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LIVESTOCK DISEASES

NORTH DAKOTA LAWS, REGULATIONS, AND LIABILITIES

by
James A. Lodoen,
Owen L. Anderson, and
Jerome E. Johnson

JOINT AGRICULTURAL LAW/ECONOMICS RESEARCH REPORT

**Department of Agricultural Economics
NORTH DAKOTA STATE UNIVERSITY
Fargo, North Dakota 58105-5636**

**School of Law
UNIVERSITY OF NORTH DAKOTA
Grand Forks, North Dakota 58202**

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This report presents information on what is an important problem for some farmers and ranchers. The report provides a view of the work of the Livestock Sanitary Board, but places most emphasis on health laws and regulations affecting the importation of various species of livestock and possible legal penalties for violating these state laws.

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LIVESTOCK DISEASES: NORTH DAKOTA LAWS, REGULATIONS, AND LIABILITIES

James A. Lodoen, Owen L. Anderson, and Jerome E. Johnson*

Livestock health regulations are important issues among farmers and ranchers. Some view these regulations as an unnecessary burden placed on them by governmental bureaucracy. Often producers and others associated with livestock do not realize that they expose themselves to both criminal and civil liability by not complying with health regulations. Costly losses also may result from both an infection to one's own herd and the spreading of infection to another herd. This report seeks to inform those associated with livestock in North Dakota of disease laws and regulations and the liability that may result from damages caused by diseased livestock.

Livestock Sanitary Board

The North Dakota Legislature created the North Dakota Livestock Sanitary Board to protect the health of domestic animals of this state. The board is authorized to determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among domestic animals.

The board has seven members appointed by the governor for seven-year terms. The State Veterinarian serves as the executive officer. Two veterinarians are members, along with one representative from each of the following livestock industries: commercial beef cattle, registered purebred beef cattle, dairy cattle, swine, and sheep. The chairman of the Veterinary Science Department at North Dakota State University serves as a consulting veterinarian.

The board has the power to quarantine animals which are or may be infected, or those which have been or may have been exposed to any contagious or infectious disease. The board may destroy an infected animal and may regulate as well as prohibit the flow of exposed or infected animals across state boundaries. It may detain, at the owner's expense, any domestic livestock found to be in violation of any regulation.

Health Laws and Regulations

General Importation Requirements

All animals imported into North Dakota must be accompanied by an official health certificate issued by a graduate veterinarian except for the following:

*Lodoen is a second year law student researcher in the joint Agricultural Law/Economics Research Program. Anderson is an Associate Professor of Law. Johnson is a Professor of Agricultural Economics.

- 1) animals directly coming from a producer's premises not diverted en route, and consigned to an auction market or other premises approved by the Livestock Sanitary Board; and
- 2) livestock consigned to a federally inspected slaughtering establishment.

A health certificate indicates the health status of an animal at the time of examination. Presence or absence of specific diseases, infections, or disabilities and results of any required tests are included on the health certificate. A veterinarian who issues a health certificate for livestock brought into North Dakota is required to forward a copy of each certificate to the North Dakota State Veterinarian.

In addition to health certificates, permits also may be required. A permit is a number issued by the State Veterinarian, usually over the phone, to a licensed veterinarian who records it on the health certificate of the livestock to be imported. A permit is issued for each load of cattle seeking entry into North Dakota, regardless of load size. Each head of livestock included in the load must have a valid health certificate in compliance with state requirements to obtain a permit. Permits provide an immediate record of imported livestock and an opportunity to confirm that the health certificates meet current criteria before the livestock enter the state.

Permits also serve as a notice of importation enabling the state veterinarian to request copies of health certificates from veterinarians who fail to forward them to the state office. A detailed record of livestock imported into North Dakota is essential in tracing the origin of a disease which occurs within the state due to imported livestock carrying a disease which is not detected until the livestock are in the state.

Specific Importation Requirements¹

No animal or poultry that is infected or that has recently been exposed to an infectious or transmissible disease can be imported. General health certificates must be issued for all livestock within 30 days before importation, declaring them free from disease and recent exposure to any infectious or transmissible disease. In addition, the following requirements apply to specific species:

Cattle

Tuberculosis--No test is required on cattle identified as originating directly from tuberculosis-free accredited herds or states. All other cattle over 12 months (365 days) of age must be negative to the tuberculosis test within 30 days prior to entry.

¹These requirements apply to animals not excluded by subsections 1 and 2 above.

Brucellosis (bangs)--No female cattle over 365 days of age may be imported unless during calthood they were officially vaccinated against brucellosis and properly identified, except when imported for exhibition purposes. Cattle imported for exhibition require a negative brucellosis test taken within 30 days prior to date of entry. Most Canadian cattle are not brucellosis vaccinated at calthood, so few qualify for importation except for exhibition purposes.

Permits are required for all female cattle imported that are over 12 months (365 days) of age. Permits also are required for all cattle (male and female) originating from any state from which the board has determined scabies may be introduced. Cattle imported from states requiring a scabies permit must be dipped in a state-approved solution. Two dippings may be required on cattle from states determined to have a large number of infestations.

Permits are required for all dairy calves under six months of age. These calves must not be sold at an auction market until 30 days following importation because of the high probability that scours or pneumonia may develop.

Sheep

Only a general health certificate is required.

Swine

Brucellosis--Breeding swine over six months (180 days) of age require a negative brucellosis test within 30 days prior to entry unless they originate from a validated brucellosis-free herd or state.

Pseudorabies--A negative test for pseudorabies is required within 30 days prior to shipment unless the swine are from a qualified free herd. A retest is required not less than 30 days nor more than 60 days after importation on shipments not originating from a qualified pseudorabies-free herd.

Both a health certificate in compliance with the brucellosis and pseudorabies requirements and a permit are required. Permits are not required for swine imported only for exhibition purposes.

Horses

Equine infectious anemia--All horses require negative tests for equine infectious anemia (Coggin's test) within 12 months prior to the date of importation, unless originating from states exempt from test requirements.

A general health certificate in compliance with the above regulation is required, except for horses imported for exhibition purposes (which only require a general health certificate).

Poultry

Pullorum-typhoid--All poultry over five months of age imported for breeding require a negative test for pullorum-typhoid unless originating from a disease-free area. A general health certificate in accordance with the above requirement is required.

Dogs

Rabies--Dogs must have a certification of no known exposure to rabies within 100 days prior to importation and cannot be from an area under quarantine. Dogs over four months of age must be vaccinated for rabies. The State Game and Fish Department requires hunting dogs to have been vaccinated at least 30 days prior to entering the state. A general health certificate in compliance with these requirements is required.

All Other Animals

Regulations should be obtained from the state veterinarian for the importation of animals not specifically mentioned in the preceding discussion.

Eradication and Control of Diseased Livestock

Generally, no person is permitted to sell, give away, or otherwise part with any animal infected or suspected of being infected with any contagious or infectious disease except as allowed by the board. Written notice that an animal is known to have been infected with or exposed to any such disease within one year prior to sale or transfer must be given to the person receiving the animal. This notice must be communicated before any sales agreement is made.

The Livestock Sanitary Board has broad powers to eradicate specific diseases found in North Dakota livestock. Any animal infected or suspected of being infected with an infectious or contagious disease should be isolated from other animals until the board or a representative of the board can determine further action. The animal is ordered killed whenever it has been determined by the board to be infected with tuberculosis, paratuberculosis, or brucellosis. Animals infected with other contagious or infectious diseases may be ordered killed as well. The board or an agent of the board shall serve written notice to the owner before a condemned animal is killed. A condemned animal shall be destroyed within 15 days following the notice, unless an extension of time is approved. An owner has the right to protest the diagnosis and determination of the board within 24 hours after receiving notice of condemnation. Then a committee of three veterinarians make the final determination whether the decision of the board will be upheld. The board appoints one veterinarian, the owner may appoint the second veterinarian, and the two selected veterinarians appoint the third veterinarian. When cattle are condemned and killed, the owner is liable for disposal of the dead livestock in accordance with instructions from the board.

An agent appointed by the board will appraise the value of the animal before it is destroyed. An owner not satisfied with the appraisal can request that a committee be appointed to make a final appraisal (in a manner similar to

that set forth in the previous paragraph). Indemnity normally will be paid by the state and/or federal government for the infected animal unless:

- 1) the owner at the time of obtaining possession of the animal knew or suspected that the animal was diseased;
- 2) the animal was diseased when it arrived in the state;
- 3) the owner is a nonresident not engaged in breeding of livestock in North Dakota;
- 4) the animal had been in this state for more than six months;
- 5) the owner is guilty of negligently exposing the animal to the disease; or
- 6) the owner is guilty of violating any laws, rules, or regulations of the board.

An outbreak considered very serious (e.g., brucellosis, tuberculosis) may cause the board to declare an outbreak an emergency and apply to the State Emergency Commission for funding to dispose of infected animals and eradicate the disease. Often an owner will cooperate with the board by allowing the disposal of his entire herd. State emergency payments usually will compensate the owner for his loss.

However, if an owner refuses to allow disposal of his entire herd, the board still has the power to order that infected animals be killed. This power may or may not extend to livestock simply exposed to the disease. The North Dakota Supreme Court in 1918 held that "the board has no power to order the destruction of an animal not actually infected with a disease." In an emergency situation where quarantine is not a practical alternative, the board, through its state police powers, may have the power to order the disposal of an entire herd.

North Dakota is currently considered an accredited brucellosis-free state. In an effort to maintain (or reobtain following an outbreak) such status, the board can require, at its discretion, testing of all cattle in particular townships or counties. An indemnity procedure for costs is provided by law.

Penalties for Violation of Import Laws and Regulations

Failure to comply with state health regulations may be a costly mistake. A violator may be fined, sentenced to jail, and forced to return the livestock if they were imported. He may even incur condemnation expenses if the animals prove to be diseased. Because of these violations, indemnity provisions would not normally apply.

Any person who imports livestock into North Dakota in violation of the above mentioned laws and regulations is guilty of a Class B misdemeanor punishable by a maximum of 30 days in jail, a \$500 fine, or both. Furthermore, anyone bringing female cattle into North Dakota which are over the maximum brucellosis vaccination age and have not been brucellosis vaccinated is guilty

of a Class A misdemeanor punishable by a maximum of one year in jail, a \$1,000 fine, or both. A person also may be subject to a civil penalty, brought on behalf of the state, not to exceed \$2,500 for violation of cattle tuberculosis and brucellosis laws. The board may order cattle brought into the state in violation of import regulations to be returned to their state of origin or to be slaughtered. Furthermore, federal criminal charges may be brought against a person who violates federal livestock health laws and regulations. However, livestock that are imported in compliance with North Dakota requirements will normally meet federal requirements.

Liability for Civil Damages

In addition to the above criminal and civil penalties, one may be subject to civil liability to parties who are damaged as a result of disease spread by livestock imported in violation of laws and regulations. A civil action is a lawsuit brought by one individual or group of individuals against another for damages caused by the person being sued.

Great expense may be incurred by the owner of diseased animals that cause other animals, or even human beings, to be affected by a particular disease. Civil liability (responsibility for damages caused to another individual or entity) is more likely to be found if the individual responsible for the damages was in violation of a health regulation. The owner or seller of diseased animals that cause others to incur damages as a result of this disease, even in absence of a regulation violation, may still be liable for damages caused. Actions by an owner of diseased livestock which may make him liable for civil damages are discussed below.

Unintentional Harm

A seller of a diseased animal may be liable for damages resulting from the spread of disease to the buyers of livestock if it can be shown that the seller was negligent in making the sale. Negligence has occurred if it can be proven that the seller: 1) knew or should have known that the animal was infected with the disease and 2) that his failure to inform the buyer that the animal was infected resulted in damages to the buyer. Courts would probably hold that the more damaging a disease, the greater the degree of care that is required of the livestock owner to prevent the spread of disease.

Sometimes an owner may be liable for damages without being negligent based on the theory of strict liability, simply because the damages occurred. Liability may be found, for example, when the owner's diseased animal trespasses on another's property and infects the other's animals or when diseased livestock are taken to a livestock show and the disease spreads and causes others to incur damages.

Fraud and Misrepresentation

Fraud occurs when:

- 1) a seller, in regard to the health of his animal, makes a false representation to a buyer that he either knows is false or that he should not have made because he lacked the knowledge to make it; and

- 2) the seller intends for the buyer to rely on the information and the buyer does rely on the information in purchasing the animal; and
- 3) damages result from the sold animal being diseased or from the spread of the disease to other animals.

Besides creating a civil liability, intentional fraud and misrepresentation also are crimes. Both are punishable by a maximum penalty of one year in jail, a fine of \$1,000, or both.

Violation of a Statute

Any person who violates any state health regulations may be held liable in a civil action to any person injured as a result of the violation for all damages directly or indirectly suffered.

Express or Implied Warranties on Sales

One who sells an animal with a disease may be responsible for any damage resulting from the sale, regardless of whether or not he knew of the disease. Unless the parties to a sale agree to the contrary, when the buyer relies on the seller's skill and judgment in selecting an animal, there can be an implied warranty that the animals sold are fit for the purpose for which they are intended to be used. Obviously, a breeding heifer sold with brucellosis will not be fit for the purpose for which she was purchased. This implied warranty is part of the Uniform Commercial Code which often applies to this type of sale. (For more information about the U.C.C., see Agricultural Economics Miscellaneous Report No. 59 U.C.C. and the North Dakota Farmer.) However, North Dakota law provides that there is no implied warranty that cattle, hogs, sheep, and horses are free from sickness or disease at the time of sale when there is a reasonable showing by the seller that all health regulations have been complied with. Nevertheless, cattle transported to another state, where the exemption does not apply, may be subject to implied warranties.

In addition, a farmer who expressly says that an animal is free from disease may be liable under an express warranty for replacement of the animal, and possibly other damages, if the animal does prove to be diseased. Furthermore, a farmer may be strictly liable for damages caused by the act of selling a diseased animal, even if he was not at fault.

Extent of Damages

Judgments in lawsuits concerning diseased livestock have been in excess of \$500,000, with the potential being virtually unlimited. A seller's liability for the sale of a diseased animal can extend to damages far greater than the value of the animal sold. Loss of future production of the animal can be included. A seller may be liable for damages to the entire herd if the disease spreads to other animals in the buyer's herd. Compensation also may include expenses for veterinarian services, preventative practices, and additional time and labor, loss of reputation, and even punitive damages. Punitive damages are money judgments awarded to the harmed party simply as a

civil penalty against the one causing the damage. Liability for punitive damages often is not covered by an individual's personal liability insurance policy. A seller may even be liable for personal injury when a person contracts undulant fever from a brucellosis-infected heifer. Aside from sales transactions, similar damages also apply where disease has been spread as a result of negligence or as a result of noncompliance with health regulations.

A damaged party should not settle on a damage amount from the injuring party before the total extent of damages is known. If damages are paid, the injured party should specifically say that the payment does not preclude compensation for further damages which could arise as a result of the same act. For example, if an injured party receives compensation for a brucellosis-infected cow, and does not specifically express that acceptance of this compensation does not preclude recovery for future damages, the injured party may not be able to recover any additional compensation in the event that the entire herd becomes infected with the disease.

Precautionary Procedures

Veterinarians suggest that farmers and ranchers apply additional standards for livestock brought into their own herd, in addition to obtaining the tests and examinations required by law. Cattle should be examined or tested for vibriosis, trichomoniasis, mange (scabies), blue tongue, and anaplasmosis. Sheep should be examined or tested for scrapie, scabies, ovine progressive pneumonia, and blue tongue. Swine should be examined for mange, and horses should be examined for equine rhinopneumonitis.

All livestock, including show animals, brought onto a rancher's premises should be isolated from other livestock for 30 days. This isolation period is sufficient time to notice most undetected diseases that could endanger the entire herd or flock.

Conclusion

Violation of state animal health laws and regulations or improper care of diseased livestock can be costly. Damages often are much greater than the penalty for violation of a statute or the replacement of a diseased animal which was sold. Compliance with health regulations, sound management practices, and honest business dealings will do much to prevent the occurrence of the many problems associated with the spread of livestock disease.

Questions concerning livestock health laws and regulations should be addressed to the North Dakota Livestock Sanitary Board or the state veterinarian. The addresses for both are: (Board or State Veterinarian)
State Capitol
Bismarck, ND 58505
(701) 224-2655