

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1420
(Representatives Belter, Onstad)
(Senators Christmann, Nichols)

AN ACT to create and enact two new sections to chapter 4-34 of the North Dakota Century Code, relating to records of cattle transactions; to amend and reenact sections 4-34-02, 4-34-03, 4-34-04, 4-34-05, 4-34-06, 4-34-08, and 4-34-10 of the North Dakota Century Code, relating to the North Dakota beef commission; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-34 of the North Dakota Century Code is created and enacted as follows:

Cattle purchasers - List of sellers to commission - Certain records exempt from disclosure - Penalty.

1. The commission may adopt rules requiring the purchaser of cattle subject to assessment under this chapter to furnish the commission with the names of persons from whom the cattle were purchased. Any person who knowingly refuses to furnish the commission with required information is guilty of a class B misdemeanor.
2. Except as otherwise provided by law, the following records are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota:
 - a. Records furnished to the commission pursuant to subsection 1;
 - b. Records furnished pursuant to section 2 of this Act; and
 - c. The identity of a person requesting refund of an assessment under section 4-34-11, and the amount of the person's requested refund.
3. This section does not limit the issuance of general statements based upon the reports of persons subject to this chapter, or the publication by the commission of the name of any person violating this chapter and a statement of the manner of violation by that person.

SECTION 2. A new section to chapter 4-34 of the North Dakota Century Code is created and enacted as follows:

Records of cattle transactions - Inspection by commission.

1. Each selling agency, livestock auction market, livestock dealer, and any other person subject to assessment under this chapter shall keep a record of:
 - a. The number of cattle purchased, initially transferred, or otherwise subject to assessment, and the date of such transaction;
 - b. The identification of the seller of cattle;
 - c. The number of cattle imported or the equivalent of beef or beef products;
 - d. The amount of assessment remitted;

- e. The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by the per head assessment; and
- f. The date any assessment was paid.
- 2. Each person subject to this section shall maintain and make available for inspection by the commission or its agents the records required by this section, including records necessary to verify any required reports. The records must be maintained for the period of time that the commission may prescribe by rule, but the records must be maintained for at least three years.

SECTION 3. AMENDMENT. Section 4-34-02 of the North Dakota Century Code is amended and reenacted as follows:

4-34-02. Definitions. Unless the context otherwise requires:

- 1. "Beef producer" means any person or firm engaged in the production of cattle.
- 2. "Cattle" means live domesticated bovine animals regardless of age.
- 3. "Cattle feeder" means any person or firm engaged in the growing of cattle or finishing of cattle for slaughter.
- 4. "Commission" means the North Dakota beef commission.
- 5. "Dairy producer" means any person or firm engaged in the production and sale of milk from cows.
- 6. "Livestock auction markets" has the same definition as contained in subsection 2 of section 36-05-01.
- 7. "Livestock dealer" has the same definition as contained in section 36-04-01.
- 8. "Participating producer" means a person who has not claimed a refund for the payment of assessment on the sale of cattle under this chapter for the preceding three years.
- 9. "Person" includes individuals, corporations, limited liability companies, partnerships, trusts, associations, cooperatives, and any and all other business units.
- 9. 10. "Selling agency" means any person engaged in the business of buying or selling in commerce livestock on a commission basis.

SECTION 4. AMENDMENT. Section 4-34-03 of the North Dakota Century Code is amended and reenacted as follows:

4-34-03. North Dakota beef commission - Appointments - Vacancies - Qualifications.

- 1. There is hereby created a North Dakota beef commission consisting of nine members who must be appointed by the governor. The commission must be composed of three beef producers, one cattle feeder, one dairy producer, one public livestock market representative, and three representatives at large. The Subject to section 4-34-05, the commission may also appoint up to two nonvoting ex-officio members.
- 2. Three initial members must be appointed for one year; three members must be appointed for two years; and three members must be appointed for three years. All subsequent members must be appointed for three years unless the appointment is to fill a vacancy in which case such appointment must be for the unexpired term. No members may serve more than two successive three-year terms. In the event a position on the commission becomes vacant for any reason, the unexpired term of such position must be filled in the same mode and manner as the original appointments. In addition to those causes

enumerated under section 44-02-01, a position on the commission is deemed vacant if a member fails to attend, without justification, three consecutive meetings of the commission.

3. Each member must:
 - a. Be a United States citizen and a resident of this state;
 - b. Be actually engaged in that phase of the cattle industry the member represents;
 - c. Have been actually engaged in that phase of the cattle industry for a period of five years; ~~and~~
 - d. Have during that period derived a substantial portion of the member's income therefrom; and
 - e. Except for the public livestock market representative, be a participating producer.

SECTION 5. AMENDMENT. Section 4-34-04 of the North Dakota Century Code is amended and reenacted as follows:

4-34-04. Nomination of members. With the exception of the representatives at large, who must be of the governor's ~~own~~ choosing, the voting members of the commission must be appointed by the governor from nominations made to him by the following organizations: to represent beef producers, by the North Dakota stockmen's association; to represent cattle feeders, by the North Dakota cattle feeders council; to represent dairy producers, by the North Dakota state milk producers association; and to represent public livestock markets, by the North Dakota livestock marketing association.

Not less than two nominations must be submitted for each office to be filled. Upon the expiration of the initial appointments, only those organizations which have the authorization to nominate candidates representing the specific classification for which an opening or openings exist are eligible to submit nominations. The initial appointments must be made immediately after the effective date of this chapter.

SECTION 6. AMENDMENT. Section 4-34-05 of the North Dakota Century Code is amended and reenacted as follows:

4-34-05. Powers and duties of commission.

1. The commission shall administer and enforce the provisions of this chapter and do all things reasonably necessary to effectuate the purposes of this chapter.
2. The commission shall elect a ~~chairman~~ presiding officer and such other officers as it ~~deems~~ determines advisable.
3. The commission shall employ and discharge at its discretion such personnel, including agents, as the commission determines are necessary to carry out the purposes of this chapter, and to prescribe their duties and powers and to fix their compensation.
4. The commission is empowered to adopt, ~~rescind, and amend~~ reasonable rules, ~~regulations~~, and orders for the exercise of its powers ~~hereunder~~. The provisions of chapter 28-32 ~~shall~~ apply to this chapter.
5. The commission is authorized to establish by resolution a headquarters centrally located within the state of North Dakota which shall continue until so changed by the commission.
6. The commission may require that the person or persons who receive and disburse the moneys of the commission must be bonded, by and in the amount to be determined by the

commission. The premium for such bond or bonds must be paid by the commission from assessments collected.

7. The commission shall deposit its funds in a special account in the state treasury.
8. The commission may incur expenses and enter into contracts and create such liabilities as may be reasonably necessary for the enforcement of this chapter.
9. The commission may borrow money, not in excess of its estimate of revenue from the current year's assessments.
10. The commission shall keep or cause to be kept accurate records of all assessments, expenditures, moneys, and other financial transactions performed pursuant to this chapter. Such records, books, and accounts must be audited by the state auditor, in accordance with established auditing and accounting procedures.
11. The commission may prosecute in the name of the state any action to enforce collection or assure payment of the assessment authorized by this chapter, and sue and be sued as a commission without individual liability for acts of the commission within the scope and powers conferred upon it by this chapter.
12. The commission is empowered to cooperate with any person or any local, state, or national commission, organization, or agency, whether voluntary or established by state or federal law, including recognized livestock groups, engaged in activities similar to the work of the commission and to make contracts and agreements for carrying out programs consistent with the purpose and intent of this chapter and to expend funds in connection with this chapter.
13. The commission may appoint up to two nonvoting ~~ex-officio~~ members for a term of one year that may be extended on an annual basis and the commission shall adopt policies to further define ~~ex-officio~~ nonvoting member eligibility and term limitations.
14. The commission may accept grants, donations of funds, property, and services, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the work and objectives of the commission, and shall deposit all funds received under this subsection in the North Dakota beef commission fund in the state treasury.
15. The commission may contract with similar entities and qualified beef councils in other states.

SECTION 7. AMENDMENT. Section 4-34-06 of the North Dakota Century Code is amended and reenacted as follows:

4-34-06. Meetings. ~~The commission shall hold an annual meeting at which time an annual report and proposed budget must be presented.~~ The commission shall hold at least ~~two other~~ three regular meetings each year at the call of the ~~chair~~ presiding officer, and may hold special meetings at the call of the presiding officer or by request of any three voting members of the commission. The ~~chairman~~ presiding officer shall establish the time, manner, and place of all meetings and shall give reasonable notice to the members. A majority of voting members constitutes a quorum for the transaction of any business.

SECTION 8. AMENDMENT. Section 4-34-08 of the North Dakota Century Code is amended and reenacted as follows:

4-34-08. Assessment for sale of cattle - Penalty.

1. There is ~~hereby~~ levied on each ~~person who is a~~ resident of this state selling cattle within the state or from the state, an assessment of fifty cents per head for each animal sold, or

the amount assessed pursuant to the federal Beef Promotion and Research Act of 1985 [7 U.S.C. 2901 et seq.] and applicable regulations, whichever is greater. The moneys collected pursuant to this chapter must be paid to the commission pursuant to this chapter and must be expended by the commission only as authorized by this chapter.

2. For the purposes of this chapter, a person is not considered to have sold cattle if the and the assessment may not apply to cattle owned by a person if that person certifies to the commission, on forms provided by the commission, that:
 - a. The person's only share in the proceeds of a sale of cattle is a sales commission, handling fee, or other service fee, ~~or the~~; or
 - b. The person acquired ownership of cattle to facilitate the transfer of ownership of the cattle from the seller to a third party, resold the cattle no later than ten days from the date on which the person acquired ownership, and ~~certified, as required by regulations prescribed by the cattlemen's beef promotion and research board and approved by the secretary of agriculture of the United States, that the requirements of 7 CFR 1260.116 have been satisfied. The moneys collected pursuant to this chapter must be paid to the commission pursuant to this chapter and must be expended by the commission only as authorized by this chapter that the assessment levied upon the person from who the person purchased cattle, if an assessment was due, has been collected and has been remitted, or will be remitted in a timely fashion.~~
3. Any person seeking nonproducer status under this section who willfully provides a false or misleading certification to the commission is guilty of a class B misdemeanor.

SECTION 9. AMENDMENT. Section 4-34-10 of the North Dakota Century Code is amended and reenacted as follows:

4-34-10. Remittance of assessments collected - Penalties. All assessments collected by licensed dealers, selling agencies at terminal markets, or auction markets, or required to be paid by any other person as provided in this chapter must be remitted to the North Dakota beef commission no later than the fifteenth day of the month following the month in which the cattle were sold. The assessments must be accompanied by remittance forms as prescribed and furnished by the commission. All moneys collected by the commission pursuant to this chapter must be remitted by the commission to the state treasurer and deposited by the state treasurer in the North Dakota beef commission fund and are hereby appropriated to the commission and must be disbursed by the commission in accordance with this chapter. Any licensed dealer, selling agency at terminal markets, auction markets, or any other person required to remit assessments but who fails to remit the assessments as required by this chapter within thirty days following the month in which the cattle were sold is guilty of a class B misdemeanor. Any licensed dealer, owner or operator of a selling agency at a terminal market, livestock auction market operator or any other person required to collect assessments but who fails to collect assessments as required by this chapter is guilty of a class B misdemeanor. Any person who sells cattle from the state of North Dakota outside the state or to an out-of-state buyer who fails to remit the assessments required by this chapter within thirty days following the month in which the cattle were sold is guilty of a class B misdemeanor. Any unpaid assessments due pursuant to this chapter ~~must~~ may be increased by two percent each month beginning with the day following the date the assessments were due. Any remaining amount due which includes any unpaid charges previously due pursuant to this section, ~~must~~ may be increased at the same rate on the corresponding day of each month thereafter until paid. The timeliness of the remittance of an assessment as required by this chapter must be based on the applicable postmark date or the date the assessment is actually received by the commission. The commission ~~is authorized to~~ may sue for and collect assessments and any penalties on unpaid assessments.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1420.

House Vote: Yeas 75 Nays 17 Absent 2

Senate Vote: Yeas 43 Nays 1 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State