

**TITLE 36
LIVESTOCK**

**CHAPTER 36-01
STATE BOARD OF ANIMAL HEALTH**

36-01-00.1. Definitions.

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

1. "Board" means the state board of animal health.
2. "Commissioner" means the agriculture commissioner.
3. "Domestic animal" means dog, cat, horse, bovine animal, sheep, goat, bison, farmed elk, llama, alpaca, or swine.
4. "Nontraditional livestock" means any wildlife held in a cage, fence, enclosure, or other manmade means of confinement that limits its movement within definite boundaries or an animal that is physically altered to limit movement and facilitate capture.

36-01-01. State board of animal health - Appointment - Terms - Qualifications.

1. The state board of animal health consists of nine members appointed by the governor for terms of seven years each with their terms of office so arranged that two terms expire on the first day of August in one year and one term expires on the first day of August in each of the next six years. The term of the individual appointed to represent the nontraditional livestock industry expires on August 1, 2010. No individual may be appointed to more than two 7-year terms on the board.
2. Each member of the board must be a qualified elector of this state. Each member of the board, immediately after appointment, shall take the oath of office required of civil officers.
3. The members of the board must include:
 - a. One individual who is actively engaged and financially interested in the commercial beef cattle industry and who shall represent the industry on the board;
 - b. One individual who is actively engaged and financially interested in the registered purebred beef cattle industry and who shall represent the industry on the board;
 - c. One individual who is actively engaged and financially interested in the dairy cattle industry and who shall represent the industry on the board;
 - d. One individual who is actively engaged and financially interested in the swine industry and who shall represent the industry on the board;
 - e. One individual who is actively engaged and financially interested in the sheep industry and who shall represent the industry on the board;
 - f. One individual who is actively engaged and financially interested in the bison industry and who shall represent the industry on the board;
 - g. One individual who is actively engaged and financially interested in the nontraditional livestock industry and who shall represent the industry on the board; and
 - h. Two individuals who are licensed veterinarians.
4. Vacancies occurring prior to the expiration of terms of office must be filled by appointment by the governor and must be for the balance of the unexpired term.
5. Recommendations for the appointment of individuals to the board may be made to the governor by the North Dakota stockmen's association for the individuals representing commercial beef cattle, by the various registered purebred beef cattle associations for the individual representing the registered purebred beef cattle industry, by the various dairy breed associations for the individual representing the dairy cattle industry, by the North Dakota swine breeders' association for the individual representing the swine industry, by the North Dakota wool growers' association for the individual representing the sheep industry, by the state veterinary medical association for the two veterinarians, by the North Dakota buffalo association for the individual representing

the bison industry, by the nontraditional livestock industry for the individual representing the nontraditional livestock industry, and by any associations within this state representing livestock industries as the governor may permit. Two recommendations must be submitted for each position to be filled.

36-01-02. Meetings of board - Limitations on number - Special.

The state board of animal health shall hold its meetings at the state capitol at such times as it may designate, but there may not be more than four regular meetings in any one year. The president of the board may call a special meeting whenever in the president's judgment it becomes necessary.

36-01-03. Officers of board - Election.

The board shall elect a president and a secretary from among its members. The commissioner shall provide clerical services to the board.

36-01-04. Compensation and expenses of members of board.

Each member of the board shall receive as compensation for services the sum of one hundred thirty-five dollars per day for each day employed and actual expenses incurred in attending the meetings of the board. The sum must be paid out of the state treasury upon vouchers duly certified by the commissioner.

36-01-05. State veterinarian - Appointment.

The commissioner shall, with the consent of the board, appoint the state veterinarian and deputy state veterinarian. The state veterinarian and deputy state veterinarian must be competent and skilled veterinarians and graduates of a veterinary medicine and surgery course at a recognized college or university. The commissioner may remove the state veterinarian or deputy state veterinarian for cause. At the request of the board, the commissioner shall deputize persons licensed to practice veterinary medicine in this state as assistant state veterinarians. Deputized persons shall serve during periods of emergency and only for the time period determined by the board.

36-01-06. State veterinarian - Duties.

The state veterinarian shall:

1. Ascertain, by personal examination or through reports from other authorized representatives or agents of the commissioner, all information which can be obtained regarding the existence of contagious, infectious, and epizootic diseases of animals.
2. Execute all orders and rules made by the board.
3. Execute all duties prescribed for the state veterinarian in title 36 and all duties and responsibilities otherwise authorized by the board that are necessary and proper in order to accomplish the business of the board of animal health and carry into effect the purposes of this title.
4. Present at the meetings of the board a detailed report of all matters connected with the work of the state veterinarian and authorized representatives of the board during the time since the last meeting.

36-01-07. Consulting veterinarian of board - Duties - Compensation.

The board shall choose a veterinarian on staff at North Dakota state university to act as consulting veterinarian to the board. The term of appointment is open and at the will of the board. At the discretion of the board, the consulting veterinarian, or any United States department of agriculture approved laboratory shall make diagnostic examinations of all diseased animals or portions thereof or of such material as may be forwarded by the board or the commissioner's duly authorized agents. For services, the consulting veterinarian or United States department of agriculture approved laboratory is entitled to receive such compensation as the commissioner may deem proper, which must be paid out of the fund appropriated for the use of the commissioner.

36-01-08. Duties - Rules.

The board shall protect the health of the domestic animals and nontraditional livestock of this state, shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and nontraditional livestock of this state, and shall prevent the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests. For the purpose of preventing the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests, the board may, by rule, quarantine any such animal, cause any such animal to be killed, regulate or prohibit the arrival in or departure from this state of any such animal, and at the cost of the owner thereof, the board may detain any animal found to be in violation of any rule or prohibition. Any matter relating to the health and welfare of domestic animals and nontraditional livestock and not specifically assigned by statute to another entity is deemed to be within the authority of the board. The board may make rules to carry into effect the purposes of this chapter and other duties prescribed in this title.

36-01-08.1. Nontraditional livestock license - Fee.

The board of animal health may require a license for nontraditional livestock maintained within this state. The annual fee for a license for a bird species required to be licensed is seven dollars. The maximum amount of annual fees for bird species licenses to be paid by a person holding more than one bird species license is forty dollars. The annual fee for a license for any other species required to be licensed is fifteen dollars. The maximum amount of annual fees for nonbird species licenses to be paid by a person holding more than one nonbird species license is one hundred dollars.

36-01-08.2. Mountain lions, wolves, and wolf hybrids held in captivity - Identification required.

Any person who keeps a mountain lion, wolf, or wolf hybrid in captivity must obtain an identification number from the board. The number must be tattooed in indelible ink inside the ear of the animal for permanent identification purposes.

36-01-08.3. Duties - Evaluations - Report.

The board and the commissioner shall conduct performance evaluations of the state veterinarian and any assistant state veterinarians.

36-01-08.4. Ownership of skunks and raccoons prohibited - Exception - Rules on primates, wolves, and wolf hybrids.

A person may not keep a skunk or raccoon in captivity. This section does not apply to a zoo licensed by the animal care program of the animal and plant health inspection service of the United States department of agriculture. The state veterinarian shall confiscate and dispose of any animal kept in violation of this section. The board shall adopt rules governing the keeping of a primate, wolf, or wolf hybrid in captivity and to implement this section. As used in this section, "primate" does not include a human being; "wolf" means any animal of the species *canis lupus*; and "wolf hybrid" means any animal that is any part wolf.

36-01-09. How regulations made.

Repealed by S.L. 1989, ch. 425, § 32.

36-01-10. Agents and assistants may be employed by commissioner - Granting of authority to United States government inspectors.

The commissioner may employ officers, agents, or assistants necessary to carry out this chapter, at a compensation to be fixed within the limits of legislative appropriations. The commissioner may grant to the inspectors of the United States department of agriculture the same authority as is possessed by agents of the commissioner.

36-01-11. Reports of board.

Repealed by S.L. 1995, ch. 347, § 53.

36-01-12. Powers of board over contagious and infectious diseases.

The board may take such steps as it may deem necessary to control, suppress, and eradicate any and all contagious and infectious diseases among any of the domestic animals and nontraditional livestock of this state. For this purpose, the board may quarantine any domestic animal or nontraditional livestock which is infected, or may be infected, with any such disease or which has been exposed, or may be exposed, to infection, cause any animal so infected to be killed, regulate or prohibit the arrival in or departure from this state of any such exposed or infected animal, and at the cost of the owner thereof, it may detain any domestic animal or nontraditional livestock found to be in violation of any such regulation or prohibition. The board may also quarantine any city, civil township, or county or areas within a county in this state and any enclosure, building, or any domestic animal or nontraditional livestock therein which is or may be infected or exposed or may be exposed to any contagious or infectious disease.

36-01-12.1. Fund transfer for control of diseases.

The commissioner may use any moneys appropriated to the commissioner for the control of animal diseases, for the rapid arrest and eradication of foot-and-mouth disease, rinderpest, contagious pleuropneumonia, or any other highly contagious or infectious animal plagues for which purpose adequate funds are not otherwise available.

36-01-12.2. Confiscation of nontraditional livestock held in violation of this chapter.

1. The state veterinarian, or the state veterinarian's designee, a police officer, sheriff, or other law enforcement officer may seize any nontraditional livestock located on private property from the animal's owner or custodian if probable cause exists to believe that the animal is being held in violation of this chapter or rules adopted under this chapter. Unless it is shown that there exists an exigency or occasion as to require the immediate confiscation, an animal may not be seized until a hearing is held allowing the owner or custodian to show cause why the animal should not be confiscated. If exigent circumstances exist, an ex parte order may be issued authorizing seizure of the animal if probable cause appears to the court that:
 - a. The animal is in immediate danger of being released into the wild, destroyed, concealed, removed from the state, or sold or given to an innocent party.
 - b. The animal is infected with any contagious or infectious disease capable of being spread to animals or humans.

All animals seized must be held subject to the order of a court of competent jurisdiction. Whenever probable cause exists for a preconfiscation hearing, the owner or custodian of the animal must be notified in writing that, on the day fixed for a hearing, which may not be less than three days from the date of receipt of notice, the owner or custodian may appear or show cause why the animal should not be confiscated. Notice must be delivered to the owner or custodian by personal service or registered mail to that person's last-known mailing address. An affidavit of service or the post-office registration receipt signed by the owner or custodian is prima facie evidence of service of notice.

2. Upon request by the person confiscating the animal, the board, the department of health and human services, the game and fish department, any county sheriff's office, city police department, or other peace officer may provide assistance in any action to seize, impound, confiscate, or quarantine any animal suspected of being held or possessed in violation of this title.
3. A court having jurisdiction of an alleged offense under this title or rules adopted under this chapter may order the disposition of all animals that have been confiscated. This order may be entered only after a hearing duly had upon proper notice to the owner or

custodian and after a finding by the court that the animal was being held or possessed in violation of this title at the time it was seized.

4. When any nontraditional livestock is found to be held or possessed contrary to this chapter, the court may:
 - a. Order the animal to be forfeited by its owner or custodian and that the animal be destroyed or disposed of otherwise. The court may order disposition to a zoo licensed by the animal care program of the animal and plant health inspection service of the United States department of agriculture if the zoo requests possession upon confiscation of the animal; or
 - b. Order the return of custody to the owner or custodian upon compliance with all applicable state and local regulations governing ownership and possession of nontraditional livestock, including payment of any license fees.The court may award reasonable costs of seizure, care, and keeping pending disposition, and attorney's fees to the agency bringing an action to confiscate any nontraditional livestock under this title.
5. Subject to section 32-12.2-02, the owner of an animal may bring a claim for money damages, and may recover the amount of actual damages incurred during the time of seizure, if the owner establishes that before the animal was seized under this chapter, the agency knew or recklessly failed to determine that the animal, at the time of seizure, was lawfully owned and licensed in this state or that the animal was a domestic animal not subject to seizure under this chapter.

36-01-13. Diseased animal to be reported - Records exempt.

1. Any person who discovers, suspects, or has reason to believe that any domestic animal or nontraditional livestock belonging to that person or belonging to any other person, is affected by any reportable contagious disease as defined by the board, shall report that knowledge, suspicion, or belief to the state veterinarian or any other agent or representative of the commissioner.
2. The records are exempt from open records laws, except those records concerning diseases that are specifically regulated by mandatory control and eradication programs or to protect public health.

36-01-14. Protest against killing of diseased animal - Examination of animal by experts - Appointment of experts.

Whenever a domestic animal or nontraditional livestock has been determined to be affected with a contagious or infectious disease and has been ordered killed by the board, the state veterinarian, or an agent or representative of the board, the owner or keeper of the animal must be notified of the order. Notice may be accomplished by sending, by registered mail, a copy of the order to the owner or keeper of the animal, or by having an agent or representative of the board serve a copy of the order upon the owner or keeper of the animal. Within twenty-four hours after receiving notice of the order, the owner or keeper may file a protest against the killing of the animal with the board or with the person who has ordered the animal killed. The protest must state under oath that, to the best of the knowledge and belief of the person making the protest, the animal is not infected with any contagious or infectious disease. An examination of the animal or laboratory reports involved then must be made by three experts, one of whom must be appointed by the board, one by the person making the protest, and the third by the two thus appointed. All the experts must be persons learned in veterinary medicine and surgery and graduates of the veterinary course of a recognized college or university.

36-01-15. Expense of experts - How paid.

If at least two of the experts declare that the animal involved is free from any contagious or infectious disease, the expense of the consultation must be paid by the commissioner. If at least two of such experts declare that such animal is affected with a contagious or infectious disease, the expenses incurred in the consultation must be paid by the person making the protest.

36-01-16. Disposal of carcass of diseased animal.

The owner or keeper of any animal killed by order of the state board of animal health, the state veterinarian, or by an agent or representative of the state board of animal health, shall dispose of the carcass of the animal in the manner prescribed by the board or the state veterinarian. If the owner or keeper of an animal killed pursuant to an order is unknown, the carcass must be disposed of at the expense of the county in which the carcass is located.

36-01-17. Oaths and examinations.

The board, any member of the board, the state veterinarian, or the commissioner may examine or cause to be examined under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination, or the danger of dissemination, of disease among domestic animals or nontraditional livestock. For this purpose, the board, members of the board, the state veterinarian, or the commissioner may take depositions, compel witnesses to attend and testify, and administer oaths. Such witnesses are entitled to receive the same fees for attendance and travel as witnesses before the district courts. The commissioner shall pay the fees from legislative appropriations.

36-01-18. Inspection of livestock in transit - Penalty.

The state veterinarian and authorized agents and representatives of the commissioner, for purposes of inspecting livestock in transit for health or ownership identification, may stop vehicles transporting livestock on public highways of this state. When signaled by the state veterinarian or an authorized agent or representative of the commissioner to stop, the operator of any vehicle shall stop the vehicle, show any health or identification forms which are required to be carried in transportation of livestock, and permit the inspector to make an inspection of the livestock being transported if deemed by the inspector to be necessary. Failure to stop when so directed is a class A misdemeanor. The inspector is authorized to use a stop signal.

The state veterinarian, or any authorized agent or representative of the commissioner, may call any sheriff or deputy sheriff, police officer, or highway patrol officer to execute its orders and those officers must obey. Any law enforcement officer may arrest and take before any district judge serving the county any person found violating this chapter. The law enforcement officer shall immediately notify the state's attorney of the county of the arrest and the state's attorney shall prosecute the person found violating this chapter.

36-01-19. Emergency fund in case of epizootic.

In case of any serious outbreak of any contagious, infectious, or epizootic diseases among domestic animals or nontraditional livestock, which cannot be controlled with the funds at the disposal of the commissioner, the commissioner shall notify the governor at once, and the governor shall call a meeting of the emergency commission. The emergency commission may authorize money to be drawn from the state treasury to meet the emergency.

36-01-20. Penalty for violation of chapter.

Repealed by omission from this code.

36-01-21. Definitions.

Repealed by S.L. 1989, ch. 425, § 32.

36-01-22. Feeding garbage to swine.

No person may feed garbage to swine. As used in this section "garbage" means animal and vegetable waste matter resulting from the handling, preparation, cooking, and consumption of foods, including animal carcasses or parts of animal carcasses, except that dairy products from a licensed creamery or dairy is not considered garbage for the purposes of this section. This section does not apply to any person who feeds garbage from the person's own household.

36-01-23. Application for permit.

Repealed by S.L. 1989, ch. 425, § 32.

36-01-24. Revocation of permits.

Repealed by S.L. 1989, ch. 425, § 32.

36-01-25. Cooking or other treatment.

Repealed by S.L. 1989, ch. 425, § 32.

36-01-26. Inspection and investigation - Maintenance of records - Feeding plants.

Repealed by S.L. 1989, ch. 425, § 32.

36-01-27. Enforcement of the act.

Repealed by S.L. 1989, ch. 425, § 32.

36-01-28. Enforcement orders - Administrative hearing - Penalty.

1. Except when otherwise ordered by a court of competent jurisdiction, the board may order any domestic animal or nontraditional livestock brought into this state which is not in compliance with the provisions of this chapter to be returned to the state of origin, or in the alternative, the board may order the animal slaughtered or destroyed. The board may grant an exception for any nontraditional livestock if a zoo licensed by the animal care program of the animal and plant health inspection service of the United States department of agriculture takes possession upon confiscation of the animal.
2. If, after a hearing, the board finds that a person has brought, kept, or received any domestic animal or nontraditional livestock in this state and the animal or livestock is not in compliance with the provisions of this chapter or rules adopted under this chapter, a civil penalty not to exceed five thousand dollars per violation may be assessed against that person.
3. Any person who violates any of the provisions of this chapter for which a specific penalty is not provided, or who knowingly violates any rule adopted by the board, is guilty of an infraction.

36-01-29. Monitored livestock feedlots - Rules - License.

The board may adopt rules for the establishment and maintenance by any person of a monitored livestock feedlot. Any person may, on compliance with the rules, obtain a license for the feedlot upon filing an application with the commissioner and upon the payment of an annual fee of fifty dollars to the commissioner. The fee must be deposited with the state treasurer in the general fund out of which, upon legislative appropriation, the veterinarian inspector's fees and cost of administration must be paid. When licensed and in compliance with the rules for the maintenance of the monitored livestock feedlot, the licensee is authorized to confine and feed, in the feedlot, without vaccination for brucellosis and such other diseases as the board may specify, cattle to be sold only for slaughter or to another monitored feedlot.

36-01-30. Feedlot registration - Rules - Penalty.

No person may operate a registered livestock feedlot without obtaining a registration number from the chief brand inspector. The board may adopt rules for the operation of feedlots registered for the enforcement of brand inspection rules. Applications for registration must be made upon forms as may be prescribed by the board and must be accompanied by a fee equal to the fee charged for brand recording. All fees and any inspection fees established by the board must be remitted regularly to the state treasurer for deposit in the North Dakota stockmen's association fund. The board may adopt rules required for the purpose of assuring compliance with brand laws, availability of brand inspection certificates, and maintenance of proper records. A registration issued under this section may be revoked or suspended for violation of any law or any rule adopted by the board under this section. In addition, any person violating this section or any rule adopted by the board under this section is guilty of a class B misdemeanor. This section does not prohibit the operation of nonregistered feedlots.

36-01-31. Venomous reptiles - Possession - Permit - Penalty.

1. Except in accordance with the terms of a permit issued under subsection 2, a person may not possess a live venomous reptile, as defined by the state veterinarian.
2. The state veterinarian may issue a permit for the possession of a live venomous reptile only if, in the determination of the state veterinarian, the applicant seeking the permit demonstrates an educational purpose for and the ability to appropriately house, feed, care for, handle, and if necessary dispose of the reptile. For purposes of this subsection, an educational purpose includes research, and displays at schools, institutions of higher education, wildlife preserves, and zoos. The state veterinarian may establish the length of time for which each permit is valid.
3. A person may not release in this state any reptile whose possession is prohibited by this section.
4. A person who violates this section is guilty of a class B misdemeanor.

36-01-32. Duties - Animal tracking.

The board shall develop and maintain animal tracking databases to assist with tracking animal movements for animal health purposes only. The information obtained and maintained in the databases is subject to open records laws as provided for in section 36-01-36.

36-01-33. State board of animal health - Certification of livestock - Fees - Agriculture commissioner - Continuing appropriation.

1.
 - a. At the request of a livestock producer, the board shall provide inspection and verification services for the purpose of certifying that livestock have been or are being raised according to standards and protocols articulated by the producer.
 - b. At the request of a livestock processor, the board shall provide inspection and verification services for the purpose of certifying that the meat products and manner of processing meet or exceed standards, descriptions, or specifications articulated by the processor.
 - c. The board shall determine the nature and scope of the inspection and verification services necessary to provide the certification requested under this subsection.
2. The board may establish and charge fees for the requested services. The board shall forward all moneys received under subsection 1 and this subsection to the state treasurer for deposit in the commissioner's operating fund.
3. The commissioner may collect fees for the cost of each brucellosis tag, each identification tag, and each health book the commissioner distributes. The fees collected by the commissioner under this subsection must be deposited in the commissioner's operating fund and are appropriated on a continuing basis to the board to be used to enforce this chapter.

36-01-34. Restriction on importation of certain animals - Exception.

1. The state board of animal health may restrict the importation and the sale or other distribution within the state of any domestic animal and any animal that is wild by nature, if the board has reason to believe that the animal may pose a threat to the health and well-being of this state's human or animal population.
2. The board may exempt, from any restriction imposed under subsection 1, the importation or sale of animals for bona fide scientific purposes, educational purposes, or temporary exhibitions.

36-01-35. Assistance in criminal investigations.

The board shall maintain and make available to any law enforcement agency a list of veterinarians who are licensed in this state and trained to provide assistance in any criminal investigation pertaining to this state's animal laws.

36-01-36. Premises identification, animal identification, and animal tracking - Open records - Exception.

1. The board shall maintain the confidentiality of information created, collected, or maintained by the state veterinarian for purposes of premises identification, animal identification, or animal tracking, including the name and address of the owner or lessee of the property where an animal found, is located.
2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:
 - a. Every individual who is the subject of the information provides written consent to the release of information;
 - b. The disclosure is authorized pursuant to federal law;
 - c. The disclosure is necessary to provide a state or federal agency with information to assist in animal disease control or tracing an animal disease;
 - d. The disclosure is to the attorney general or to law enforcement to assist in a criminal investigation;
 - e. A court of competent jurisdiction orders the disclosure; or
 - f. The disclosure is to provide the North Dakota stockmen's association with information pursuant to section 4.1-72-05.
3. A person violating this section is subject to the remedies set forth in section 44-04-21.2. For purposes of applying section 44-04-21.2, "public entity" includes any person that has contracted with the state for the provision of services related to a premises identification, animal identification, or animal tracking database program.