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*Equal Opportunity in Employment and Services*

**Testimony of Wayne Carlson**  
**North Dakota Department of Agriculture**  
**House Bill 1112**  
**Senate Agriculture Committee**  
**Roosevelt Parks Room**  
**March 12, 2009**

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Chairman Flakoll and members of the committee, for the record, I am Wayne Carlson the Program Manager for the North Dakota Department of Agriculture. I am here to testify in support of House Bill 1112, which would allow for civil penalties if meat inspection laws are violated.

The effectiveness of the state meat inspection law would be enhanced if we could issues penalties for violations. Although we can take regulatory control action in the event of product adulteration, most violations now lead only to the issuance of a warning letter. This is effective in most cases, but not in all. The only other enforcement action we have available is criminal prosecution, and it is reserved for only the most serious offenses.

During 2008, there were two egregious violations of the Meat Inspection Act that demonstrate a true lack of ability for our regulatory officers to do their jobs effectively and protect the state's consumers.

A meat processing plant that operates under a retail exemption is allowed to sell a small amount of federally inspected single ingredient, raw products to hotels, restaurants and/or institutions. The dollar amount is set annually by USDA. Because we have serious concerns about this practice, we strive to ensure that these establishments follow the rules. In March 2008, our compliance officer discovered that a retailer in the Bismarck/Mandan area had exceeded this limit for the calendar year 2007 by several thousand dollars. Throughout 2007, this information was purposely withheld from inspectors during reviews. A warning letter was issued immediately, and we had hoped this would be enough to prevent the same violation from occurring in the future. Unfortunately, this was not the case. Seven months later, in October 2008, our compliance officer discovered that this retailer had sold nearly twice their allowed amount for 2008. From March 2008 through October 2008, the operators of this establishment purposely and repeatedly withheld records and actually lied to our regulatory officials. I believe this blatant unwillingness to comply occurred because the establishment knew there would be no real consequences for their actions.

### Case Number 2

This involves an older custom exempt establishment that had not been maintained and had gradually deteriorated to the point that the owner was unable or unwilling to correct major deficiencies that were needed for him to continue operating. In March 2008, he signed a Plant Activity Report, indicating he would discontinue custom processing activities and would contact us in the event he changed his mind or sold the plant. In November 2008, our staff discovered that this owner had decided to start operating again; however, he knew he could not meet the requirements so he did not contact us. At this time, our inspectors observed worsening conditions

and serious food safety hazards, and we ordered the owner to cease all activities immediately and remain closed until he was able to address facility and sanitation issues. Once again he ignored the order. Within two weeks, our compliance officer found him operating. Again, as in the first case, I believe he refused to comply because he knew there weren't significant consequences for his violations.

The state meat inspection program was developed to help provide opportunities for small meat processors and producers. I believe we have done this and will continue to do so. However, we are also obligated to protect consumers and reduce the likelihood of food borne illness. Meat products are considered to be one of the highest risk foods because of their contamination potential. It is critical that meat is handled correctly in a sanitary environment and in a manner to preserve its wholesomeness. If it is not, there is a risk of food borne illness.

The meat inspection law has a penalty section, and any person in violation of the act is guilty of a Class A misdemeanor. Any serious or repetitive violations of this chapter are sent to the local states attorney's office. We have found this process to be slow and/or burdensome. In other cases, either no action is taken, or the violation may end up as a criminal case which may result in excessive punishment for the offense. Allowing an administrative fine gives us the flexibility to punish those minor offenses instead of taking criminal actions.

This proposed penalty authority would provide the state meat inspection program with authority that is very similar to other regulatory programs within our agency. I have included a list of other, similar penalty authority in state law for various areas of the Agriculture Department. As you can see by this list, we have the ability to assess civil penalties that are up to \$5,000 per incident, which is far more than we are asking in this bill.

Most meat processors understand the importance of sanitation and the need to adhere to regulations. It is the few individuals who are not concerned about the safety of their product for which we seek this legislation. In order for the program to continue to be successful and expand, we must ensure that the establishments under state inspection meet and follow state and federal regulations. Our inspection staff must also have the tools necessary to effectively enforce the regulations and ensure that only wholesome meat products are produced and offered for sale.

Mr. Chairman and committee members, I urge a “do pass” on House Bill 1112. I would be happy to answer any questions you may have.

Thank you.