENDMENT. Section 4-05.1-18 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-18. State board of agricultural research and education - Chairman - Meetings.

The state board of agricultural research and education annually shall elect one of its members annually to serve as chairman. The board shall meet at the times and locations designated by the chairman in consultation with the vice president of agricultural affairs at North Dakota state university.

SECTION 17. AMENDMENT. Section 4-05.1-19 of the North Dakota Century Code is amended and reenacted as follows:


Within the policies of the state board of higher education, the state board of agricultural research and education is responsible for budgeting and policymaking associated with the agricultural experiment station and the North Dakota state university extension service. The state board of agricultural research and education shall:

1. Determine the causes of any adverse economic impacts on crops and livestock produced in this state;

2. Develop ongoing strategies for the provision of research solutions and resources to negate adverse economic impacts on crops and livestock produced in this state;

3. Develop ongoing strategies for the dissemination of research information through the extension service;

4. Implement the strategies developed under subsections 2 and 3, subject to approval by the state board of higher education;

5. Develop, with the agricultural experiment station and the North Dakota state university extension service, an annual budget for the operations of these entities;
Sixty-fifth
Legislative Assembly

6. Develop a biennial budget request based on its prioritized needs list and submit that request to the president of North Dakota state university and the state board of higher education, and forward its prioritized needs list and request without modification to the office of management and budget and the appropriations committees of the legislative assembly;

7. Maximize the use of existing financial resources, equipment, and facilities to generate the greatest economic benefit from research and extension efforts and to promote efficiency;

8. Annually evaluate the results of research and extension activities and expenditures and report the findings to the legislative management and the state board of higher education;

9. Advise the president of North Dakota state university regarding the recruitment, selection, and performance of the vice president of agricultural affairs, the extension service director, and the station director; and

10. Present a status report to the budget section of the legislative management.

NOTE: Subsection 10 provides no guidance on how often the status report is to be presented. The reports have been provided since 1997 on a biennial basis.

SECTION 18. AMENDMENT. Section 4-05.1-20 of the North Dakota Century Code is amended and reenacted as follows:


The agricultural research fund is a special fund in the state treasury. The moneys in the fund must be expended for purposes of agricultural research and education. Any interest earned by the fund must be returned to the fund.

NOTE: Language has been adjusted to match current practice.

SECTION 19. AMENDMENT. Section 4-05.1-21 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-2415-12.1-19. State board of agricultural research and education - Apportionment of research funds.

1. The state board of agricultural research and education may use up to ten percent of the proceeds of the agricultural research fund, not to exceed fifty thousand
Sixty-fifth
Legislative Assembly

dollars per year, for administrative expenses and annually shall apportion the
remaining proceeds of the agricultural research fund as follows:

NOTE: Language has been adjusted to match current practice.

a. Seventy percent to research activities affecting North Dakota agricultural
commodities that account for at least two percent of the gross sales of all
agricultural commodities grown or produced in the state. The percentage of the
dollars available for each agricultural commodity under this section may not
exceed the percentage that the gross sales of the agricultural commodity bear to
the North Dakota gross sales of all agricultural commodities grown or produced
during the previous year, as determined by the agricultural statistics service;

b. Eighteen percent to research activities affecting North Dakota animal agriculture;

and

c. Twelve percent to research activities affecting new and emerging crops in North
Dakota.

2. The state board of agricultural research and education shall solicit proposals for
research from the public and private sectors and shall appoint committees to review
the proposals and award the agricultural research grants on a competitive basis. Each
committee must consist of a majority of agricultural producers selected in consultation
with the agricultural commodity groups representing commodities that are the subjects
of the proposed research and may include researchers and other individuals
knowledgeable about the proposed area of research. Whenever possible, the
committees shall require that a grant recipient commit matching funds.

3. The state board of agricultural research and education shall develop policies regarding
the award of research grants, including requirements for matching funds, cooperation
with other in-state and out-of-state researchers, and coordination with other in-state
and out-of-state proposed or ongoing research projects.
A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

4-36-01. Declaration of intent.

It is hereby found and declared that:

1. The high cost as well as the lack of availability of agricultural loans for farmers with the resultant decreases in crop, livestock, and business productivity and inability on the part of farmers to acquire agricultural equipment and machinery, livestock, and real estate jeopardizes the continued existence of family-owned agricultural enterprises and lessens the supply of agricultural commodities available to fulfill the needs of the citizens of this state.

2. As a result of the continuing increase in the costs of maintaining operations, including costs of construction and rehabilitation, maintenance and repair expenses, and the cost of real estate, the state suffers from structural economic weaknesses which contribute to a decline in the operation and maintenance of agricultural enterprises and the capital investment therein.

3. The reduction in family-owned agricultural enterprises results in an insufficiency of gainful employment in rural areas and adds additional pressure on the state's welfare, public health, and crime prevention programs and increases the cost of unemployment compensation to the existing enterprises of the state.

NOTE: Statements of legislative policy, purpose, and intent within the North Dakota Century Code are strongly discouraged. Such statements may be used for a purpose unintended by the drafter and the Legislative Assembly.
SECTION 2. AMENDMENT. Section 4-36-02 of the North Dakota Century Code is amended and reenacted as follows:

4-36-02. Legislative findings—Need for agricultural loan financing—How accomplished.

There exists in this state an inadequate supply of, and a pressing need for, farm credit and agricultural loan financing at interest rates which are consistent with the needs of farmers.

The problems set forth in section 4-36-01 and this section cannot alone be remedied through the operation of private enterprise or individual communities or both, but can be alleviated through governmental action designed to encourage the investment of private capital in the agricultural sector through the use of financing as provided in this chapter for the purpose of making loans available at interest rates lower than those available in the conventional farm credit markets.

Alleviating the conditions and problems, set forth in section 4-36-01 and this section by the encouragement of private investment through a financing as provided in this chapter, is a public purpose and use for which public money provided by the sale of revenue bonds may be borrowed, expended, advanced, and loaned. Such activities must not be conducted for profit.

Such activities are proper governmental functions and can best be accomplished by the industrial commission of North Dakota. The necessity for the provisions of this chapter to protect the health, safety, morals, and general welfare of all the people of this state is hereby declared as a matter of legislative determination. The industrial commission of North Dakota under this chapter shall make financing available for farmers to meet the credit needs which private industry is unable to serve.

NOTE: This is another statement of legislative policy, purpose, and intent that is strongly discouraged. The language included in the final sentence of this section has been moved to Section 4 of this bill draft.

SECTION 3. AMENDMENT. Section 4-36-03 of the North Dakota Century Code is amended and reenacted as follows:

4-36-036-09.19-01. Terms defined. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Agriculture or agricultural enterprise" includes the real:
   a. Real and personal property constituting farms, ranches, and other agricultural commodity producers; agriculturally
Sixty-fifth
Legislative Assembly

1. b. Agriculturally related businesses; agriculturally
2. c. Agriculturally related sewage, liquid and solid waste collection, disposal, treatment, and drainage services, and facilities; agriculturally
3. d. Agriculturally related antipollution and air, water, ground, and subsurface pollution abatement and control facilities and services; agriculturally
4. e. Agriculturally related permanent soil and water conservation projects; including the installation of tiling for drainage, planting of perennial grasses, legumes, shrubs, or trees; the establishment of grassed waterways and the construction of terraces, or any other permanent soil and water conservation practice approved by the local soil conservation or water resource district; and

f. Conservation farm equipment or any type of no-till or minimum-till machinery and equipment.

2. "Bonds" means includes any bonds, notes, debentures, interim certificates, bond, grant and revenue anticipation notes, or any other evidence of indebtedness.

NOTE: It is pointless to define bonds as bonds (especially twice). It appears what is intended is to include within references to bonds any other evidence of indebtedness.

3. "Commission" means the industrial commission of North Dakota created pursuant to section 54-17-01.

4. "Contracting party" means any party to a lease, sales contract, or loan agreement except the commission.

5. "Lender" means any federal or state-chartered bank, federal land bank, production credit association, bank for cooperatives, savings and loan association, building and loan association, small business investment company, or any other institution qualified within the state to originate and service loans, including insurance companies, credit unions, and mortgage loan companies.

6. "Loan insurer" and/or "loan guarantor" means means an agency, department, administration, or instrumentality, corporate or otherwise, of or in the department of housing and urban development, the farmers home administration of the department of agriculture, or the veterans administration of the United States, or any private mortgage insurance company, or any other public or private agency which insures or guarantees loans.
7. "Operating loan" means an operating loan as defined under section 6-09.9-02.
8. "State" means the state of North Dakota.

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


The commission is hereby granted all powers necessary or appropriate to carry out and effectuate the purposes of this chapter, including the following:

1. Make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter.
2. Employ and compensate architects, engineers, attorneys, inspectors, accountants, agricultural and financial experts, and such other advisors, consultants, and agents as may be necessary in its judgment, and to fix their compensation.
3. Borrow money and issue bonds as provided by this chapter.
4. Procure insurance or guarantees from any public or private entities, including any department, agency, or instrumentality of the United States, for payment of any bonds issued by the commission under this chapter, including the power to pay premiums on any such insurance.
5. Receive and accept from any source, aid or contributions of money, property, labor, or other things of value, including gifts or grants from any department, agency, or instrumentality of the United States, to be held, used and applied to carry out the purposes of this chapter subject to the conditions upon which the grants or contributions are made, including gifts or grants from any department, agency, or instrumentality of the United States for any purpose consistent with the provisions of this chapter.
6. Enter into agreements with any department, agency, or instrumentality of the United States or this state or with lenders, and enter into loan agreements with contracting parties for the purpose of planning, regulating, and providing for the financing and refinancing of any agricultural enterprise or an operating loan.
7. Enter into contracts or agreements with lenders for the servicing and processing of loans.
8. To the extent permitted under its contract with the holders of bonds of the commission, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease, or agreement of any kind to which the commission is a party.

9. To the extent permitted under its contract with the holders of bonds of the commission, enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States or of this state, the reduction can be made without jeopardizing the economic stability of the agricultural enterprise being financed.

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

4-36-056-09.19-03. Commission - Duties enumerated.

The commission shall:

1. Invest proceeds and funds obtained from bonds issued under this chapter and any funds obtained therefrom which are not needed for immediate disbursement, including any funds held in reserve, in direct and general obligations of the United States, obligations issued by agencies of the United States, any obligations issued by the United States or agencies thereof, obligations of this state, or any obligations or securities that may from time to time be legally purchased by governmental subdivisions of this state, including the unsecured promissory notes of national banking associations having the highest investment rating.

2. Collect fees and charges, as the commission determines to be reasonable, in connection with its loans, advances, insurance, commitments, and servicing.

3. Sell, at public or private sale, with or without public bidding, any loan or other obligation held by the commission.
4. To do any act necessary or convenient to the exercise of the powers granted or implied by this chapter or reasonably implied from it.

5. Make financing available for farmers to meet the credit needs that private industry is unable to serve.

SECTION 6. AMENDMENT. Section 4-36-06 of the North Dakota Century Code is amended and reenacted as follows:


The commission may make, and undertake commitments to make, loans or loan commitments to lenders under terms and conditions requiring that require the loan proceeds thereof to be used by such the lenders to make operating loans and loans for agricultural enterprises. Loan commitments or actual loans shall Loans or loan commitments must be originated through and serviced by any a bank, trust company, savings and loan association, mortgage banker, or other financial institution authorized to transact business in this state.

SECTION 7. AMENDMENT. Section 4-36-07 of the North Dakota Century Code is amended and reenacted as follows:

4-36-076-09.19-05. Commission - Invest in, purchase, or assign loans - Conditions.

The commission may invest in, purchase, or make commitments to take assignments of; operating loans and loans made by lenders for the construction, rehabilitation, or purchase of agricultural enterprises. No loan is not eligible for investment in, purchase, or assignment by the commission if the loan was made more than six months prior to the date of the potential investment, purchase, or assignment by the commission.

SECTION 8. AMENDMENT. Section 4-36-08 of the North Dakota Century Code is amended and reenacted as follows:

4-36-086-09.19-06. Commission - Lender's requirements.

Prior to exercising any of the powers authorized in sections 4-36-066-09.19-04 and 4-36-076-09.19-05, the commission shall require the lender to certify and agree that:

1. The loan is, or if the same has not been made will, at the time of making, be in all respects a prudent investment; and

2. Such the lender will use the proceeds of such the loan, investment, sale, or assignment within a reasonable period of time to make loans or purchase operating loans or loans to provide agricultural enterprises, or, if such the lender has made a
Sixty-fifth
Legislative Assembly

commitment to make operating loans or loans to provide agricultural enterprises on
the basis of a commitment from the commission to purchase such loans, such the
lender will make such loans and sell the same loans to the commission within a
reasonable period of time.

SECTION 9. AMENDMENT. Section 4-36-09 of the North Dakota Century Code is amended
and reenacted as follows:

4-36-096-09.19-07. Commission - Optional requirements enumerated.
Prior to exercising any of the powers conferred authorized by sections 4-36-066-09.19-04,
and 4-36-076-09.19-05, the commission may, but is not obligated to:

1. Require that the loan involved be insured by a loan insurer or be guaranteed by a loan
   guarantor;
2. Require any type of security that it the commission deems reasonable and necessary;
   or
3. Authorize the reservation of funds by lenders in such amounts and subject to
   such conditions as the commission considers deemed reasonable and necessary by
   the commission.

SECTION 10. AMENDMENT. Section 4-36-10 of the North Dakota Century Code is
amended and reenacted as follows:

4-36-106-09.19-08. Commission - Borrow money and issue bonds - Purposes.
The commission has the power to may borrow money and to issue from time to time its
bonds in such principal amounts as the commission determines is deems necessary to provide
sufficient funds to carry out its purposes under this chapter to include:

1. Carrying Carry out the additional powers of sections 4-36-066-09.19-04 and
   4-36-096-09.19-07.
2. The payment of Pay interest on bonds of the commission issued under this chapter.
3. The establishment of Establish reserves to secure the bonds issued under this chapter.
4. All Pay all other necessary and convenient expenditures of the commission incident to
   necessary and convenient, to carry out its purposes and powers under this chapter.

SECTION 11. AMENDMENT. Section 4-36-11 of the North Dakota Century Code is
amended and reenacted as follows:
4-36-116-09.19-09. Commission - Issue bonds to renew, pay, or refund bonds.

1. The commission has the power to issue from time to time may:

   a. Issue bonds to renew or to pay bonds, and their interest, issued under this chapter, including the interest thereon, and whenever it deems refunding expedient, to refund;

   b. Refund any bonds issued under this chapter, when the commission deems refunding expedient, by the issuance of new bonds, regardless of whether the bonds to be refunded have or have not matured, and to issue; and

   c. Issue bonds partly to refund outstanding bonds and partly for any other purposes permitted under this chapter.

2. The refunding bonds may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded, or exchanged for the bonds to be refunded.

SECTION 12. AMENDMENT. Section 4-36-12 of the North Dakota Century Code is amended and reenacted as follows:


   Bonds Any bond issued under this chapter shall not beare payable only from nor charged-upon any funds other than the revenues specifically pledged to the payment thereof, nor is theof the bond. The commission is not subject to any liability thereon for any bond issued under this chapter. Such The bonds do not constitute a charge, lien, or encumbrance, legal or equitable, upon any commission property of the commission, except those whole or partial agricultural enterprises, or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purposes of this chapter. The bonds may be additionally secured by a pledge of any grant, contribution, or guarantee from the federal government, the state, or any corporation, limited liability company, association, institution, or person.

   NOTE: Under Section 1-01-49, which applies to the entire Century Code, "Person" means an individual, organization, government, political subdivision, or government agency or instrumentality.

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

Bonds issued by the commission under this chapter do not constitute a debt, liability, or general obligation of this state or any political subdivision thereof, or a pledge of the faith and credit of this state or any political subdivision thereof, but are payable solely as provided by section 4-36-126-09.19-10. Each bond issued under this chapter shall contain on the face thereof a statement that neither the following are pledged to the payment of the principal or the interest on the bond:

1. The faith and credit nor the taxing power of this state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bond; or

2. The taxing power of this state or any political subdivision.

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


1. A bond under this chapter must be authorized by a resolution of the commission, shall. A bond must bear such the date or dates of authorization, the interest rate or rates, including variations of the rates, and shall mature at such the time or times as such resolution may provide, except that not provided in the resolution. A bond must be in denominations, be in either coupon or registered form, carry registration privileges, be executed in a manner, be payable in a medium of payment, at a place or places, and be subject to terms of redemption, including redemption prior to maturity, as provided in the resolution. A resolution of the commission authorizing a bond must provide:

a. That a bond may not mature more than thirty years from the date of its issue, as the resolution shall provide. The bonds shall bear;

b. The interest at such rate or rates of the bond, including variations of such the rates, in such;

c. The denominations, in such of the bond;

d. The form of the bond, either coupon or registered, in such;

e. The registration privileges, be executed in such;

f. The manner, be payable in such in which the bond is to be executed;
Sixty-fifth
Legislative Assembly

1. The medium of payment, at such of the bond;
2. The place or places, and be subject to such where the bond may be redeemed;
   and
3. The terms of redemption, including redemption prior to maturity, as such resolution may provide.
4. The provisions of other state laws relating to the issuance of revenue bonds do not apply to bonds issued by the commission under this chapter. Bonds of the commission issued under this chapter may be sold by the commission at public or private sale, and at such a price or prices as the commission shall determine determined by the commission.

SECTION 15. AMENDMENT. Section 4-36-15 of the North Dakota Century Code is amended and reenacted as follows:


Any resolution authorizing the issuance of bonds under this chapter may contain specify provisions, which shall that must be a part of the contract or contracts with the holders of such the bonds, as to including:

1. The setting aside, regulation, and disposition of reservesfunds or sinking funds and the regulation and disposition thereof.
2. Limitations on the purposestowhichhow the proceeds from the sale of bonds may be applied and limitations on pledging the proceeds to secure the payment of the bonds.
3. Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.
4. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto amend or abrogate the contract, and the manner in which the consent may be given.
5. Limitations on the amount of money to be expended by the commission for operating expenses of the commission.
6. Vesting in a trustee or trustees such property, rights, powers, and duties in trust as determined by the commission may determine, and limiting or abrogating the right of
bondholders to appoint a trustee or limiting the rights, powers, and duties of the 
trustee.

7. Defining the acts or omissions to act which constitute a default and the obligations or 
duties of the commission to the holders of the bonds; and providing for the rights and 
remedies of the holders of the bonds in the event of default, including as a matter of 
right the appointment of a receiver; but the rights and remedies must not be 
inconsistent with the general laws of this state and other provisions of this chapter.

NOTE: The "provisions of this chapter" are "laws of this state."

8. Any other matter, of like or different character, which that in any way affects the 
security or protection of the holders of the bonds.

SECTION 16. AMENDMENT. Section 4-36-16 of the North Dakota Century Code is 
amended and reenacted as follows:

Any pledge made by the commission is valid and binding from the time the pledge is made. 
The revenue, money, or properties so pledged and thereafter subsequently received by the 
commission are immediately subject to the lien of such the pledge without any physical delivery 
thereof or further act, and the lien of any such pledge is valid and binding as against all 
parties any party having claims of any kind in tort, contract, or otherwise against the 
commission, irrespective of whether the parties have notice thereof of the pledge. Neither 
the resolution nor or any other instrument by which a pledge is created need be is not 
required to be recorded.

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

The commission, subject to any existing agreements with bondholders as may then 
extist, has the power to may purchase bonds issued by it hereunder out of any funds available 
therefor to the commission, which must thereupon subsequently be canceled, at any reasonable 
price which, if the bonds are then redeemable, may not exceed the redemption price 
then currently applicable plus accrued interest to the next interest payment thereon of the bond.

SECTION 18. AMENDMENT. Section 4-36-18 of the North Dakota Century Code is 
amended and reenacted as follows:
4-36-186-09.19-16. Bonds secured by trust indenture - Contents - Expenses how treated.

The bonds issued under this chapter may be secured by a trust indenture by and between the commission and a corporate trustee which may be any bank having the power of a trust company or any trust company within or without the state. Such a trust indenture may contain such reasonable provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the commission in relation to the exercise of its powers and the custody, safekeeping, and application of all money. The commission may provide by the trust indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the commission may determine.

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


Whether or not the all bonds issued under this chapter are in the form and character of negotiable instruments, such bonds are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

SECTION 20. AMENDMENT. Section 4-36-20 of the North Dakota Century Code is amended and reenacted as follows:

4-36-206-09.19-18. Bonds - Signatures of prior members or officers - Validity.

In the event that if any of the members or officers of the commission cease to be members or officers of the commission prior to the delivery of any bonds or coupons signed by them bearing their signatures, their signatures or facsimiles thereof are nevertheless remain valid and sufficient for all purposes, the same as if such members or officers had remained in office until such delivery.

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

Neither the members of the commission nor any other person executing the bonds issued under this chapter is not subject to personal liability or accountability by reason of the issuance thereof of those bonds.

SECTION 22. AMENDMENT. Section 4-36-22 of the North Dakota Century Code is amended and reenacted as follows:

4-36-226-09.19-20. Funds created.

The commission may create and establish such any funds and accounts as may be necessary or desirable for carrying out the purposes of this chapter.

SECTION 23. AMENDMENT. Section 4-36-23 of the North Dakota Century Code is amended and reenacted as follows:


The state does hereby pledge to and agree with the holder of any bonds issued under this chapter that the state will not limit or alter the rights vested in the commission to fulfill the terms of any agreements made with the holders thereof of bonds or in any way impair the rights or remedies of the holders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The commission is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds.

NOTE: This section appears to be unnecessary. Article X, Section 13, of the Constitution of North Dakota provides in part "Every law authorizing a bond issue shall provide for levying an annual tax, or make other provision, sufficient to pay the interest semiannually, and the principal within thirty years from the date of the issue of such bonds and shall specially appropriate the proceeds of such tax, or of such other provisions to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid."

SECTION 24. AMENDMENT. Section 4-36-24 of the North Dakota Century Code is amended and reenacted as follows:
Sixty-fifth
Legislative Assembly

4-36-246-09.19-22. Bank of North Dakota - Authorization to exercise administrative
powers - Payment of commission expenses - Reimbursement - Liability of state or
political subdivision.

The commission may delegate to the Bank of North Dakota, and the Bank of North Dakota
is hereby authorized to exercise, all administrative powers granted to the commission under
this chapter. The Bank of North Dakota is further authorized to advance from its funds the
amount necessary to permit the commission to issue bonds under this chapter which, The
advanced funds must be refunded to the Bank of North Dakota by the commission upon
issuance of said bonds. Thereafter, all subsequent expenses incurred by the commission
in carrying out the provisions of this chapter must be payable solely from funds provided under
this chapter, and nothing in this chapter may not be construed to authorize the commission
to incur indebtedness or liability on behalf of or payable by this state or any political
subdivision thereof.

SECTION 25. AMENDMENT. Section 4-36-25 of the North Dakota Century Code is
amended and reenacted as follows:

4-36-256-09.19-23. Commission - Bonds exempt from taxation - Exception.

All bonds issued under this chapter, their interest payable thereon and their income derived
therefrom except inheritance, estate, and transfer taxes, are at all times exempt from all taxes
imposed by this state, any county, any city, or any other political subdivision of this state. Bonds-
may be Interest on bonds issued under this chapter whereby the interest on the bonds is subject
to federal income taxation.

SECTION 26. AMENDMENT. Section 4-36-26 of the North Dakota Century Code is
amended and reenacted as follows:


The bonds issued by and under the authority of this chapter by the commission are legal
investments in which all public officers or public bodies of this state, its political subdivisions, all
municipalities and municipal subdivisions, all banks, bankers, banking associations, trust
companies, savings associations, including savings and loan associations, investment
companies, and other persons carrying on a banking business, all administrators, guardians,
executors, trustees, and other fiduciaries, and all other persons who are now or may later be
authorized to invest in bonds or in other obligations of this state, may invest funds, including
capital, in their control or belonging to them. The bonds are authorized securities which may be
deposited with and received by all public officers and bodies of this state or any agency or
political subdivision of this state and all municipalities and public corporations for any purpose
for which the deposit of bonds or other obligations of this state is now or may be later
authorized by law.

SECTION 27. AMENDMENT. Section 4-36-27 of the North Dakota Century Code is
amended and reenacted as follows:

4-36-276-09.19-25. Chapter - How construed.

Neither this chapter nor anything contained in this chapter is or shall may not be
construed as a restriction or limitation upon any commission powers which the commission
might otherwise have authorized under any other law of this state, and this chapter is cumulative
to such powers. This chapter does and must be construed to provide a complete, additional,
and alternative method for the doing of the things exercising the powers and duties of the
commission authorized under law and must be regarded as supplemental and additional to
powers conferred by any other laws. The issuance of bonds under the provisions of this chapter
need is not required to comply with the requirements of any other state laws applicable to the
issuance of bonds, notes, and other obligations. No proceedings, notice, or approval
isProceedings, notices, or approvals are not required for the issuance of any bonds or any
instrument or the security thereof of any bond or instrument, except as provided in this chapter.
All agricultural enterprises for which funds are advanced, loaned, or otherwise provided by the
commission under this chapter must be in compliance with any land use, zoning, subdivision,
and other laws of this state applicable to the land upon which such the enterprise is located or is
to be constructed.

SECTION 28. AMENDMENT. Section 4-43-01 of the North Dakota Century Code is
amended and reenacted as follows:

4-43-046-09.18-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Bank" means the Bank of North Dakota.

2. "Bonds" means revenue bonds, any notes, debentures, interim certificates, grant and
   revenue anticipation notes, or other evidence of indebtedness issued by the
   commission under this chapter.
Sixty-fifth
Legislative Assembly

3. "Commission" means the industrial commission.

NOTE: The definition of bonds was amended to be consistent with the definitions in the preceding definition section of this draft.

SECTION 29. AMENDMENT. Section 4-43-02 of the North Dakota Century Code is amended and reenacted as follows:

4-43-026-09.18-02. Powers.

The commission may:

1. Contract for the performance of its duties and functions under this chapter.

2. Sue and be sued.

3. Borrow money through the issuance and sale of bonds as provided under this chapter.

4. Invest proceeds of its bonds not required for immediate disbursement, including any reserve funds, in securities the commission determines to be prudent by the commission, subject to any agreements with the holders of the commission's bonds.

5. Procure insurance, a guaranty, or a letter of credit for the payment of its bonds, including the payment of premiums or other fees, from any public or private entity.

6. Make loans to persons establishing meatpacking plants in this state through the loan program provided for under this chapter and charge the borrowers fees approved by the commission.

7. Prescribe and approve the forms and procedures for loan applications under this chapter by persons establishing a meatpacking plant in this state.

8. Prescribe the terms and conditions of loans to be made under this chapter.

9. Consent to any changes in the terms or provisions of its bonds, or of any other contract to which the commission is a party, subject to any contracts with the holders of the commission's bonds.

10. Purchase bonds issued under this chapter out of any funds available to the commission for the purpose of purchasing bonds and not pledged to or necessary for some other purpose, and hold, cancel, or sell the bonds, subject to any contracts with its bondholders.

SECTION 30. AMENDMENT. Section 4-43-03 of the North Dakota Century Code is amended and reenacted as follows:
Sixty-fifth
Legislative Assembly

4-43-036-09.18-03. Bank of North Dakota.

The commission may delegate to the Bank, and the Bank is authorized to may exercise, all administrative powers granted to the commission under this chapter, including processing and reviewing applications for, and closing and servicing loans made to, persons establishing meatpacking plants in this state.

SECTION 31. AMENDMENT. Section 4-43-04 of the North Dakota Century Code is amended and reenacted as follows:

4-43-046-09.18-04. Issuance and sale of bonds - Use of bond proceeds.

The commission may issue its bonds in such any principal amounts as deemed necessary by the commission determines is necessary to provide sufficient funds to perform its powers under this chapter. The proceeds may not be used for any purpose other than to make loans, pay the costs of bond issuance, pay accrued or capitalized interest or capitalized principal, and provide any reasonably required reserve funds. The bonds must be authorized by resolution of the commission and must bear such the date, mature at such the times, bear interest at such the rates, be in such the denominations, be payable from such the sources, and be subject to such the terms of redemption as may be provided by the resolution. The bonds may be sold by the commission at public or private sale at the times and at the prices allowed by the commission. The commission may provide for refunding or refinancing of the bonds.

SECTION 32. AMENDMENT. Section 4-43-05 of the North Dakota Century Code is amended and reenacted as follows:

4-43-056-09.18-05. Agreement with bondholders.

Any resolution of the commission authorizing the issuance of bonds under this chapter may contain contractual provisions:

1. Setting aside of reserves reserve funds or sinking funds.
2. Limiting the purposes to which the proceeds from the sale of bonds may be applied and limiting the pledging of the proceeds to secure the payment of the bonds.
3. Limiting the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.
4. Providing the any procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of
which must consent to such amendment or abrogation, and the manner in which the consent may be given.

5. Vesting in a trustee such property, rights, powers, and duties in trust as the commission may determine, and limiting or abrogating the right of bondholders to appoint a trustee, or limiting the rights, powers, and duties of the trustee.

6. Defining the acts or omissions, which constitute a default of the obligations and duties of the commission to the bondholders, and providing for the rights and remedies of the bondholders in the event of a default, provided that the rights and remedies must be consistent with the laws of this state.

7. Including any other matter that affects the security or protection of the bondholders.

SECTION 33. AMENDMENT. Section 4-43-06 of the North Dakota Century Code is amended and reenacted as follows:

4-43-066-09.18-06. Reserve fund.

1. The commission shall establish and maintain a reserve fund for bonds issued under this chapter. The commission shall deposit in the reserve fund:
   a. All bond proceeds required to be deposited in the reserve fund by the terms of any contract between the commission and the bondholders or by the terms of any resolution of the commission concerning the use of bond proceeds.
   b. All moneys made available to the commission for deposit in the reserve fund.

2. Moneys in the reserve fund may not be used for any purpose other than to make payments of the principal and interest on bonds, including any premium required to be paid when bonds are redeemed prior to maturity, and sinking fund installments as they become due and payable.

3. Moneys in the reserve fund may be withdrawn in accordance with the terms of any contract between the commission and the bondholders or any resolution of the commission concerning the use of bond proceeds.

SECTION 34. AMENDMENT. Section 4-43-07 of the North Dakota Century Code is amended and reenacted as follows:

4-43-076-09.18-07. Exemption from state and local taxes.

All bonds issued under this chapter and the interest and income payable to and received by bondholders are exempt from taxation by the state or any political subdivision of the state.
SECTION 35. AMENDMENT. Section 4-43-08 of the North Dakota Century Code is amended and reenacted as follows:

4-43-096-09.18-08. Payment of bonds.

Bonds issued under this chapter by the commission are not obligations or debts of the state, and are payable solely from revenues or other funds available to the commission under this chapter. The bonds do not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the commission or the Bank, other than the revenues and property pledged under this chapter. Each bond issued under this chapter must contain a statement that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or interest on the bond.

SECTION 36. AMENDMENT. Section 4-43-09 of the North Dakota Century Code is amended and reenacted as follows:

4-43-096-09.18-09. Legal investments.

Bonds issued under this chapter by the commission are legal investments in which all public officers or public bodies of the state, its political subdivisions, and all banks organized under the laws of the state and engaged in the business of banking may invest funds.

SECTION 37. AMENDMENT. Section 4-43-10 of the North Dakota Century Code is amended and reenacted as follows:

4-43-106-09.18-10. Validity.

Bonds issued under this chapter must be executed by a member of the commission or by facsimile signature and the manual signature of an authenticating agent. Any bond bearing the signature of a member of the commission in office on the date of execution is valid for all purposes for which it was issued. After issuance, all bonds issued under this chapter by the commission are conclusively presumed to be fully authorized and issued under the laws of the state, and any person is estopped from questioning their authorization, issuance, execution, sale, or delivery by the commission.
A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14-01 of the North Dakota Century Code is amended and reenacted as follows:

4-14-014.1-29-01. Definitions.

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

1. "Bona fide competitor" is deemed to mean a duly licensed dealer in any farm product maintaining a place of business in the same trade territory.

2. "Farm products" means butter, milk, cream, butterfat, cheese, and other dairy products, honey, eggs, poultry, and grain.

3. "Person" means an individual, firm, copartnership, corporation, limited liability company, or association.

NOTE: Section 1-01-49 provides for the entire Century Code "Person" means an individual, organization, government, political subdivision, or government agency or instrumentality. Consideration should be given to a broader definition in this section to cover business associations not listed.

SECTION 2. AMENDMENT. Section 4-14-02 of the North Dakota Century Code is amended and reenacted as follows:

4-14-024.1-29-02. Unfair discrimination - Exception.

1. Any person is guilty of unfair discrimination if:

   a. The person is engaged in the business of buying farm products for manufacture or sale who discriminates; and

   b. The person discriminates between different sections, localities, communities, or cities, of this state, by purchasing farm products at a higher price or rate in one locality than is paid for such products of the same kind, quality, and grade by
such a person in another section, locality, community, or city, or than is paid to another person of the same community, after making due allowance for the difference, if any, in the actual cost of transportation paid from the locality of purchase to the locality of manufacture or sale, is guilty of unfair discrimination.

2. It is not unfair discrimination for any person to pay in any section, locality, community, or city, a price equal to that actually paid on the same day by any bona fide competitor in such a section or locality for farm products of the same kind and grade if such the price is paid in a bona fide and good-faith effort to meet competition, and in such case, the burden of proving such facts is upon the defendant.

SECTION 3. AMENDMENT. Section 4-14-03 of the North Dakota Century Code is amended and reenacted as follows:

4-14-034.1-29-03. Different prices in purchase of agricultural products to be prima facie evidence.

Proof that any person has paid a higher price for any farm products in one section, locality, community, or city, than in another, or has paid another person a different price for the same kind and quality of product in the same community, after due allowance for the cost of transportation has been made, is prima facie evidence of a violation of this chapter.

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

4-14-044.1-29-04. Unfair discrimination in sale of farm products.

1. Any person doing is guilty of unfair discrimination if that person:
   a. Is engaged in the business in the state of North Dakota and engaged in of the manufacture, distribution, or sale of farm products who discriminates in this state;
   and
   b. Discriminates between or among different sections, communities, cities, or portions thereof in this state, by selling at a lower price or rate in one section, community, city, or portion thereof than is charged by such a person for such farm products in another section, community, city, or portion thereof, after making due allowance for the difference, if any, in the actual cost of transportation of such the products, is guilty of unfair discrimination. Proof of such a differential in price is prima facie evidence of a violation of this section in a civil action.
Sixty-fifth
Legislative Assembly

2. It is not unfair discrimination for any person to sell in any section, locality, community, or city, at a price equal to that actually charged on the same day by any bona fide competitor in such a section or locality for farm products of the same kind and grade if such the price is charged in a bona fide and good-faith effort to meet competition, and in such case, the burden of proving such facts is upon the defendant in a civil action.

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

4-14-054.1-29-05. Complaint of unfair discrimination - Investigation - Prosecution -

Duty of agriculture commissioner.

When a complaint is made to the agriculture commissioner or to the dairy commissioner that any person is guilty of unfair discrimination, either of them, the agriculture commissioner shall investigate the complaint, or either, The agriculture commissioner, upon that individual's own initiative, without the filing of a complaint, may investigate and ascertain whether this chapter has been violated, and in either event may subpoena, supervise, and control witnesses, administer oaths, and take testimony, the same as the district court. If, in the agriculture commissioner's opinion, sufficient evidence of a violation exists therefor, the agriculture commissioner may report the facts to the attorney general who shall prosecute an action in the name of this state in the proper court to annul the charter of any corporation or limited liability company violating the provisions of this chapter. If any corporation or limited liability company is adjudged by the courts to be guilty of unfair discrimination, the court may vacate the charter or revoke the authority of such corporation or limited liability company to do business in this state of North Dakota, and may enjoin the person permanently from transacting business in this state.

SECTION 6. AMENDMENT. Section 4-14-06 of the North Dakota Century Code is amended and reenacted as follows:

4-14-064.1-29-06. Enforcement of chapter.

The agriculture commissioner and the state dairy commissioner and their deputies, the agriculture commissioner's designee, assistants, and agents and the state's attorneys, sheriffs, and peace officers of the respective counties shall enforce the provisions of this chapter. The
Sixty-fifth
Legislative Assembly

authority extended to the agriculture commissioner and to the state dairy commissioner under this chapter must be considered as a duty of such officers only, and does not preclude any other prosecuting officer or any interested party from instituting proceedings, civil or criminal, for the enforcement of any of the provisions of this chapter.

SECTION 7. AMENDMENT. Section 4-14-07 of the North Dakota Century Code is amended and reenacted as follows:

4-14-07. Penalty.

Any person violating any provision of this chapter is guilty of a class A misdemeanor.

SECTION 8. AMENDMENT. Section 4-14-08 of the North Dakota Century Code is amended and reenacted as follows:

4-14-08. Remedies of chapter cumulative.

The remedies provided in this chapter are cumulative and not exclusive.

SECTION 9. AMENDMENT. Section 4-14-09 of the North Dakota Century Code is amended and reenacted as follows:

4-14-09. Unfair trade practices in the dairy industry.

1. As used in this section, the term "dairy products" includes milk, cream, butter, cheese, cheese food, ice cream, frozen desserts, ice milk, sherbet, and any other edible product manufactured or processed which has any of the preceding products as its principal ingredients.

2. Each of the practices described in this subsection is declared to be an unfair trade practice. It is unlawful for any person to be engaged in such unfair trade practices. It is an unfair trade practice for a person who is a dealer in or a vendor of dairy products, for sale to a retailer or who sells dairy products to any person for retail sale:

   a. Give or extend discounts on dairy products sold to retail outlets, except for standard printed public discounts which fairly represent cost savings which may be passed on to the consumer;

   b. Make payments of money, credit, gifts, or loans to retail outlets as rental for the storage or display of dairy products on the premises where they are offered for sale;
Sixty-fifth Legislative Assembly

c. Maintain or make repairs of any equipment owned by a retail outlet, except those used exclusively for dairy products, charging comparative, competitive commercial fees and charges for the service and parts; or

d. Give any gift of money, merchandise, services, or materials of any value to any retail outlet, except bona fide charities, except such other than services heretofore specifically permitted.

3. Nothing in this section may not be interpreted to prohibit the operation of a retail outlet by a person who is also a dealer in or a vendor of retail products for sale to a retailer or for retail sales, or to prohibit the use by that person in such retail outlet of any equipment or advertising or miscellaneous matter owned by that person provided that such retail outlet is under direct control and management of the dealer.

4. Nothing in this section may not be interpreted to prohibit the giving away distribution of merchandise without charge, to be consumed on the premises.

5. For the purpose of this section, any subsidiary or affiliate corporation, cooperative, officer, director, manager, governor, or partner of a corporation, a limited liability company, a cooperative, or partnership which is a dealer in or a vendor of dairy products is deemed to be a dealer in or vendor of dairy products.

SECTION 10. AMENDMENT. Section 4-14-10 of the North Dakota Century Code is amended and reenacted as follows:

4-14-104.1-29-10. Contracts void - Penalty.

All contracts and agreements made in violation of sections 4-14-094.1-29-09 through 4-14-144.1-29-11 are void. Any person who violates any of the provisions of sections 4-14-094.1-29-09 through 4-14-144.1-29-11 is guilty of a class B misdemeanor.

SECTION 11. AMENDMENT. Section 4-14-11 of the North Dakota Century Code is amended and reenacted as follows:

4-14-144.1-29-11. Enforcement of fair trade practices.

The attorney general is responsible for the enforcement of sections 4-14-094.1-29-09 through 4-14-144.1-29-11. Prosecution of violators of sections 4-14-094.1-29-09 through 4-14-11 is under the supervision of the state's attorney of the county in which the violation occurred.
A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

NOTE: The existing Chapter 4-37 is relatively compact and could be consolidated within a single section for placement within another chapter, perhaps the chapter covering powers and duties of the Agriculture Commissioner. This draft is prepared on that basis.

4-37-01. Agriculture in the classroom program.

1. Recognizing the need to promote and foster an understanding of the agricultural economy of the state of North Dakota and the values of rural lifestyles, an agriculture in the classroom program is established. The agriculture commissioner shall administer the agriculture in the classroom program with the advice of the agriculture in the classroom council.

4-37-02. Agriculture in the classroom council.

1. The agriculture in the classroom council consists of seven individuals. The agriculture commissioner shall appoint six council members. The seventh council member is the superintendent of public instruction or the superintendent's designee.

2. Annually, the council members may select one from among themselves to serve as the chairman.

3. The council shall meet at least twice each year, at the call of the chairman, for the purpose of providing advice to the agriculture commissioner regarding issues related to the agriculture in the classroom program.
4-37-03. Purpose – Powers and duties.

1. The agriculture commissioner may award grants and contract with any person for the provision of an agriculture in the classroom program, the development of agricultural curriculum activities applicable to students from kindergarten through grade twelve, and the training of teachers in agricultural curriculum activities.

2. The agriculture commissioner shall work with teachers, the superintendent of public instruction, the department of career and technical education, and the United States department of agriculture to provide and promote an agriculture in the classroom program.

NOTE: This provision is mostly duplication of subdivision a in the following subsection.

3. In addition to any other powers and duties set forth in this section, the agriculture commissioner may:
   a. Consult and work with the superintendent of public instruction, the department of career and technical education, the United States department of agriculture, and any other public or nonpublic entities to provide and promote an agriculture in the classroom program;
   b. Prepare instructional, informational, and reference publications on the North Dakota agricultural economy and rural lifestyles;
   c. Provide training programs for public school teachers in agricultural curriculum activities;
   d. Encourage research on and identification of new instructional, informational, and reference publications relating to this state's agricultural economy and rural lifestyles; and
   e. Monitor the quality and condition of the agriculture in the classroom program.

4-37-04. Gifts and grants.

5. The agriculture commissioner may accept and expend gifts, grants, and donations in support of the agriculture in the classroom program. If any gifts, grants, or donations are designated for a specific purpose, the commissioner shall honor the purpose provided the purpose is consistent with this chapter.

4-37-05. Expenses of council members.

6. Members of the agriculture in the classroom council may not receive any compensation for their services on the council, but are entitled to be reimbursed for
Sixty-fifth
Legislative Assembly

1 their expenses incurred in performing their duties in the amounts provided by law for
2 state employees.
3 **NOTE:** The subsections in the draft might be rearranged in more logical order but are
4 presented here in the order they fall in current law.