

CHAPTER 36-04 LIVESTOCK DEALERS

36-04-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the agriculture commissioner.
2. "Dealer" means any person, copartnership, association, corporation, or limited liability company engaged in the business of buying or dealing in horses, mules, cattle, hogs, goats, sheep, or wool from the producer, terminal market, or livestock auction market for resale, slaughter, or shipment within or without the state, and also resale in the local market.
3. "Department" means the department of agriculture.

36-04-02. Restrictions on application of provisions of chapter. The provisions of this chapter do not apply to:

1. Farmers who or farm associations which buy and sell farmed elk, livestock, poultry, or wool among themselves as producers.
2. Farmers who or farm associations which purchase farmed elk, livestock, or wool to complete a load of their own farmed elk, livestock, or wool for shipment to market if the amount so purchased does not exceed twenty-five percent of a truckload.
3. Cooperative farmed elk, livestock, or wool marketing associations of producers of farmed elk, livestock, or wool in their dealings with their members.
4. Livestock, including farmed elk, purchased by local butchers for slaughter or processing in their business for local home consumption.

36-04-03. Dealer's license required - Agent designation and licensure - Suitability for licensure - Liability of owner for agent's acts.

1. All dealers and agents must be licensed as provided in this chapter.
2. No agent may act for any dealer unless the dealer is licensed and has designated such agent to act in the dealer's behalf and has notified the department of the appointment in the dealer's application for a license or in a separate written instrument and requested the department to issue to such agent an agent's license in such form as may be prescribed by the commissioner and has signed a statement in substantially the following form:

I, the undersigned applicant for a North Dakota livestock dealer's license, understand that I am strictly responsible for and will be held strictly liable for all acts, omissions, or failures arising out of livestock dealings of the agents listed above, whether or not the dealings have been personally authorized by me.

3. No dealer may designate as an agent any person who has been denied a dealer's or agent's license or has had a dealer's or agent's license revoked for any reason or has otherwise acted in a manner which would be in violation of this chapter, except upon a determination by the commissioner that the person is sufficiently rehabilitated to serve the public as a dealer's agent and that the person does not owe any debt to any livestock seller or auction market. Conviction of an offense as defined by section 12.1-01-04 does not disqualify a person from licensure unless the commissioner determines that the offense has a direct bearing upon a person's

ability to serve the public as a dealer's agent or that the person is not at present sufficiently rehabilitated under section 12.1-33-02.1.

4. Agents may not deal in their own names or issue a check or any other commercial paper except in the name of their principals when acting as agents. A dealer is accountable and responsible for all the acts arising out of livestock dealings of a designated agent, whether authorized or unauthorized by the dealer.

36-04-04. Application for license - Contents - Refusal to license - Suspension and revocation.

1. Before entering into a business of a kind described in this chapter and annually, on or before July first, each dealer shall file an application for a license to transact such business with the department on a form prescribed by it. The application must show:
 - a. The nature of the business for which a license is desired and whether it is for the business of buying livestock or wool, or for both such businesses.
 - b. The name or names of the persons applying for the license.
 - c. The full name of each member thereof if the applicant is a firm, association, or partnership, the names of the officers thereof if the applicant is a corporation, or the names of the managers thereof if the applicant is a limited liability company.
 - d. The name of the agent or agents of the applicant.
 - e. The post-office address and the principal place of business of the applicant.
 - f. If the applicant is a foreign corporation, its principal place of business without this state, the name of the state in which it is incorporated, and that it has complied with the laws of this state relating to foreign corporations.
 - g. If the applicant is a foreign limited liability company, its principal place of business without this state, the name of the state in which it is organized, and that it has complied with the laws of this state relating to foreign limited liability companies.
 - h. Such other facts as the department may prescribe.
2. The commissioner shall refuse to issue or renew a license if the applicant:
 - a. Has not filed a surety bond in the form and amount required under the provisions of this chapter;
 - b. Has not satisfactorily demonstrated that the applicant's current assets exceed the applicant's current liabilities;
 - c. Has been found by the commissioner to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions; or
 - d. Has made or caused to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter.

Whenever the commissioner finds that any livestock dealer has violated the provisions of this subsection, the commissioner may suspend or refuse to issue or renew the license of such offender in the manner provided by law.

36-04-05. Dealer to file bond with department - Additional bond may be required.

Each applicant for a license under this chapter shall file with the application a bond issued by an approved surety company. The department must be named as the obligee in each bond but the bond will be held for the purpose of protecting and for the benefit of any person selling livestock or wool, as the case may be, to the licensed dealer or the dealer's agent. The bond must be conditioned for:

1. The faithful performance by the dealer and the dealer's designated agent of the duties as such;
2. The compliance by the dealer and the dealer's designated agent with all of the provisions of this code relating to the purchase of livestock or wool, as the case may be;
3. The full and complete payment to the seller for all livestock or wool purchased by the dealer or the dealer's designated agent; and
4. The full protection of any person who deals with the dealer or the dealer's designated agent.

Each bond must cover the license period of the dealer or such greater time as the commissioner may prescribe and must be approved as to amount, form, and sufficiency by the department. The minimum amount of bond is ten thousand dollars, and must be for any greater amount as may be determined by computing the amount of bond on the same basis as prescribed for dealers subject to the provisions of the Packers and Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.]. The department may demand an additional or increased bond whenever in its judgment the volume of business of the principal warrants such demand.

In lieu of the bond required of dealers under this section, the applicant may file with the department the dealer's bond filed by that applicant with the United States department of agriculture and in effect pursuant to the Packers and Stockyards Act, 1921, naming the commissioner as the trustee of such bond. Bonds from out-of-state applicants may be in favor of a trustee who is a financially responsible, disinterested person satisfactory to the commissioner. The minimum amount of such bond is ten thousand dollars, unless the department determines that the amount of such bond is insufficient in any instance, in which event the department shall require the reasonable amount of the bond required to protect the public interest.

36-04-05.1. Records release required with application for licensure. A dealer shall file, together with the license application, a release authorizing the access of the commissioner to financial records of the dealer held by financial institutions, accountants, and other sources. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing a dealer or in the course of an investigation of a dealer. Any information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to the attorney general, other state agencies, and any prosecuting officials requiring the information for use in pursuit of official duties.

36-04-06. Amount of bonds. Repealed by S.L. 1973, ch. 275, § 18.

36-04-07. Issuance of licenses - Fees - Term of license - Licenses not transferable. The department shall issue to each applicant who has complied with the provisions of this chapter a license of the kind applied for upon the payment by the applicant of fees as follows:

1. For a livestock dealer's license, fifty dollars.
2. For a wool dealer's license, ten dollars.

3. Penalty fee for any late applicant's application or late fee shall be five dollars per month after July first of any year.

Each license issued under the provisions of this chapter shall license the conduct of the business described therein at the place or places named in the application therefor, and shall expire on the thirtieth day of June next following the date of its issue, except that all licenses issued by the department pursuant to this chapter prior to July 1, 1977, shall be valid until June 30, 1978, and shall expire upon June 30, 1978. Licenses issued hereunder are not transferable between persons or places.

36-04-07.1. Notice - Nonsufficient funds checks. A dealer that receives a check for the sale of horses, mules, cattle, hogs, goats, sheep, or wool which is returned unpaid with a notation that the payment has been refused because of nonsufficient funds shall notify the commissioner within forty-eight hours after receipt of the check.

36-04-08. Transportation company or common carrier not to receive livestock or poultry for shipment from unlicensed dealer. Repealed by S.L. 1973, ch. 275, § 18.

36-04-09. Disposition of fees - Inspections. All fees collected by the department under the provisions of this chapter shall be credited to the general fund of the state treasury. The provisions of this chapter shall be enforced by the commissioner and the regular inspectors of the department.

36-04-09.1. Cease and desist authority. The commissioner may issue an order to cease and desist when, in the opinion of the commissioner, any person within the state is taking or planning any action which is or may be in violation of this chapter. If an order is granted, the commissioner shall conduct a hearing within thirty days of the issuance of the order to determine whether the actions of the person named in the order violated or would have violated this chapter. The commissioner shall, after the hearing but not later than forty-five days after the issuance of the order, revoke the order or make it permanent, as the facts require.

36-04-09.2. Investigation of dealers - Hearing conducted to determine whether license should be issued or revoked.

1. The department upon its own motion or upon a complaint by any person may enter into an investigation of the sales and transactions of any dealer and of the conditions under which its business is conducted. The department may conduct a hearing to determine whether the license of any dealer should be revoked or whether the application of the dealer for an original or renewal license should be denied.
2. The department shall conduct an investigation of an alleged violation of this chapter when:
 - a. A complaint, allegation, or order to show cause, alleging an act which would constitute a violation of this chapter, is issued by or sought by the packers and stockyards administration of the United States;
 - b. The department has information sufficient to form a reasonable belief that a violation of this chapter has occurred; or
 - c. The department has received a sworn statement, affidavit, or other evidence, from any person alleging a violation of this chapter.
3. The department shall conduct a hearing when, pursuant to an investigation, probable cause exists that a violation of this chapter has occurred.
4. The department shall conduct an audit, or cause an audit to be conducted, when probable cause exists that any dealer has violated subdivision a, b, c, or d of subsection 2 of section 36-04-04 or any of the financial provisions of this chapter.

36-04-10. Refusal or revocation of license. The department shall refuse to grant a license, or shall revoke a license which it has granted, when it is satisfied that:

1. The applicant or licensee has violated any of the laws of this state governing the handling, shipment, or transportation of livestock or wool;
2. The applicant or licensee has been guilty of deceit, fraud, dishonesty, forgery, or theft as a dealer in livestock or wool, or in dealing therein;
3. The applicant made or caused to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
4. The applicant has failed to keep and maintain suitable records, which disclose all purchases and sales of livestock, or has refused, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any and all of such records relating to the dealer's business;
5. The applicant has failed or refused to furnish the information required under this chapter and as prescribed by the department;
6. The applicant has failed to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1;
7. The applicant or licensee has failed to pay brand inspection fees or veterinarian fees as required by law;
8. The applicant or licensee has failed to collect beef promotion assessments pursuant to chapter 4.1-03; or
9. The applicant or licensee has failed to pay for livestock purchased. Such failure includes the issuance of a check as payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

36-04-10.1. Unlawful acts. It is a violation of this chapter for any applicant or licensee to:

1. Violate any of the laws of this state governing the handling, shipment, or transportation of livestock or wool;
2. Make or cause to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
3. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any or all of such records relating to the dealer's business;
4. Fail or refuse to furnish the information required under this chapter as prescribed by the department;
5. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1;
6. Fail to pay brand inspection fees or veterinarian fees as required by law;
7. Fail to collect beef promotion assessments pursuant to chapter 4.1-03; or

8. Fail to pay for livestock purchased. Such failure includes the issuance of a check or payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

36-04-11. Hearing had before license revoked - Regulations governing - Appeal from order. Before any license issued is revoked, the licensee must be furnished with a copy of the complaint made against the licensee, and a hearing must be had thereon before the department to determine whether or not the license shall be revoked. The licensee must be given notice of the hearing at least fifteen days prior thereto. The notice may be served either by registered or certified mail addressed to the given address of the licensee or in the manner provided by the North Dakota Rules of Civil Procedure for the service of a summons. At the time and place fixed for the hearing, the department, or any member or duly authorized agent thereof, shall take and receive evidence, administer oaths, examine witnesses, and take the testimony offered, and shall submit and file the same with the department. The department upon the evidence received shall make and file an order either dismissing the proceedings or revoking the license. The aggrieved party may take an appeal to the district court of the county in which the licensee maintains its principal place of business.

36-04-11.1. Rules and regulations. The department may prepare, adopt, promulgate, modify, repeal, and enforce rules and regulations necessary to carry out the purposes and provisions of this chapter.

36-04-12. Department to become trustee upon default in dealer's bond. If any dealer defaults in the provisions of any bond provided for in this chapter, the dealer is deemed to be insolvent within the meaning of this chapter. The claim for relief for damages upon the bond, and the amount recovered in any claim for relief for the conversion of livestock or wool, as the case may be, purchased by the dealer while the license is in force and effect, constitutes a trust fund in the hands of the department for all persons having a claim for relief against the dealer on said bond.

36-04-13. Application by department for appointment of trustee - Hearing - Appointment. Upon the insolvency of a dealer as defined in section 36-04-01, the department may apply to the district court of the county in which the dealer maintains its principal place of business for the appointment of itself as trustee. Upon such notice to the dealer as the court shall prescribe, but not exceeding ten days, or upon waiver of such notice in writing by the dealer, the court shall proceed to hear and determine such application in a summary manner. If it appears to the court that the dealer is insolvent within the meaning of this chapter and that it would be for the best interest of persons holding claims against the dealer for the purchase price of livestock or wool sold to such dealer or to the dealer's 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 to perform its duties as such trustee in the manner set out in this chapter without further direction from the court.

36-04-14. Department to take possession of records and property as trustee - Notice to file claims - When claims barred. Upon its appointment as trustee, the department is entitled to possession of all the books and records of the dealer which were kept by the dealer in connection with such business, and shall take possession thereof, and of all livestock or wool purchased by such dealer under the license granted to the dealer and still remaining in the dealer's possession. The department, as such trustee, by publication of a notice published once each week for three successive weeks in the official newspaper of the county in which the dealer operated, shall notify all persons having claims against the dealer to file the same with the department. Any such person who fails to file that person's claim with the department and to surrender to it any receipts which that person obtained from such dealer within forty-five days after the last publication of such notice is barred from participation upon such claim in any fund marshalled by the department as prescribed in this chapter.

36-04-15. Maintenance of actions to marshal assets of insolvent dealer. The department, in its capacity as trustee, may maintain suits or special proceedings in the name of the state of North Dakota upon its own relation but for the benefit of all claimants against the

dealer's bond, upon such bond and against any person who has converted any of the livestock or wool, for the purpose of marshalling all of the trust assets of the insolvent dealer and distributing the same among the claimants. Recourse must be had against the bond, however, before recourse is had against a person who knowingly and in good faith converted any of such livestock or wool unless the department deems it necessary that all such remedies be pursued at the same time.

36-04-16. Remedy of claimants - Separate action by claimant permissible. No claimant has a separate claim for relief against the dealer's bond unless the department fails or refuses to apply for its own appointment as trustee as provided in this chapter. This chapter does not prohibit any claimant, either independently or in conjunction with other claimants, from pursuing concurrently with the department any other remedy which the claimant or claimants may have against the dealer, or against the property of the dealer, for the whole of the claimant's or claimants' claims or for any deficiency which occurs after payments have been made from the trust fund.

36-04-17. Appeal or compromising of action by the department. The department may prosecute an action for any claims arising under the provisions of this chapter in any court, may appeal from any adverse judgment to the courts of last resort, and may settle and compromise any such action whenever in its judgment it will be for the best interests of the claimants. Upon payment to it of the amount of any such compromise, or of the full amount of any bond or conversion claim, the department may exonerate the person compromising or paying the same from further liability growing out of such action.

36-04-18. Moneys collected on claims to be deposited in Bank of North Dakota. All moneys collected and received by the department as trustee must be deposited in the Bank of North Dakota pending the marshalling of said fund.

36-04-19. Department to file report upon recovery of trust fund - Notice to claimants - Approving or modifying report. Upon recovery of the trust fund, or so much thereof as it is possible to recover or as is necessary to pay all outstanding claims, the department shall file its report in court showing the amount payable upon each claim, after recognizing any proper liens or pledges thereon or assignments thereof or deductions therefrom, with legal interest thereon. If the fund proves insufficient to redeem all claims in full, the fund must be prorated among the claimants in such manner as the department deems fair and equitable. Thereupon the court shall cite such claimants upon such notice by mail as it shall prescribe to appear upon a day fixed in the notice and show cause why such report should not be approved and distribution of said fund made as outlined in the report. Upon such hearing, the court shall approve such report or modify the same as justice may require and shall issue an order directing the distribution of the fund and discharging the department from its trust.

36-04-20. 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 this chapter, and may employ outside legal assistance when the attorney general deems it necessary to do so and may deduct the expense in connection therewith 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 this chapter when such fee, cost, or disbursement accrues to the state or to a county of this state.

36-04-21. Penalties - Criminal - Civil - Injunctions.

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

3. The department may, in accordance with the laws of this state governing injunctions and other process, maintain an action in the name of the state against any person violating any provision of this chapter.