

**FIRST ENGROSSMENT  
with Senate Amendments**

Fifty-seventh  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1170**

Introduced by

Agriculture Committee

(At the request of the Agriculture Commissioner)

1 A BILL for an Act to amend and reenact sections 4-30-01, 4-30-02, 4-30-02.1, 4-30-03.1,  
2 4-30-03.2, 4-30-03.3, 4-30-03.4, 4-30-03.5, 4-30-03.6, 4-30-03.7, 4-30-03.8, 4-30-13.1,  
3 4-30-18, 4-30-20, 4-30-36, 4-30-36.2, 4-30-36.3, 4-30-36.4, 4-30-37, 4-30-38, 4-30-47, and  
4 4-30-48 of the North Dakota Century Code, relating to elimination of references to the sale of  
5 cream and to update references to federal laws and regulations; and to repeal sections  
6 4-30-19, 4-30-21, 4-30-22, 4-30-23, 4-30-24, 4-30-25, 4-30-26, and 4-30-42 of the North  
7 Dakota Century Code, relating to standards for production and sale of cream.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 4-30-01 of the 1999 Supplement to the North  
10 Dakota Century Code is amended and reenacted as follows:

11 **4-30-01. Definitions.** In this chapter, unless the context ~~or subject matter~~ otherwise  
12 requires:

- 13 1. "Approved laboratory" means a laboratory in which the entire facilities and  
14 equipment have been approved by the department as being adequate to perform  
15 the necessary official tests in accordance with the North Dakota laws and the rules  
16 of the department.
- 17 2. "Cheese factory" means a place where cheese is made for commercial purposes.
- 18 3. "Commissioner" means the agriculture commissioner ~~of agriculture~~ or the  
19 commissioner's designee.
- 20 4. "Composite sample" means a mixture of single samples of milk or milk products  
21 taken from different lots or deliveries, the amount taken each time being in  
22 proportion to the amount of milk or milk products delivered. Composite samples  
23 are usually taken for determining the butterfat content of a product and are tested

- 1 at a frequency of not less than once every fifteen days. Preservatives may be  
2 added.
- 3 5. "Condensery" means a place where condensed or evaporated milk is produced or  
4 where milk is changed to a thick liquid by evaporation of a part of the water.
- 5 ~~6. "Cream station" means any place other than a creamery where deliveries of cream~~  
6 ~~are weighed, graded, sampled, tested, or collected for purchase.~~
- 7 ~~7. "Creamery" means a place where butter is made for commercial purposes.~~
- 8 ~~8.~~ "Dairy animal" means any mammal maintained for the commercial production of  
9 milk to be offered for sale for use in the processing or manufacturing of milk or  
10 dairy products.
- 11 ~~9.~~ 7. "Dairy or dairy farm" means a place where one or more dairy animals are kept, a  
12 part or all of the milk or milk products from which is sold or offered for sale.
- 13 ~~40.~~ 8. "Department" means the department of agriculture.
- 14 ~~44.~~ 9. "Distributor" means a person who purchases milk or milk products and transports  
15 them to a retail dealer or a consumer.
- 16 ~~42.~~ 10. "Drying plant" means a place which manufactures dry milk products obtained by  
17 the removal of water from milk or milk products.
- 18 ~~43.~~ 11. "Filled dairy products" means any milk, cream, or skimmed milk, or any  
19 combination thereof, whether or not condensed, evaporated, concentrated, frozen,  
20 powdered, dried, or desiccated, or any food product made or manufactured  
21 therefrom, to which has been added, or which has been blended or compounded  
22 with, any fat or oil other than milkfat so that the resulting product is in imitation or  
23 semblance of any dairy product, including but not limited to milk, cream, sour  
24 cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or  
25 skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese,  
26 creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated  
27 milk, or concentrated milk; provided, however, that this term shall not be construed  
28 to mean or include:
- 29 a. Any distinctive proprietary food compound not readily mistaken for a dairy  
30 product, where such compound is customarily used on the order of a

- 1                   physician and is prepared and designed for medicinal or special dietary use  
2                   and prominently so labeled;
- 3                   b. Any dairy product flavored with chocolate or cocoa, or the vitamin content of  
4                   which has been increased, or both, where the fats or oils other than milkfat  
5                   contained in such product do not exceed the amount of cacao fat naturally  
6                   present in the chocolate or cocoa used and the food oil, not in excess of  
7                   one-hundredths per centum of the weight of the finished product, used as a  
8                   carrier of such vitamins; or
- 9                   c. Oleomargarine.
- 10   ~~44.~~ 12. "Grading" means the examination of milk or milk products by sight, odor, taste, or  
11                   laboratory analysis, the results of which determine a grade designating the quality  
12                   of the product.
- 13   ~~45.~~ 13. "Ice cream plant" means a place where ice cream is made for commercial  
14                   purposes.
- 15   ~~46.~~ 14. "Ice milk plant" means a place where ice milk is made for commercial purposes.
- 16   ~~47.~~ 15. "Imitation milk" or "imitation milk product" means a food product or food compound  
17                   made to resemble milk or a milk product when any of the following occurs:
- 18                   a. The food physically resembles milk or a milk product. "Physical resemblance"  
19                   means those characteristics relating to the composition of food, including fat  
20                   and moisture content, nonfat solids content, and functional ingredient or food  
21                   additive content such as emulsifiers, stabilizers, flavor, or color additives.
- 22                   b. The packaging used resembles the packaging used for milk or for a milk  
23                   product.
- 24                   c. The food product or food compound is displayed in a retail establishment in  
25                   the same manner as milk or a milk product.
- 26                   d. Verbal or pictorial expressions are used on the food products or food  
27                   compounds, labeling, or in advertisements or other similar devices used to  
28                   promote the food products or food compounds that state or imply that the  
29                   food is milk or a milk product.
- 30                   e. The food product or food compound in any other way is manufactured,  
31                   packaged, or labeled so as to resemble the identity, intended use, or physical

- 1                   and sensory properties of milk or a milk product. "Physical and sensory  
2                   properties" means those characteristics relating to flavor, texture, smell, and  
3                   appearance of a food product or food compound.
- 4    ~~48.~~ 16. "Milk ~~or cream~~ hauler" means a person who owns vehicles used to transport raw  
5                   milk from a dairy farm to a dairy facility.
- 6    ~~49.~~ 17. "Milk plant or bottling plant" means a place where milk or milk products are  
7                   collected, handled, processed, stored, and prepared for distribution.
- 8    ~~20.~~ 18. "Milk solids or total solids" means the total amount of solids in milk.
- 9    ~~24.~~ 19. "Overrun" means the increase in volume of a manufactured product due to the  
10                  incorporation of water, air, or other substance commonly used in the  
11                  manufacturing processes.
- 12   ~~22.~~ 20. "Pasteurization" as applied to milk or skim milk means the process of heating  
13                  every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78  
14                  degrees Celsius] and cream and other milk products to at least one hundred fifty  
15                  degrees Fahrenheit [65.55 degrees Celsius], and holding it at such temperature  
16                  continuously for at least thirty minutes; or heating every particle of milk to at least  
17                  one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and  
18                  other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44  
19                  degrees Celsius], and holding it at such temperature continuously for at least  
20                  fifteen seconds in approved and properly operated equipment. When applied to  
21                  cream for buttermaking, the cream shall be held at a temperature of not less than  
22                  one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least  
23                  thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00  
24                  degrees Celsius] for at least fifteen seconds. Nothing contained in this definition  
25                  may be construed as barring any other process which has been demonstrated to  
26                  be equally efficient which assures proper pasteurization and keeping quality, which  
27                  is consistent with the most desirable quality, and which is approved by the dairy  
28                  commissioner.
- 29   ~~23.~~ 21. "Peddler" means a person who purchases milk or milk products and sells them  
30                  directly to consumers at any place other than from a store, stand, or other fixed  
31                  place of business.





1           **4-30-02.1. Records release required with application for licensure.** A purchaser of  
2 milk ~~or cream~~ in North Dakota shall file with the license application a release authorizing the  
3 commissioner access to the applicant's financial records held by financial institutions,  
4 accountants, and others. The release must be in a form approved by the commissioner. The  
5 commissioner may use the release in the course of licensing or relicensing the applicant or in  
6 the course of an investigation of the applicant due to a complaint against the applicant or when  
7 based upon evidence establishing probable cause of a violation of this chapter. Information  
8 gained through the use of a release is confidential. The commissioner may furnish information  
9 obtained through the use of the records release to any state agency and to any prosecutorial  
10 official requiring the information for use in performing official duties.

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

13           **4-30-03.1. Financial condition - Assurance of prompt payment.** Each applicant for  
14 a license under section 4-30-02 who purchases milk ~~or cream~~ from a dairy producer shall have  
15 first satisfied the department that the applicant's financial condition is such as to reasonably  
16 assure prompt payment to the dairy producers for purchased milk ~~and cream~~.

17           **SECTION 5. AMENDMENT.** Section 4-30-03.2 of the 1999 Supplement to the North  
18 Dakota Century Code is amended and reenacted as follows:

19           **4-30-03.2. Statement of business operations or financial condition - Filing -**  
20 **Review by Bank of North Dakota - Confidential - Audited.** Each applicant for a license  
21 under section 4-30-02 who purchases milk ~~or cream~~ from a dairy producer shall annually file  
22 with the department an audited financial statement prepared by an independent certified public  
23 accountant or licensed public accountant in accordance with generally accepted accounting  
24 practices and principles, verified by the accountant as accurately representing business  
25 operations and financial conditions of the plant business for which the statement is rendered,  
26 prepared as of the close of the plant's most recent fiscal year. In lieu of filing an audited  
27 financial statement an applicant may file other forms of security as provided in section  
28 4-30-03.3. All audited financial statements shall be reviewed by the Bank of North Dakota. All  
29 statements shall be confidential and shall not be open for public inspection. The department  
30 may require additional statements to be audited by a certified public accountant or a licensed  
31 public accountant.

1           **SECTION 6. AMENDMENT.** Section 4-30-03.3 of the 1999 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **4-30-03.3. Surety bond, trustee agreement, other security or assurances.** In all  
4 cases where it appears that the financial condition of any applicant or licensee who purchases  
5 milk ~~or cream~~ from a dairy producer is not adequate to reasonably assure payment to dairy  
6 producers when due for the milk ~~or cream~~ to be purchased, or in lieu of annually filing with the  
7 department an audited financial statement as required in section 4-30-03.2, the department  
8 shall require from an applicant or licensee security or other assurances in one of the following  
9 forms:

- 10           1. The filing of a surety bond acceptable to the department. The amount of the surety  
11 bond must be determined on the basis of average purchases of milk ~~or cream~~ from  
12 dairy producers during the previous year. Where payment for milk ~~or cream~~  
13 purchased from dairy producers is made on a weekly basis, the amount of the  
14 surety bond must be at least in an amount equal to the average weekly purchases  
15 of milk ~~or cream~~. Where payment for milk ~~or cream~~ purchased from dairy  
16 producers is made on a semimonthly basis, the amount of the surety bond must be  
17 at least in an amount equal to the average semimonthly purchases of milk ~~or~~  
18 ~~cream~~. Where the period of payment for milk ~~or cream~~ purchased from dairy  
19 producers is made on a basis involving periods of time greater than semimonthly,  
20 the amount of the surety bond must be at least in an amount equal to the average  
21 purchases of milk ~~or cream~~ for that greater period of time. The amount of the bond  
22 for each period of payment must also include an amount equal to at least the  
23 average purchases for three days following the close of the period of payment.  
24 The amount of the surety bond of any licensee who pays assignments to creditors  
25 of a producer of milk ~~and cream~~ at a lesser frequency than the licensee pays the  
26 producer must also include an amount equal to the value of assignments from the  
27 prior payment period. The commissioner must be named as obligee, but the bond  
28 or draft must be held for the purpose of protecting, and for the benefit of, any dairy  
29 producer, and the full and complete payment to ~~the seller~~ that dairy producer for all  
30 milk ~~or cream~~ purchased by the licensee. The aggregate liability of the bonding



- 1            company or the department to all dairy producers must in no event exceed the  
2            amount of the bond.
- 3            2. The providing of an amount of protection for dairy producers, from whom milk ~~or~~  
4            ~~cream~~ is purchased, equal to the amount of protection provided in subsection 1,  
5            whereby the security is to be held by the department solely for the protection of  
6            dairy producers, in one or more of the following forms:
- 7            a. Cash deposited with a bank or trust company and held under an escrow  
8            agreement with the department.
- 9            b. Bonds of the United States deposited with the department.
- 10           c. Stocks, bonds, or other marketable securities at current market values, which  
11           securities have regularly reported quotations, deposited with the department.
- 12           d. A certified bank draft, certified check, irrevocable letter of credit, or certificate  
13           of deposit held in favor of the department.
- 14           3. The filing of an agreement providing for the complete control over all manufactured  
15           or processed milk and dairy products by a trustee to be selected at least annually  
16           by the dairy producers. The trustee shall make and file a trustee's bond and  
17           contracts signed by the owner or operator and the purchaser of the dairy products  
18           requiring that payment for all dairy products sold be made to the trustee. The  
19           trustee shall maintain a separate bank account for that purpose and shall at least  
20           annually render a true and correct account of trustee dealings to the department  
21           and to the dairy producers.

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

24            **4-30-03.4. Financial basis for license - Statement to producer - Notification to**  
25            **department.** All milk ~~or cream~~ purchasers licensed under section 4-30-02 shall inform  
26            producers delivering milk ~~and cream~~ of the financial basis on which the license was issued  
27            including the type and amount of security, if any, filed under section 4-30-03.3 by a written  
28            statement to each producer patron at least once every year. No person may receive milk ~~or~~  
29            ~~cream~~ which will increase the amount due and accrued beyond the amount represented as a  
30            basis for the issuance of a license without first notifying the department.

1           **SECTION 8. AMENDMENT.** Section 4-30-03.5 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **4-30-03.5. Additional security.** Whenever the department determines that the value  
4 of milk ~~or cream~~ purchased or received from producers has increased or that an increase may  
5 reasonably be anticipated, so that the total amount of security does not comply with the amount  
6 required by subsection 1 or 2 of section 4-30-03.3, the department shall require additional  
7 security as will afford producers the protection intended by section 4-30-03.3. The department  
8 may suspend or revoke any license if the licensee fails to provide the additional security  
9 required by the department pursuant to this section.

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

12           **4-30-03.6. Filing of security before license year.** Surety bonds or other security for  
13 the license year must be filed with the department not later than the first day of the month  
14 before the beginning of each license year. If any applicant or licensee who purchases or  
15 receives milk ~~or cream~~ from dairy producers has not filed a surety bond or other security, and  
16 has not been relieved from filing a surety bond or other security, by the first day of the month of  
17 the license year, the department shall notify producers selling milk ~~or cream~~ to the applicant or  
18 licensee that the applicant or licensee has not filed any security or made other provisions for  
19 assuring payments for milk ~~or cream~~ purchases, for the license year.

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

22           **4-30-03.7. Failure to file security - Notice to producers.** Whenever an applicant or  
23 licensee fails to file a surety bond or other security within the time fixed by section 4-30-03.6 or  
24 the department's demand for additional security, the department shall publish in a newspaper  
25 or newspapers having circulation in the area or areas in which the producers whose milk ~~or~~  
26 ~~cream~~ is sold or delivered to the applicant or licensee reside, a notice stating that the  
27 department made demand or request of the applicant or licensee; that the applicant or licensee  
28 has failed to comply; that the department does not have on file a surety bond or other security  
29 as demanded; and that adequate security to protect producers may not be available to them.  
30 In addition to published notice to producers, the department shall send by registered mail, a  
31 copy of the notice to each producer delivering milk ~~or cream~~ to the applicant or licensee as may

1 be able to be determined from available records and the notice must be addressed to the  
2 producer's last known place of residence.

3 **SECTION 11. AMENDMENT.** Section 4-30-03.8 of the 1999 Supplement to the North  
4 Dakota Century Code is amended and reenacted as follows:

5 **4-30-03.8. Out-of-state dealers, processors, or producers not exempt.** Sections  
6 4-30-03.1 through 4-30-03.10 apply to all milk ~~or cream~~ purchasers licensed under section  
7 4-30-02 doing business in whole or in part within the state. The protection to producers  
8 afforded by sections 4-30-03.1 through 4-30-03.10 is available to the producers of any state  
9 selling milk ~~or cream~~ to any licensee licensed under section 4-30-02, but the surety bond or  
10 other security required by sections 4-30-03.3 and 4-30-03.5 is payable only for the benefit of  
11 producers who are located within this state.

12 **SECTION 12. AMENDMENT.** Section 4-30-13.1 of the 1999 Supplement to the North  
13 Dakota Century Code is amended and reenacted as follows:

14 **4-30-13.1. Commissioner to investigate complaint.** Upon receiving a ~~written~~  
15 statement claiming that any provision of this chapter or the rules of the department have been  
16 violated, the commissioner shall investigate the complaint as thoroughly and as soon as  
17 possible and practicable. If the commissioner finds upon conducting such investigation that a  
18 provision of this chapter or the rules of the department have been violated, the commissioner  
19 may take any action deemed appropriate.

20 **SECTION 13. AMENDMENT.** Section 4-30-18 of the 1999 Supplement to the North  
21 Dakota Century Code is amended and reenacted as follows:

22 **4-30-18. Sampling and testing procedures - Equipment - Supplies.** The laboratory  
23 procedures, equipment, chemicals, and other apparatus or substances used in the sampling,  
24 hauling, or testing of milk or milk products must conform to that described in the ~~latest~~ sixteenth  
25 edition of "Standard Methods for the Examination of Dairy Products" published by the American  
26 public health association, incorporated, a copy of which shall be on file in the department. No  
27 equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or  
28 testing of milk or milk products which is not in conformance with the requirements of this  
29 chapter may be sold or offered for sale. The commissioner through the adoption of rules may  
30 alter, amend, or prohibit any specific requirement of this section and may approve other

1 sampling, hauling, or testing procedures or equipment. The commissioner, where appropriate,  
2 may check calibration of farm bulk milk tanks and equipment.

3 **SECTION 14. AMENDMENT.** Section 4-30-20 of the 1999 Supplement to the North  
4 Dakota Century Code is amended and reenacted as follows:

5 **4-30-20. Sampling of milk.** Every purchaser of milk from a dairy producer shall collect  
6 a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a  
7 producer. Samples must be collected and maintained in accordance with those procedures  
8 contained in the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy  
9 Products" published by the American public health association, incorporated. Records must be  
10 kept which readily identify the sample with those items used to determine payment for the milk.  
11 Such items must include: weight, butterfat content, protein, solids-not-fat, and the total amount  
12 of money paid for the milk. ~~All milk samples must be kept for at least twenty four hours after~~  
13 ~~testing has been completed.~~

14 **SECTION 15. AMENDMENT.** Section 4-30-36 of the 1999 Supplement to the North  
15 Dakota Century Code is amended and reenacted as follows:

16 **4-30-36. Standards for grade A milk and milk products - Adoption of**  
17 **amendments.** Only grade A milk may be sold as fluid beverage for human consumption. The  
18 minimum standards for milk and milk products designated as grade A are the same as the  
19 minimum requirements of the "Grade A Pasteurized Milk Ordinance, ~~1989~~ 1999  
20 Recommendations of the United States Public Health Service" including "Grade "A" Condensed  
21 and Dry Milk Ordinance 1995 Revision, Grade A Condensed and Dry Milk Products and  
22 Condensed and Dry Whey Supplement 1" and all supplements added thereto except that the  
23 minimum requirements for solids not fat in all grade A milk is eight and one-half percent and the  
24 butterfat content of grade A whole milk is three and one-fourth percent. The commissioner may  
25 adopt as department regulations other standards in addition to any amendments, supplements  
26 to, or new editions of the milk ordinance which are in the interest of public safety,  
27 wholesomeness of product, consumer interest, sanitation, good supply, salability, and  
28 promotion of grade A milk and milk products.

29 **SECTION 16. AMENDMENT.** Section 4-30-36.2 of the 1999 Supplement to the North  
30 Dakota Century Code is amended and reenacted as follows:

1           **4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties -**  
2 **Guidelines.** The state milk sanitation rating and sampling surveillance officer is responsible for  
3 the rating and certification of milk and dairy products. The rating and certification of milk and  
4 dairy products must be in accordance with the procedures outlined in the public health  
5 service/food and drug administration publication entitled "Methods of Making Sanitation Ratings  
6 of Milk Supplies - ~~4989~~ 1999 revision corrected Edition" and the sampling of milk and dairy  
7 products must be in accordance with the guidelines recommended in the ~~latest~~ sixteenth  
8 edition of "Standard Methods for the Examination of Dairy Products" published by the American  
9 public health association.

10           **SECTION 17. AMENDMENT.** Section 4-30-36.3 of the 1999 Supplement to the North  
11 Dakota Century Code is amended and reenacted as follows:

12           **4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines.** The milk  
13 laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy  
14 products laboratories within the state. Evaluations and certification of milk laboratories must be  
15 made in accordance with the ~~latest~~ sixteenth edition of "Standard Methods for the Examination  
16 of Dairy Products" published by the American public health association and the procedures  
17 outlined in the public health service/food and drug administration publication entitled  
18 "Evaluation of Milk Laboratories - ~~4989~~ 1995 Edition".

19           **SECTION 18. AMENDMENT.** Section 4-30-36.4 of the 1999 Supplement to the North  
20 Dakota Century Code is amended and reenacted as follows:

21           **4-30-36.4. Grade A pasteurized milk ordinance.** Dairy producers, processors, and  
22 manufacturers shall comply with the "Grade A Pasteurized Milk Ordinance of ~~4989~~ 1999" and  
23 its supplements and follow the procedures standards set by "Governing the Cooperative  
24 State-Public Health Service Food and Drug Administration Program of the National Conference  
25 on Interstate Milk Shipments 1999 revisions".

26           **SECTION 19. AMENDMENT.** Section 4-30-37 of the 1999 Supplement to the North  
27 Dakota Century Code is amended and reenacted as follows:

28           **4-30-37. Quality records to be kept - Term.** Adequate records for testing and grading  
29 in conformance with this chapter and the rules ~~and regulations~~ of the department must be kept  
30 by each business sampling or testing milk ~~or cream~~ for at least twelve months in a manner  
31 approved by the commissioner.

1           **SECTION 20. AMENDMENT.** Section 4-30-38 of the 1999 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **4-30-38. Transportation of milk ~~and cream~~ for manufacturing, processing, or**  
4 **bottling purposes - Commissioner to adopt rules.** The commissioner may adopt rules  
5 governing the transportation of milk ~~and cream~~ to be used for manufacturing, processing, or  
6 bottling purposes. No facility or vehicle ~~shall~~ may be used or operated in violation of these  
7 rules.

8           **SECTION 21. AMENDMENT.** Section 4-30-47 of the 1999 Supplement to the North  
9 Dakota Century Code is amended and reenacted as follows:

10           **4-30-47. Dispute over test - Official test made - By whom - Other tests - Fees.** If a  
11 disagreement between a seller and a buyer or the legal representatives of both or either arises  
12 over the percentage of butterfat contained in any quantity of milk ~~or cream~~ sold or offered for  
13 sale at the request of the owner and in the owner's presence, a sample of such milk ~~or cream~~  
14 obtained as provided in ~~sections 4-30-19 and~~ section 4-30-20 and mutually agreed upon by the  
15 interested parties as being a representative sample, must be sealed satisfactorily and mailed  
16 by the buyer to the office of the dairy commissioner. There must accompany each sample a  
17 statement giving the name and address of the seller and the buyer of the milk ~~or cream~~ in  
18 question, the net weight thereof, the percentage and amount of butterfat contained therein, the  
19 price per pound [.45 kilogram] for butterfat, and the amount of money paid or offered in  
20 payment for the same and bearing the signature of the seller and the buyer. The commissioner  
21 or the commissioner's agent shall determine the percentage of butterfat contained in the  
22 sample and shall make a report of the result in triplicate, the original to be filed in the  
23 commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk ~~or~~  
24 ~~cream~~. The percentage of butterfat so determined and reported constitutes the "official  
25 butterfat test" and is the basis on which final settlement must be made. The fee for the making  
26 of the official butterfat test and any other tests required must be in such amount as set by  
27 regulation of the dairy commissioner, considering the actual costs of making the test, and such  
28 fee must be mailed to the dairy commissioner at the time of forwarding the sample for such  
29 official butterfat or other test.

30           **SECTION 22. AMENDMENT.** Section 4-30-48 of the 1999 Supplement to the North  
31 Dakota Century Code is amended and reenacted as follows:

1           **4-30-48. Failure to agree on sample for official test - Procedure to be followed.**

2   Whenever it is impossible to secure or mutually agree upon a sample of milk ~~or cream~~ as  
3   provided in section 4-30-47, then the party selling or offering for sale such milk ~~or cream~~ may  
4   require that the buyer or prospective buyer forward to the department the sample taken in  
5   compliance with sections 4-30-19 and 4-30-20. Each sample so forwarded must be  
6   accompanied by a statement in the form of an affidavit from the buyer or prospective buyer,  
7   stating that the sample was taken in compliance with the provisions of sections 4-30-19 and  
8   4-30-20, and the statement also must contain all information required in section 4-30-47, except  
9   that the signature of the seller is not required thereon. Each sample must be tested and  
10   reported on as prescribed in section 4-30-47, and the percentage of butterfat so determined  
11   and reported constitutes the "official butterfat test" and is the basis on which final settlement  
12   must be made.

13           **SECTION 23. REPEAL.** Sections 4-30-19, 4-30-21, 4-30-22, 4-30-23, 4-30-24,  
14   4-30-25, 4-30-26, and 4-30-42 of the North Dakota Century Code are repealed.