

AGRICULTURE

CHAPTER 78

S. B. No. 84

(Forkner, Roen, Meidinger, Mahoney)

COUNTY FAIR TAX LEVY

AN ACT

To amend and reenact section 4-02-27.1 of the North Dakota Century Code, relating to an additional mill levy for the aid of county fair associations, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 4-02-27.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-27.1. Additional Levy Authorized.) The board of county commissioners may, by appropriate resolution, submit to the electors of the county at the next special or general election, the question of whether an annual levy of not to exceed one-half mill upon all taxable property in the county, in addition to the levy provided in section 4-02-27 of this code, shall be authorized for the purpose of aiding a county fair association. If such additional levy is approved by the electors, the board of county commissioners shall be authorized to make such additional annual levy, not to exceed one-half mill, and disburse the proceeds thereof in the manner provided in section 4-02-27 for the levy and disbursement of other county fair association aid funds. The failure of the electors to approve any additional mill levy under the provisions of this section shall not be construed as invalidating a levy previously approved by such electors prior to such election.

§ 2. **Emergency.)** This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 4, 1963.

CHAPTER 79

S. B. No. 106
(Brooks)

ADDITIONAL COUNTY FAIR LEVY IN CERTAIN COUNTIES

AN ACT

To authorize certain counties to levy a tax for county fair purposes, providing for the expenditure of the proceeds, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) The board of county commissioners of any county having a population in excess of twenty-five thousand, according to the latest federal decennial census, shall, when petitioned by at least five percent of the electors of the county, including electors residing in at least one-half of the voting precincts of the county as determined by the number of votes cast in the county for the office of governor at the last preceding general election, submit to the electors of the county at any general election or special election called for such purpose, the proposition of authorizing the board of county commissioners to purchase or lease in the name of the county not to exceed two hundred and forty acres of real estate and to construct thereon such buildings and other improvements as may be deemed desirable for the conduct of a county fair and authorizing the board of county commissioners, in the event that the county general fund is deemed insufficient to provide funds therefor, to levy a tax of not to exceed two mills in any one year for a period of not to exceed ten years upon the net taxable valuation of property in the county. If a majority of the votes cast at such election are in favor of the proposition, including the proposed levy, the tax shall be levied and collected as are other property taxes, with the proceeds thereof to be placed into a fund to be known as the "county fair fund". Such tax shall be in addition to any mill levy limitations provided by law, including the levies authorized by sections 4-02-27 and 4-02-27.1.

§ 2.) Any property used for county fair purposes may be sold by the board of county commissioners upon such terms and conditions as the board shall determine, and the proceeds of such sale shall be placed in the county fair fund and used exclusively for county fair purposes, provided that if the county fails to hold a fair within the county for two successive years, any property on hand may be sold and the proceeds of such sale, together with any other unexpended balance in the

county fair fund may, at the discretion of the board of county commissioners, be transferred to the county general fund. The levy of the tax authorized by section 1 of this Act, expenditures of the proceeds thereof, and the conduct of the fair shall be governed by the provisions of sections 4-02-26 through 4-02-34 to the extent such sections are consistent with the provisions of this Act.

§ 3. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 9, 1963.

CHAPTER 80

S. B. No. 72

(Brooks, Baker, Dahlund, Ringsak, Robinson, Wartner, Sinner)

EXPERIMENT STATION BOARD OF VISITORS

AN ACT

To amend and reenact section 4-05-08.6 of the North Dakota Century Code, relating to travel expenses of the board of visitors for the north central agricultural experiment station.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 4-05-08.6 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-05-08.6. Board of Visitors — Members — Inspection — Expenses—Duties.) It shall be the duty of the board of county commissioners of Renville, Bottineau, Rolette, Benson, Ward, McHenry, Pierce, McLean, Mountrail, Sheridan, Burke, and Wells counties to name two farmers operating farms in their respective counties to serve as a board of visitors to said north central agricultural experiment station. The members of the board of visitors shall serve for three years and shall not be eligible for reappointment until after a lapse of three years following each term of office. Vacancies occurring on such board shall be filled by the county commissioners of the county where such vacancy occurs. It shall be the duty of said board of visitors to make an annual inspection of said north central agricultural experiment station upon call of the director of the North Dakota agricultural experiment station. At least one of the inspections in a biennium shall be in the growing season. The board of visitors shall be entitled to a fee of five dollars

for each visit, plus mileage at the same rate as provided by law for other state officials for every mile actually traveled to and from said farm. It shall be the duty of the board of visitors to inspect the work of the north central agricultural experiment station and to counsel and advise with the officials in charge. The board of visitors shall name one of its members to serve as chairman and another to serve as secretary, and they shall make a written report to the director of the North Dakota agricultural experiment station.

Approved March 14, 1963.

CHAPTER 81

H. B. No. 823

(Leet)

POULTRY IMPROVEMENT BOARD, PURPOSE

AN ACT

To amend and reenact subsection 5 of section 4-13-03 of the North Dakota Century Code, relating to the purposes of the North Dakota poultry improvement board.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 5 of section 4-13-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. To act as the state agency to cooperate with the United States department of agriculture, to provide federal-state grading service for poultry and poultry products, and to require identification as to grade of poultry and poultry products offered for sale at the retail level, and to supervise the federal-state poultry grading service; and

Approved March 9, 1963.

CHAPTER 82

H. B. No. 622
(Leet, Kelly, Overbo)

POULTRY IMPROVEMENT BOARD MEMBERSHIP

AN ACT

To amend and reenact sections 4-13-05 and 4-13-07 of the North Dakota Century Code, relating to the composition of the poultry improvement board and their expenses.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 4-13-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-13-05. Members of Board—Qualifications—Appointment—Term—Vacancies.) Not later than July 10, 1943, the boards of directors of the North Dakota Poultry Association and the North Dakota Turkey Federation, acting concurrently, shall submit to the governor a list of nominees for appointment to the North Dakota poultry improvement board containing the names of three bona fide hatchery operators or owners, three poultry processors and marketing men, three poultry producers, three turkey breeders, and three persons engaged in the poultry feed business, and shall designate in such list the classification for which the nominees are selected. All of such nominees shall be qualified electors of the state of North Dakota. Not to exceed five days after the receipt of such list of nominees, the governor shall appoint from such list, six members of said board, consisting of one member from each of such classifications. One of such members shall be appointed for a term to expire July 1, 1944, one for a term to expire July 1, 1945, one for a term to expire July 1, 1946, one for a term to expire July 1, 1947, one for a term to expire July 1, 1948, and one for a term to expire July 1, 1949 and said members shall serve until such dates, respectively, and until their successors are appointed and qualified. On or before July first in each year hereafter when a term is to expire, the governor shall appoint one member, for a six-year term, who shall be appointed from a list of three nominees selected and submitted to him in the manner above set forth, such nominees to be named from the classification represented by the member whose term expires. Vacancies arising by reason of the death, resignation, removal, or disqualification of a member of said board shall be filled in the same manner as to nomination and appointment, and members appointed to fill vacancies shall serve for the unexpired term in which the vacancy has arisen.

§ 2. **Amendment.)** Section 4-13-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-13-07. Compensation of Board Members.) The appointive members of the board shall receive ten dollars per day for the performance of their duties under this chapter, including the attendance at regular and special meetings of the board. In addition to such compensation, they shall receive travel expenses and the regular mileage rate provided by law for other state officials for each mile actually and necessarily traveled in the performance of their duties. The amounts herein specified shall be the only compensation allowable and shall be payable from the poultry improvement fund. The ex officio members of the board shall receive no compensation or expense money from such fund, but they may collect their expenses in carrying out the work of the poultry improvement board from the state departments which they respectively represent.

Approved March 9, 1963.

CHAPTER 83

S. B. No. 186

(Ringsak, Mahoney, Meidinger, Sorlie)

DISCRIMINATION IN SALE OF FARM PRODUCTS

AN ACT

To amend and reenact section 4-14-04 of the North Dakota Century Code, relating to unfair discrimination in sale of farm products, and providing a savings clause.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 4-14-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-14-04. Unfair Discrimination in Sale of Farm Products.) Any person doing business in the state of North Dakota and engaged in the manufacture, distribution, or sale of farm products who discriminates between different sections, communities, cities, or villages, or portions thereof in this state, by selling at a lower price or rate in one section, community, city, or village, or portion thereof than is charged by such person for such farm products in another section, community, city, or village, or portion thereof, after making due allowance

for the difference, if any, in the actual cost of transportation of such products, is guilty of unfair discrimination. Proof of such differential in price shall be prima facie evidence of violation of this section in a civil action. It shall not be unfair discrimination for any person to sell in any section, locality, community, city, or village at a price equal to that actually charged on the same day by any bona fide competitor in such section or locality for farm products of the same kind and grade if such price is charged in a bona fide and good faith effort to meet competition, and in such case, the burden of proving such facts shall be upon the defendant in a civil action.

§ 2. Savings Clause.) If any section, subsection, subdivision, sentence, phrase, clause, word or words of this Act shall for any reason be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the Act.

Approved March 15, 1963.

CHAPTER 84

H. B. No. 630

(Johnson, Vendsel, Gackle, Fossum, Christensen (McLean),
(Winge, Berg)

DAIRY PRODUCTS PROMOTION ASSESSMENTS

AN ACT

To amend and reenact subsection 7 of section 4-27-05 and section 4-27-06 of the North Dakota Century Code, relating to dairy products promotion.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 7 of section 4-27-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. In order to effectuate the declared purposes of this chapter, the commission is hereby authorized to collect an assessment of one-half cent upon each pound of butterfat produced and sold in the state of North Dakota and to make disbursement from such funds as provided herein.

§ 2. Amendment.) Section 4-27-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-27-06. Assessment.) 1. There is hereby levied an assessment of one-half cent upon each pound of butterfat produced

and sold in the state of North Dakota. When butterfat is sold without a butterfat test being made, its butterfat content shall be computed on the basis of three and one-half percent of weight when milk, and thirty-two percent of weight when cream.

2. All assessments levied under this chapter shall be collected by the first dealer or processor through deduction of the same from the price paid for butterfat to the producer, with the exception that where the producer sells directly to the consumer, the assessment shall be collected from such producer. All moneys received by the dealers, processors and producers from such assessment shall be remitted to the state treasurer and deposited by him in the North Dakota dairy products promotion commission fund and are hereby appropriated to the commission and shall be disbursed by the commission in accordance with the provisions of this chapter. The remittance of such assessments shall be made monthly within fifteen days after the period for which remittance is made. Assessments unpaid on the date on which they are due and payable shall be increased by ten percent of the amount of the assessment.

3. Any producer desiring a refund of such assessment must himself make written application to the secretary-treasurer of the North Dakota dairy products promotion commission therefor. Such application may only be made on an annual basis and may only be made within thirty days after January first of each year on forms provided by the commission.

Approved March 7, 1963.

CHAPTER 85

S. B. No. 329

(Ringsak, Kautzmann, George, Erickson, Wartner, Sorlie,
(Chesrown, Strinden, Meidinger)

STATE DAIRY DEPARTMENT

AN ACT

To provide for the establishment of a dairy department within the department of agriculture and labor, to provide for a dairy commissioner and other personnel, and to prescribe their powers, duties, and salaries, and to repeal chapter 4-17 of the North Dakota Century Code, relating to the dairy department and the powers and duties of officials thereof.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Dairy Department—Division of Department of Agriculture and Labor—Purposes.) The dairy department is a division of the department of agriculture and labor, and shall promote, improve, and regulate the dairy products of this state and enforce proper rules and regulations pertaining thereto.

§ 2. Dairy Commissioner and Assistants.) The commissioner of agriculture and labor shall appoint a deputy in his department to be known as the dairy commissioner, who shall be the official head of the dairy department. The commissioner of agriculture and labor, with the advice of the dairy commissioner, shall appoint as many assistant dairy commissioners as the needs of the department demand and funds available permit. The dairy commissioner, with the consent of the commissioner of agriculture and labor, may appoint special assistant dairy commissioners if a circumstance arises when a special assistant would facilitate or improve the effectiveness and efficiency of the dairy department. The assistant dairy commissioners and the special assistant dairy commissioners shall perform such duties as directed by the dairy commissioner and the commissioner of agriculture and labor, and when performing such duties, the assistant dairy commissioners and the special assistant dairy commissioners shall have the same authority as is conferred upon the dairy commissioner by this chapter.

§ 3. Duties of Dairy Commissioner.) The dairy commissioner shall enforce all laws and rules and regulations in force or hereafter enacted relating to the production, storage, processing, manufacturing, transportation, labeling, and sale of milk and milk products, their imitations and substitutes.

He shall promulgate and enforce rules and regulations necessary to promote, improve, and regulate the production,

storage, handling, processing, manufacturing, transportation, labeling and sale of milk and milk products, their imitations and substitutes, and shall amend, alter, or abolish such rules and regulations when warranted by changed conditions or experience.

He shall inspect, or have inspected, at least twice each year or oftener if necessary, every creamery, cheese factory, condensery, drying plant, ice cream factory, ice milk factory, cream station, dairy, bottling plant, storage depot, collecting station, and all other milk and cream purchasing, processing, manufacturing or distributing businesses, and any business which is processing or manufacturing a product which is an imitation or substitute for milk or milk products.

He shall assist dairy producers, processors, and all other persons, businesses and organizations concerned with dairying in promoting, improving, and regulating the dairy interests of this state.

He shall cooperate and consult with all federal, state, district, county, and municipal organizations, departments, agencies, schools, commissioners, associations, clubs and other groups interested in the dairy industry but shall not be bound by their policies.

§ 4. Additional Powers and Duties of Dairy Commissioner and Authorized Persons.) The dairy commissioner and those persons authorized by him:

1. Shall have free access to all places of business, buildings, vehicles, and equipment used in the production, storage, handling, processing, manufacture, transporting, and marketing of milk and milk products, their imitations, and substitutes.
2. May open and inspect any package, can, or other container which is suspected of containing any article or substance which is produced, stored, handled, processed, manufactured, transported, sold or offered for sale under the provisions of the North Dakota Century Code, or the rules and regulations of the dairy department, and he may take samples or specimens therefrom and have them analyzed or tested. A product so suspected may be seized or ordered held by the commissioner until samples are taken and tested in an approved laboratory.
3. May prevent the purchase, sale, processing, manufacturing or transportation of milk or milk products intended as food for human consumption which is in violation of any North Dakota laws or the rules and regulations of the dairy department. All persons engaged in the dairy business and officials and employees of common carriers

which transport milk or milk products shall give every assistance in their power in tracing and discovering the presence of any article named in violation of this North Dakota law when so requested by the commissioner or his duly authorized representatives.

§ 5. Reports — Dairy Commissioner and Commissioner of Agriculture and Labor—Contents.) The dairy commissioner shall make a report to the commissioner of agriculture and labor when directed by him. The annual report of the commissioner of agriculture and labor shall contain a detailed report of the work and proceedings, together with an account of expenses and disbursements of the dairy commissioner and the assistant dairy commissioners, in relation to the production, manufacture, and sale of dairy products, and such suggestions as the commissioner of agriculture and labor may regard of public importance.

§ 6. Assistant Dairy Commissioners — Duties — Powers.) The assistant dairy commissioners shall perform such duties as may be directed by the dairy commissioner or the commissioner of agriculture and labor, and when performing such duties, the assistant dairy commissioners shall have the same authority as is conferred upon the dairy commissioner by this chapter.

§ 7. Salaries and Expenses of Dairy Commissioner, Assistant Dairy Commissioners, and Special Assistant Dairy Commissioners.) The dairy commissioner and the assistant dairy commissioners shall receive salaries fixed by the commissioner of agriculture and labor within the limits of the legislative appropriations. The dairy commissioner and the assistant dairy commissioners shall be paid all actual and necessary expenses incurred in the performance of their duties, to be paid as the expenses of other departments are paid. If salaries, wages or expenses are paid to a special assistant dairy commissioner, he shall receive such compensation as fixed by the commissioner of agriculture and labor and shall be paid in the same manner as a regular employee of the department.

§ 8. Bulletins — Publishing — Contents — Expense.) The dairy commissioner under the supervision of the commissioner of agriculture and labor shall publish and distribute, from time to time, bulletins containing the rules and regulations promulgated by him, and other useful information of advantage to the dairy interests of this state. The expenses for such publications shall be audited and paid for as other public printing.

§ 9. Repeal.) Chapter 4-17 of the North Dakota Century Code is hereby repealed.

Approved March 7, 1963.

CHAPTER 86

S. B. No. 88

(Ringsak, Trenbeath, Mutch, Kisse)

DAIRY PRODUCTS, DEFINITIONS

AN ACT

To provide definitions for the administration and regulation of the dairy processing, production, and manufacturing industry within the state, and to repeal sections 4-18-01, 4-18A-01, and 4-18B-02 of the North Dakota Century Code, relating to definitions for the purpose of dairy regulation.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Definitions.**) In this chapter, unless the context or subject matter otherwise requires:

1. "Creamery" shall mean a place where butter is made for commercial purposes;
2. "Cheese factory" shall mean a place where cheese is made for commercial purposes;
3. "Condensery" shall mean a place where condensed or evaporated milk is produced or where milk is changed to a thick liquid by evaporation of a part of the water;
4. "Drying plant" shall mean a place which manufactures dry milk products obtained by the removal of water from milk or milk products;
5. "Ice cream plant" shall mean a place where ice cream is made for commercial purposes;
6. "Ice milk plant" shall mean a place where ice milk is made for commercial purposes;
7. "Cream station" shall mean any place other than a creamery where deliveries of cream are weighed, graded, sampled, tested, or collected for purchase;
8. "Milk plant or bottling plant" shall mean a place where milk or milk products are collected, handled, processed, stored and prepared for distribution;
9. "Distributor" shall mean a person who purchases milk or milk products and transports them to a retail dealer or a consumer;
10. "Peddler" shall mean a person who purchases milk or milk products and sells them directly to consumers at any place other than from a store, stand or other fixed place of business;
11. "Retail" shall mean the sale of milk or milk products directly to the consumer;

12. "Wholesale" shall mean the sale of milk or milk products to a retail dealer for purposes of resale;
13. "Collecting station" shall mean a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition shall not be interpreted to include the warehouses, docks, loading platforms or storage rooms of commercial carriers;
14. "Transfer station" shall mean a place where milk or milk products are regularly transferred from one vehicle to another. This definition shall not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers;
15. "Commercial carrier" shall mean a person or business which is subject to regulation by state or federal authorities;
16. "Producer dairy" shall mean a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing;
17. "Milk producer" shall mean a person who owns or controls one or more cows, a part or all of the milk or milk products from which is sold, or offered for sale;
18. "Dairy or dairy farm" shall mean a place where one or more cows are kept, a part or all of the milk or milk products from which is sold or offered for sale;
19. "Producer - processor" or "producer - distributor" shall mean a producer who is also a processor or distributor;
20. "Milk or cream hauler" shall mean a person, other than a milk producer or a dairy plant employee, who transports milk, or milk products to or from a dairy plant or a collecting point;
21. "Milk" shall mean the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows or goats;
22. "Raw milk or raw milk products" shall mean products which have not been treated by the process of pasteurization as defined in this section;
23. "Skim milk or low fat milk" shall mean milk from which a portion of milkfat has been removed;
24. "Nonfat, fat-free, or defatted milk" shall mean skim milk which contains not more than fifteen hundredths of one percent milkfat;
25. "Flavored milk" shall mean a beverage or confection consisting of milk to which has been added a syrup or flavor made from wholesome ingredients;
26. "Flavored drink or flavored dairy drink" shall mean a beverage or confection consisting of skim milk to which

- has been added a syrup or flavor made from wholesome ingredients;
27. "Flavored reconstituted milk" shall mean a flavored milk made from reconstituted milk;
 28. "Flavored reconstituted drink or flavored reconstituted dairy drink" shall mean a flavored drink made from reconstituted skim milk;
 29. "Buttermilk" shall mean a fluid product resulting from the churning of milk or cream;
 30. "Cultured buttermilk" shall mean a fluid product resulting from the souring or treatment, by a lactic acid or other culture, of pasteurized skim milk or pasteurized reconstituted skim milk.
 31. "Cultured milk" shall mean a fluid or semifluid product resulting from the souring or treatment, by a lactic acid or other culture, of pasteurized milk, pasteurized reconstituted milk, or pasteurized concentrated milk;
 32. "Vitamin D milk" shall mean milk the vitamin D content of which has been increased by an approved method;
 33. "Fortified milk and milk products" shall mean milk to which has been added vitamins or minerals in an approved method;
 34. "Reconstituted or recombined milk" shall mean a product which results from the recombining of milk constituents with water, and which complies with the standards for milkfat and solids-not-fat of milk;
 35. "Reconstituted or recombined cream" shall mean a product which results from the combination of dry cream, butter, or milkfat, with cream, milk, skim milk, or water, and which complies with the milkfat standards of cream;
 36. "Reconstituted or recombined skim milk" shall mean a product which results from the recombining of skim milk constituents with water;
 37. "Homogenized milk" shall mean milk which has been treated in such a manner as to insure breakup of the fat globules to such an extent that, after forty-eight hours of quiescent storage, no visible cream separation occurs on the milk, and the fat percentage of the top one hundred milliliters of milk in a quart bottle, or of proportionate volumes in containers of other sizes, does not differ by more than ten percent of itself from the fat percentage of the remaining milk as determined after thorough mixing. The word "milk" shall be interpreted to include homogenized milk;
 38. "Concentrated milk" shall mean a fluid product, unsterilized and unsweetened, resulting from the removal

- of a considerable portion of the water from milk. When recombined with water, in accordance with instructions printed on the container, the resulting product conforms with the standards for milkfat and solids-not-fat of milk;
39. "Concentrated milk products" shall mean and include homogenized concentrated milk, vitamin D concentrated milk, concentrated skim milk, concentrated flavored milk, concentrated flavored drink, and similar concentrated products made from concentrated milk or concentrated skim milk, as the case may be, and which, when recombined with water in accordance with instructions printed on the container, conform with the standards of the corresponding milk products;
 40. "Milk solids or total solids" shall mean the total amount of solids in milk;
 41. "Skim milk solids or solids-not-fat" shall mean the total solids in milk after all fat has been removed;
 42. "Cream" shall mean the fatty liquid or semi-liquid separated from milk, with or without the addition thereto of milk or skim milk;
 43. "Half and half" shall mean a product consisting of a mixture of milk and cream;
 44. "Reconstituted, or recombined, half and half" shall mean a product resulting from the combination of reconstituted milk or reconstituted skim milk with cream or reconstituted cream;
 45. "Whipped cream" shall mean cream to which a harmless gas has been added to cause whipping of the product. It may also contain sugar, a harmless flavoring, or a harmless stabilizer;
 46. "Cottage cheese" shall mean the soft uncured cheese prepared from the curd obtained by adding harmless, lactic-acid-producing bacteria, with or without enzymatic action, to pasteurized skim milk or pasteurized reconstituted skim milk;
 47. "Creamed cottage cheese" shall mean the soft uncured cheese which is prepared by mixing cottage cheese with pasteurized cream, or with a pasteurized mixture of cream and milk or skim milk;
 48. "Cheese" shall mean that product which is usually known by that name which is the sound, solid and ripened product of milk and cream made by coagulating the casein in thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning;
 49. "Butter" shall mean that product usually known by that name which is manufactured exclusively from milk,

- cream, or both, with or without common salt, with or without additional coloring matter;
50. "Whipped butter" shall mean butter to which a harmless gas has been added;
51. "Milk products or dairy products" shall mean and include cream, sour cream, half and half, whipped cream, concentrated milk, concentrated milk products, low fat skim milk, non-fat milk, flavored milk, flavored drink, flavored reconstituted milk, flavored reconstituted drink, buttermilk, cultured buttermilk, cultured milk, vitamin D milk, fortified milk, reconstituted or recombined milk, reconstituted cream, reconstituted skim milk, cottage cheese, creamed cottage cheese, butter, ice cream, ice milk, cheese, unsweetened condensed milk, sweetened condensed milk, evaporated milk, dry buttermilk, dry whole milk, dry skim milk, and any other product made by the addition of any substance to milk or to any of these milk products, and used for similar purposes, and designated as a milk product by the dairy commissioner;
52. "Filled dairy products" shall mean any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or dessicated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milkfat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk; provided, however, that this term shall not be construed to mean or include:
- a. Any distinctive proprietary food compound not readily mistaken for a dairy product, where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;
 - b. Any dairy product flavored with chocolate or cocoa, or the vitamin content of which has been increased, or both, where the fats or oils other than milk fat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredths percentum of the weight of the finished product, used as a carrier of such vitamins; or
 - c. Oleomargarine;

53. "Overrun" shall mean the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes;
54. "Pasteurization" as applied to milk or skim milk shall mean the process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit and cream and other milk products to at least one hundred fifty degrees Fahrenheit, and holding it at such temperature continuously for at least thirty minutes; or heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment. When applied to cream for buttermaking, the cream shall be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit for at least fifteen seconds. Nothing contained in this definition shall be construed as barring any other process which has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the dairy commissioner;
55. "Adulterated milk or adulterated milk products" shall mean any milk or cream to which water has been added, or any milk or milk products which contains any unwholesome substance, or which, if defined by state law or by the rules and regulations of the dairy department, does not conform with its definition;
56. "Misbranded milk or misbranded milk products" shall mean any milk or milk product which carries a grade label, unless such grade label has been awarded by the dairy commissioner and not revoked, or which fails to conform in any other respect with the statements on the label;
57. "Dry milk products or powdered milk products" shall mean milk, or milk products dehydrated by evaporation;
58. "Whole milk powder or dry whole milk" shall mean milk which has been dehydrated to dryness;
59. "Skim milk powder or dry skim milk" shall mean skim milk dehydrated to dryness;
60. "Dry buttermilk powder or dry buttermilk" shall mean buttermilk dehydrated to dryness;
61. "Instant dry powder or instant dry milk" shall mean

- milk dehydrated to dryness and which dissolves "instantly" when reconstituted;
62. "Canned milk" shall mean milk sealed in metal cans for sale to consumers. It is commonly a sweetened, condensed and sterile fluid or evaporated milk;
 63. "Ice cream" shall mean the pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients;
 64. "Ice cream mix" shall mean the mix from which ice cream is frozen, made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer;
 65. "Ice milk and ice milk mix" shall mean and include any frozen, or unfrozen substance, mixture, or compound which is not ice cream, milk sherbet, ice, or frozen or frosted malted milk as the same are defined by the department, regardless of the name under which it is sold or offered for sale:
 - a. If the freezing of such substance, mixture or compound is accompanied by agitation of the ingredients thereof;
 - b. If such substance, mixture or compound is made in imitation or semblance of ice cream;
 - c. If such substance, mixture, or compound is prepared or frozen in the same manner as ice cream is customarily prepared or frozen;
 66. "Frozen milk" shall mean milk which has been processed by freezing;
 67. "Condensed milk or evaporated milk" shall mean milk which has been concentrated by removing water with or without the addition of sugar;
 68. "Processing or manufacturing" shall mean the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner which changes the natural, physical or chemical properties of the original product;
 69. "Sampling" shall mean a procedure whereby a portion or specimen of milk, or milk products is taken for the purpose of grading or testing;

70. "Composite sample" shall mean a mixture of single samples of milk or milk products taken from different lots or deliveries, the amount taken each time being in proportion to the amount of milk or milk products delivered. Composite samples are usually taken for determining the butterfat content of a product and are tested at a frequency of not less than once every fifteen days. Preservatives may be added;
71. "Grading" shall mean the examination of milk, or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating the quality of the product;
72. "Testing" shall mean an examination of milk, or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof;
73. "Department" shall mean the dairy department;
74. "Commissioner" shall mean the dairy commissioner;
75. "Agent" shall mean a person who is authorized by another person to act for him in dealing with a third person;
76. "Person" shall mean individuals, firms, partnerships, associations, trusts, estates, corporations, and any and all other business units, devices or arrangements;
77. "C.I.P." shall mean a method of cleaning, commonly called "cleaned-in-place" whereby equipment is cleaned by circulating washing solutions and sanitizers through it and thereby eliminating the necessity of dismantling the equipment;
78. "Approved laboratory" shall mean a laboratory in which the entire facilities and equipment have been approved by the dairy commissioner as being adequate to perform the necessary official tests in accordance with the North Dakota laws and the rules and regulations of the dairy department;
79. "3A Standards" shall mean standards which have been established for certain equipment, utensils, and other items by the 3A Sanitary Standards Committee of the International Association of Milk and Food Sanitarians, Incorporated.

§ 2. **Repeal.**) Sections 4-18-01, 4-18A-01, and 4-18B-02 of the North Dakota Century Code are hereby repealed.

Approved March 1, 1963.

CHAPTER 87

S. B. No. 168

(Ringsak, Miller, Thompson, Mahoney, George, Strinden, Beck)

DAIRY PRODUCTS REGULATIONS

AN ACT

To provide for the licensing, bonding, and regulation of the dairy producing processes and manufacturing industry in the state of North Dakota, to provide standards therefor and to provide for the powers and duties of the dairy department in connection therewith and providing penalties; and to repeal chapters 4-18, 4-18A, and 4-18B, of the North Dakota Century Code, relating to the regulation of dairy products production, manufacturing, and processing in the state of North Dakota.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Licenses Required — Fees — Terms.) Every producer-processor, peddler, distributor, and every person purchasing milk or milk products for processing or manufacturing, or owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant, cream station, milk plant, and every other business engaged in the processing or manufacturing of milk or milk products and doing business within this state shall obtain the license required by this section for each such place of business. Application for such license shall be made to the dairy commissioner upon such form as the commissioner may require. Upon making application for license, it is implied that consent is given by the applicant for inspection by the state dairy department. If the commissioner finds that the applicant conforms to the North Dakota laws and the rules and regulations of the dairy department, he shall issue a license for conducting such operations as listed on the application form. If a licensee wishes to conduct operations other than those so listed, he may request that the commissioner approve them, and if the commissioner finds that the proposals are in conformance with North Dakota laws and the rules and regulations of the dairy department, he shall approve them. The license, together with a summary of the North Dakota dairy laws and the rules and regulations of the dairy department shall be posted conspicuously in each place of business so licensed. All licenses issued under this section shall expire on the thirtieth day of June of each year and shall not be transferable. The fee for such licenses shall be ten dollars.

§ 2. Bonding of Purchasers of Dairy Products.) Each applicant for license under section 1, who purchases milk or cream

from a dairy producer, shall file with his application for license a surety bond or certified bank draft held in favor of the dairy department, to an amount equal to the average weekly purchases of such milk or cream bought from dairy producers during the previous year, or if such a determination is impossible or unavailable, the amount required shall be determined by the dairy commissioner, provided that, in such a case, no amount less than \$1,000 shall be accepted. The commissioner shall be named as obligee, but the bond or draft shall be held for the purpose of protecting, and for the benefit of, any dairy producer, and the full and complete payment to the seller for all milk or cream purchased by the licensee; provided, however, that the aggregate liability of the bonding company or the dairy department to all such persons shall in no event exceed the amount of such a bond or draft.

§ 3. Dairy Department to Become Trustee Upon Default in Bond or Certified Bank Draft.) If any licensee defaults in the provisions of any bond or certified bank draft as provided for in section 2, he shall be deemed to be insolvent within the meaning of this chapter. The cause of action for damages upon any such bond or draft, and the amount recovered in any cause of action for the conversion of milk, or milk products, as the case may be, purchased by such licensee while such license is in force and effect, shall constitute a trust fund in the hands of the dairy department for all persons having a cause of action against such licensee on said bond or draft.

§ 4. Application by Dairy Department for Appointment of Trustee—Hearing—Appointment.) Upon the insolvency of a licensee as defined in section 3, the dairy department shall apply to the district court of Burleigh County for the appointment of itself as trustee. Upon such notice to the licensee as the court shall prescribe, but not exceeding ten days, or upon waiver of such notice in writing by the licensee, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court that the licensee is insolvent within the meaning of this chapter and that it would be for the best interest of persons holding claims against the licensee for the purchase price of milk or milk products sold to such licensee or to his agent that the dairy department shall execute such trust, the court shall issue an order appointing the dairy department as a trustee, without bond, and the dairy department shall proceed in the manner set out in this chapter without further direction from the court.

§ 5. Notice to File Claims—When Claims Barred.) The dairy department, as trustee, by publication of a notice published once each week for three successive weeks in the official

newspapers of the principal counties in which the licensee operated, shall notify all persons having claims against the licensee to file the same with the department. Any such person who shall fail to file his claim with the department and to surrender to it any receipts which he obtained from such licensee within forty-five days after the last publication of such notice shall be barred from participation upon such claim in any fund marshaled by the department as prescribed in this chapter.

§ 6. Remedy of Claimants—Separate Action by Claimant Permissible.) No claimant shall have a separate cause of action against the licensee's bond or certified bank draft unless the dairy department shall fail or refuse to apply for its own appointment as trustee as provided in this chapter. The provisions of this chapter shall not prohibit any claimant, either independently or in conjunction with other claimants, from pursuing concurrently with the dairy department any other remedy which he or they may have against the licensee, or against the property of the licensee, for the whole of his or their claims or for any deficiency which occurs after payments have been made from the trust fund.

§ 7. Appeal or Compromising of Action by Dairy Department.) The dairy department may prosecute an action for any claims arising under the provisions of this chapter in any court, may appeal from any adverse judgment to the courts of last resort, and may settle and compromise any such action whenever in its judgment it will be for the best interests of the claimants. Upon payment to it of the amount of any such compromise, or of the full amount of any bond or certified bank draft, the dairy department may exonerate the person compromising or paying the same from further liability growing out of such action.

§ 8. Moneys Collected on Claims To Be Deposited in Bank of North Dakota.) All moneys collected and received by the dairy department as trustee shall be deposited in the Bank of North Dakota pending the marshaling of said fund.

§ 9. Dairy Department to File Report Upon Recovery of Trust Fund — Notice to Claimants — Approving or Modifying Report.) Upon recovery of the trust fund, or so much thereof as it is possible to recover or as is necessary to pay all outstanding claims, the dairy department shall file its report in court showing the amount payable upon each claim, after recognizing any proper liens or pledges thereon or assignments thereof or deductions therefrom, with legal interest thereon. If the fund shall prove insufficient to redeem all claims in full, the fund shall be prorated among the claimants in such manner as the department shall deem fair and equit-

able. Thereupon the court shall cite such claimants upon such notice by mail as it shall prescribe to appear upon a day fixed in the notice and show cause why such report shall not be approved and distribution of said fund made as outlined in the report. Upon such hearing the court shall approve such report or modify the same as justice may require and shall issue an order directing the distribution of the fund and discharging the department from its trust.

§ 10. Attorney General to Represent Dairy Department and May Employ Assistants — Dairy Department Need Not Pay Court Costs.) The attorney general shall represent the dairy department in any action or proceeding brought under the provisions of section 3, and he may employ outside legal assistance when he deems it necessary to do so, and may deduct the expense in connection therewith from the trust fund. The department shall not be required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought by it under the provisions of section 3 when such fee, cost, or disbursement accrues to the state or to a county of this state.

§ 11. License Needed to Sample, Grade or Test—Examination—Term—Fee.) No person shall sample, grade, or test milk, or milk products for the purpose of determining the value or grade thereof without obtaining a license from the dairy department. In case of illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six days in one calendar year, unless specific approval for a longer period is obtained from the dairy commissioner. The licensee shall be responsible for the acts of his substitute. An applicant for license shall file an application with the dairy department stating the type of sampling, grading, or testing he wished to be licensed for. Before a license is issued, the applicant must pass a written examination prepared and given by the dairy department, he shall show that he is conversant with the requirements of this chapter which pertain to such sampling, grading, or testing, and must prove by actual demonstration that he is competent and qualified to perform each type of sampling, grading, and testing listed on his application. The dairy commissioner shall then issue a license which shall state the types of sampling, grading or testing which the applicant has proven to be able to perform. Additions may be added to the application form and license, without charge, after the license has been issued, upon the request of the licensee and after he has satisfactorily passed the required examinations for each such addition. All examinations should be given by the dairy department within fifteen days after receiving the application. A licensee need not take any examinations when renewing their license unless his ability at performing such sampling,

grading, or testing is questioned by the dairy commissioner or his assistants. Licenses issued under this section shall expire on December 30th of each year, shall be posted conspicuously in the licensee's place of operation, and shall not be transferable. The fee for the initial license shall be two dollars and renewal fee shall be one dollar. A penalty fee of one dollar shall be added after the thirty-first day of January if renewals are not paid prior to that date.

§ 12. Complaint Upon Violation—Notice of Hearing.) Any person who has information that any person or business licensed under the provisions of this chapter and has violated any of its provisions or any rule or regulation of the dairy department, may file with the dairy commissioner, an affidavit, setting forth any such violations and it is hereby made the duty of all peace officers who have information of any such violations committed by such licensee to file such an affidavit with the dairy department. Such affidavit shall state the facts constituting the violations charged therein with such clarity and certainty that the licensee may be reasonably appraised of the offense alleged to have been committed by him. Upon receipt of any such affidavit, it shall be the duty of the dairy commissioner to set the matter down for hearing at an early date. The dairy commissioner shall send by registered or certified mail to the licensee a copy of the affidavit together with a notice of the time and place of hearing thereon, which date of hearing shall not be less than ten days after such copy of affidavit and notice has been mailed to the licensee.

§ 13. Hearing—Place.) The commissioner of agriculture and labor or the dairy commissioner may conduct any hearing herein provided for. Such hearing shall be held in the county where the licensed person resides or in which the licensed premises is located.

§ 14. Suspension of License.) If, after such hearing, the commissioner of agriculture and labor or the dairy commissioner finds that the violations charged in the affidavit have been established by the evidence, he may order the suspension of the license for a period not to exceed thirty days. If the commissioner of agriculture and labor or the dairy commissioner finds that the licensee has not previously violated the law in the operation of his licensed business, or that no license held by him has previously been suspended, or if it appears to the satisfaction of the commissioner of agriculture and labor or the dairy commissioner that it is reasonable to believe that the licensee will not again commit the offenses charged in the affidavit and that to suspend the license would be unduly severe, then the commissioner of agriculture and labor or the

dairy commissioner may, in his discretion, withhold suspension of the license for such period of time as he deems proper.

Any person, firm or corporation whose license for any place of business is suspended shall not be eligible during the period of such suspension to engage in the purchase, sale, processing, manufacturing, sampling, grading or testing milk, or milk products at such place of business either personally, or indirectly by having a financial interest in such business.

§ 15. Witnesses—Subpoena—Fees.) The commissioner of agriculture and labor or the dairy commissioner shall have the power to subpoena witnesses, to compel their attendance, and to administer oaths. Such witnesses shall be allowed a fee of ten dollars per day, together with their mileage in attending such hearing at the rate of eight and one-half cents per mile, such fees and expenses to be paid by the state treasurer on voucher duly approved by the commissioner of agriculture and labor.

§ 16. Review by the Court.) The action of the commissioner of agriculture or the dairy commissioner in suspending a license may be appealed to the district court of the county and district in which the hearing provided for in section 13 is held by procedure applicable to appeals taken in the manner provided in chapter 28-32 of the title Judicial Procedure, Civil, as now or hereafter amended, except that the commissioner of agriculture and labor or the dairy commissioner order suspending the license may be stayed by the court appealed to upon filing with the clerk of said court a bond approved by and in the amount set by the judge of said district court for the faithful observance of the laws of the state and the rules and regulations of the dairy department relative to the operation of the business licensed during the pendency of the appeal.

§ 17. Sampling and Testing Procedures—Equipment—Supplies.) The procedures, equipment, chemicals, and other apparatus or substances used in the sampling, grading, or testing of milk or milk products shall conform to that described in the latest edition of "Standard Methods for the Examination of Dairy Products" published by the American Public Health Association, Inc., or the "Official Methods of Analysis of the Association of Official Agricultural Chemists" a copy of each being on file in the dairy department. No equipment, chemicals or other apparatus or substance used in the sampling, grading, or testing of milk or milk products which is not in conformance with the requirements of this chapter shall be sold or offered for sale. The dairy commissioner may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, grading, or testing proced-

ures or equipment by issuing rules and regulations pertaining thereto but only after consulting with the director of the state laboratories department, the state health officer, and the chairman of the department of dairy husbandry at the North Dakota State University.

§ 18. Sampling Milk or Cream—Care of Samples.) Every purchaser of milk or cream from a dairy producer shall take a representative sample of at least two ounces from each container in which the milk or cream is delivered. All the milk or cream from one producer may be transferred from the containers in which they are received into an empty dump tank or vat and the sample taken from it. Before emptying any part thereof or adding any substance thereto and before the sample is taken, the milk or cream must be thoroughly mixed. The device used in taking the sample must be clean and the container used to hold the sample must be clean and dry. The containers holding the samples must be kept securely covered and marked or kept by some approved system whereby they will be readily identifiable with the producer whose milk it represents. Records must be kept which readily identify the sample with the weight, butter fat content, and the amount of money paid for said milk or cream. A record of the weight of all cream held over from one shipment to another shall be kept and a representative sample taken, held, and identified as a "hold over sample". All samples must be protected from extreme temperatures and retained at least twenty-four hours after testing has been completed.

§ 19. Composite Samples — Optional — Care of Samples.) Every purchaser of milk from a dairy producer, as an option to the provisions of section 18, may use composite samples which are obtained by taking a representative sample of the milk each time the milk is received at the plant or picked up at the farm for a period not to exceed fifteen days, after thoroughly mixing, and before emptying any part thereof or adding any substance thereto. The device used to take the sample must be clean and the container used to hold the sample must be clean and dry. Approved preservatives may be added. Samples must be held under refrigeration and shall never be kept out of refrigeration for a period any longer than actually necessary in the routine of sampling, grading, or testing. The sample containers must be kept securely covered and marked or kept by some approved system whereby they will be readily identifiable with the producer whose milk the sample represents. Records must be kept which readily identify the sample with the weight, butterfat content, and the amount of money paid for said milk. All milk samples shall be kept for at least twenty-four hours after testing has been completed.

§ 20. Standards for the Production of Cream for Manufacturing Purposes.) Cream for manufacturing purposes shall be separated from the milk of healthy cows and from herds which are kept in conformance with the laws of North Dakota and the rules and regulations of the livestock sanitary board and the state dairy department. Cows shall not be fed any hay, silage, or other feed which contains any unwholesome substance. Milk from cows treated with an antibiotic or other drug shall be excluded from the market for at least seventy-two hours unless specifically stated otherwise on the label of such antibiotic or drug. The cowyards, premises and buildings shall be kept reasonably clean. Utensils, equipment, and other items used in handling the milk or cream shall be kept clean, in good condition and free of rust. New utensils and equipment shall subscribe to 3A standards if such standards have been established for said utensils or equipment. Udders shall be washed before milking. The milk and cream must be protected at all times from contamination with flies, rodents, and sediment, and from extremes of temperature.

§ 21. Grades of Cream and Butterfat Based on Sediment Content and Quality.) All cream sold and purchased shall be graded and paid for on the basis of the following established grades:

1. "Sweet cream" shall have only the fresh natural cream flavor and odor except that it may have a slight feed flavor and odor. Acidity calculated as lactic acid shall not exceed two-tenths of one percent. The sediment pad shall not exceed number three;
2. "Grade one" shall have a fresh natural cream flavor and odor except that it may have a slight to definite feed or slight to definite acid flavor and odor. Acidity calculated as lactic acid shall not exceed seven-tenths of one percent. The sediment pad shall not exceed number four;
3. "Grade two" shall have not more than pronounced feed and definite degrees of stale, acid, weed, bitter, and other unnatural but not offensive flavors and odors. Acidity calculated as lactic acid shall not exceed eight-tenths of one percent. The sediment pad shall not exceed number four;
4. "Unlawful cream" is cream which contains dirt, filth, or other extraneous matter which would make it unfit for human food, or which has an offensive feed, weed, stale, or other unnatural flavor and odor, or is foamy, or cheesy, or shows surface mold, or is putrid or decomposed, or in which the acidity calculated as lactic acid is in excess of eight-tenths of one percent, or in which the sediment pad is in excess of number four;

5. All regulatory officials and all persons, firms, or corporations authorized to purchase cream shall add a harmless vegetable color to all "unlawful cream" offered for sale. Cream so colored shall then be returned to the party offering it for sale. All licensed cream buyers shall keep a record of cream or butterfat purchased as to grade and sediment test. Such record shall be available for inspection for six months from the date of purchase.

The sediment discs shall be rated on the basis of rules and regulations of the dairy department.

§ 22. Sediment Testing Program for Manufacturing Cream.)

The dairy commissioner shall promulgate rules and regulations concerning frequency and operational details of a sediment testing program.

§ 23. Acceptable, Probational and Reject Cream.) The dairy commissioner may promulgate rules and regulations concerning acceptable, probational and reject cream.

§ 24. Cream Station Requirements.) Any room in any cream station where cream is purchased, handled or stored shall be large enough so there will never be undue crowding with normal and expected volumes of business. It shall be separated from other rooms and from the outside by self-closing, tight-fitting doors which may be screen doors if there is no chance of flies, sediment, or other conditions contaminating the cream. All openings from the cream station must be screened during fly season. The floor, walls and ceiling shall be tight, in good repair, and kept clean at all times. Adequate ventilation shall be maintained to minimize odors and condensation. Adequate artificial lights must be provided and those areas where testing is done or washing of cream cans or other equipment or utensils is conducted shall have artificial lighting equivalent to one watt to each square foot of floor area. A cream station must be kept clean and orderly at all times. Cooling facilities must be provided to cool all cream adequately and cream must be protected at all times from flies, rodents, and sediment. Fly and rodent control programs must be practiced when necessary. A cream station shall not be used for any purpose other than the purchase, handling, and storing of milk or milk products except as approved by the dairy commissioner.

§ 25. Purchases of Cream—Prices of Grades To Be Kept Posted.) The prices being offered for butterfat at every cream purchasing establishment shall be properly posted. If a different price is being paid at any one cream purchasing establishment owned, operated, or controlled by the same person, firm,

or corporation for butterfat shipped directly, than is being offered for butterfat delivered at such point, all direct shipment and delivered prices must be so posted. All prices shall be posted in a place where they can be clearly seen from the street. A price different from that so posted shall not be paid and at no time shall a price differential between grades be less than one cent per pound of butterfat.

§ 26. Standards for the Production of Manufacturing Grade Milk.) Milk for manufacturing purposes shall be produced from cows in a healthy condition and shall be from dairy farms where herds are kept in conformance with state laws and the rules and regulations of the North Dakota livestock sanitary board and the dairy department regarding tuberculosis, brucellosis, and other animal diseases. Cows shall be fed properly and shall not be fed any hay, silage, or other feeds which contain any unwholesome substances. Milk from cows treated with an antibiotic or other drug shall be excluded from the market for at least seventy-two hours unless the label thereon specifically states otherwise. The cowyard, loading, and holding areas shall be kept reasonably clean and shall have reasonably good drainage. Milking barns and parlors shall be kept clean, well lighted, and well ventilated. Gutters shall be of concrete or other impervious material. Manure shall be properly disposed of and shall not be accessible to milking cows. Flanks of milk cows shall be kept reasonably clean and udders shall be properly washed before milking.

A milk house of adequate size shall be provided. Interior walls and ceiling shall be tight and constructed of a smooth and easily cleaned material, and shall be finished in an approved manner. The floor shall be of concrete or other impervious, approved, material and shall be sloped and drained to a trapped drain. All openings out of the milk house shall be protected against the entrance of flies, rodents, and sediment, by the use of doors, screens, flaps, fans, or other approved methods. Adequate fly and rodent control methods must be practiced. Doors shall be tight and self-closing. The milk house shall be well ventilated and well lighted with artificial light. Facilities must be provided to cool all milk to fifty degrees Fahrenheit or lower within two hours after milking and must be maintained at that temperature until delivery. If a bulk tank is used, it shall be so installed that there is at least eighteen inches of clearance between the tank and other equipment or walls on the non-working side and end of the tank and twenty-four inches on the working side and end. Twenty-four inches on the non-working side and end and thirty-six inches on the working side and end is strongly recommended. The bulk tank shall not be located over a floor drain or under a ventilator. A two compartment wash vat

large enough to submerge all utensils and an adequate, safe, and clean supply of hot water shall be provided. The milk must be protected from flies, rodents, and sediment at all times. Utensils, equipment, and other items used in handling milk shall be in good condition, free from rust, and properly cleaned, and shall be properly sanitized before use. Garbage and wastes shall be properly disposed of. The milk house must be kept clean and orderly. All new equipment and replacement equipment shall conform to 3A standards if standards have been established for said equipment.

§ 27. Farm Certification.) The dairy commissioner may promulgate rules and regulations concerning farm certification.

§ 28. Grades of Milk for Manufacturing Purposes.) The dairy commissioner may promulgate rules and regulations concerning grades of milk for manufacturing purposes.

§ 29. Milk Grading Program.) The dairy commissioner may promulgate rules and regulations concerning a milk grading program.

§ 30. Rejection and Exclusion of Milk.) The dairy commissioner may promulgate rules and regulations concerning rejection and exclusion of milk.

§ 31. New Producers—Transfer Producers.) The dairy commissioner may promulgate rules and regulations concerning new producers and transfer producers.

§ 32. Dairy Manufacturing or Processing Plant Requirements—Commissioner to Approve New Plants.) All dairy processing or manufacturing plants shall be large enough that there will never be undue crowding with normal and expected volumes of business. Dairy plants shall not be used for any other purpose than the purchase, handling, processing, manufacturing, or storage of milk or milk products unless specific approval is obtained from the dairy commissioner and shall be kept clean and orderly at all times. The premises surrounding a dairy plant shall be kept clean and orderly. All outer doors and all doors leading into rooms not used in normal dairy plant operations shall be solid, tight-fitting, and self-closing. All openings from the plant shall be screened or otherwise effectively protected to prevent the entrance of flies, rodents, and sediment. Floors shall be impervious, in good condition, graded to drain, and kept clean at all times. Walls and ceilings shall have a smooth, washable, light-colored surface and shall be kept clean and in good repair. Dairy plants shall be well ventilated to prevent odors and condensation, and shall be supplied with adequate artificial light. Areas

where testing and washing are done shall have an equivalent of at least one watt of light to each square foot of floor space. All milk and milk product containers and equipment, except singleservice containers, shall be thoroughly cleaned after each usage. All such containers shall be subjected to an effective and approved bactericidal process. After bactericidal treatment, all bottles, cans and other multi-use milk or milk product containers and equipment shall be transported and stored in such a manner as to be protected from contamination. Pasteurized milk or milk products shall not be permitted to come in contact with equipment which has been in contact with unpasteurized or a lower grade of milk or milk products unless such equipment has first been thoroughly cleaned and subjected to an effective and approved bactericidal process. All products, equipment, and utensils used in the plant shall be handled and stored in a safe and sanitary manner. Convenient hand washing facilities shall be provided with hot and cold running water, soap, and approved towels. A common towel is prohibited. The hot and cold water supply shall be adequate and convenient, of a safe and sanitary quality, and shall be in conformance with the state plumbing code. Approved toilet facilities must be provided. No employee shall resume work after using the toilet without washing his hands. A plant must have an adequate and safe sewage disposal system. Wastes shall be properly disposed of in a public sewer, or in containers which are fully covered except when in actual use. All employees working in a dairy plant who come in contact with milk or milk products, or the equipment or utensils used in the handling, processing, or manufacture thereof, shall have medical certificates which assure that they are not afflicted with a communicable disease. All employees who become ill with a communicable disease must obtain the approval of and a medical certificate from a medical doctor before returning to work. Employees shall keep themselves and their apparel as clean as practicable at all times. Smoking or expectorating is not permitted in the part of the plant where milk or milk products are handled, processed, or manufactured. Before the construction of any new dairy manufacturing or processing plant, and before any major remodeling, rebuilding, or renovating plans are carried out, a copy of the plans shall be submitted to the dairy commissioner for his approval. The dairy commissioner shall issue rules and regulations from time to time relative to the various dairy plant operations.

§ 33. Inspection of Dairy Plants Manufacturing or Processing Milk Products.) The dairy commissioner shall promulgate rules and regulations for an inspection program of dairy plants manufacturing or processing milk products.

§ 34. Standards for Manufactured Dairy Products.) The dairy commissioner shall promulgate rules and regulations establishing standards for manufactured dairy products.

§ 35. Standards for Grade A Milk and Milk Products.) The minimum standards for milk and milk products designated as Grade A shall be the same as the minimum requirements of the latest edition of the "Milk Ordinance and Code" and all supplements added thereto which is published by the Public Health Service of the United States Department of Health, Education and Welfare.

§ 36. Quality Records To Be Kept—Term.) Adequate records for testing and grading in conformance with this chapter and the rules and regulations of the dairy department shall be kept by each business sampling, testing, or grading milk or cream for at least six months in a manner approved by the dairy commissioner.

§ 37. Transportation of Milk or Cream for Manufacturing, Processing, or Bottling Purposes—Requirements.) Vehicles used in the transportation of milk or cream must be kept clean. If the vehicle is not enclosed, other means of protecting the milk or cream must be practiced such as covering the containers with a tarp or having individual hoods over each container. Milk or cream shall not be placed near hides, petroleum products, live poultry, or other articles or substances which may cause the milk or cream to become contaminated with flavors or sediment.

§ 38. Transportation of Processed or Manufactured Products.) Vehicles transporting processed or manufactured milk or milk products shall be clean and enclosed, and shall be insulated or refrigerated if the product so being transported requires it. Shipment of milk or milk products through this state are not required to be unloaded under the provisions of this chapter.

§ 39. Adulterated, Impure, or Unwholesome Milk or Milk Products Not To Be Transported, Stored, Sold or Offered for Sale.) Any milk or milk products produced or kept under unclean or unsanitary conditions or produced from animals which are diseased or fed unwholesome, impure, or toxic feed, or milk which tastes from colostrum, shall be deemed impure and unwholesome. No milk or milk product which is deemed to be adulterated, impure, or unwholesome shall be transported, stored, sold, or offered for sale in this state.

§ 40. Sale of Milk or Milk Products in Violation of This Chapter Prohibited.) No person may sell, or offer for sale, any milk or milk product, their imitations or substitutes, which is produced, processed, manufactured, transported, or

stored, in violation of the laws of this state or the rules and regulations of the dairy department, or which do not subscribe to its definition as stated in this chapter or hereafter defined by the dairy commissioner.

§ 41. Overrun Limited.) No person shall permit an overrun in excess of twenty-five percent when manufacturing butter. The reports made to the dairy commissioner under the provisions of section 45 by persons who are engaged in the manufacture of butter shall be competent evidence against the person making the report in a prosecution. If the report shows that during a period of one month or more the person making the report and charged with a violation of this section on a certain day within the period of the report, has had or permitted an average percentage of overrun in excess of twenty-five percent in the manufacture of butter during said period, the report shall be prima facie evidence of a violation of this section.

§ 42. Filled Dairy Products—Declaration of Policy.)

1. Filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for or confusion with such dairy products and in many cases cannot be distinguished from genuine dairy products by the ordinary consumer. The manufacture, sale, exchange, transportation, possession, or offering for sale or exchange of filled dairy products creates a condition conducive to substitution, confusion, deception, and fraud, and one which if permitted to exist tends to interfere with the orderly and fair marketing of foods essential to the well being of the people of this state. It is hereby declared to be the purpose of this section to correct and eliminate the condition above referred to; to protect the public from confusion, fraud, and deception; to prohibit practices inimical to the general welfare; and to promote the orderly and fair marketing of essential foods.
2. It shall be unlawful for any person to manufacture, sell, exchange, transport, possess, or offer for sale or exchange any filled dairy product.

§ 43. Branding Cans, Kegs, Barrels, and Receptacles—Filing Brand—Contents.) All persons engaged in the purchase of milk or cream or in the manufacture of milk products shall adopt a brand or mark of ownership to be stamped or marked on any can, cask, keg, barrel, or other receptacle used in the handling and transportation of any such products, and shall file in the office of the dairy commissioner, without charge, a description of the brand or mark to be used and the use to

be made of any such receptacle. The commissioner shall not register any brand or mark which is identical to or is so similar to any mark or brand already registered that they would be difficult to differentiate between them. The brand or mark so registered may consist of a name, design, mark or marks, or may be some particular color of paint or enamel or other satisfactory mark of ownership. No receptacle branded or marked in conformance with this section shall be in the possession of any person other than the person or his agents to which the brand or mark is registered or a common carrier while transporting such receptacles.

§ 44. Labeling of Milk and Milk Products for Sale at Retail.)

A package, carton, box, or any other container which holds milk or milk products for sale at retail shall not bear any statement, design, or device regarding the product, or ingredients and substances contained therein, which is false, deceiving, misleading, or confusing in any particular, or which infers falsely as to the locality, state, or county of its origin. All containers shall be so labeled as to clearly show the proper and correct net weight, volume, quantity, or size of the products contained therein as the case may be and they must be filled as full as practicable. All containers shall be labeled so as to clearly show the name of the product, its correct grade, if a grade is stated, and whether or not the product is raw, pasteurized, homogenized, reconstituted, or condensed. All containers must be readily identifiable with the dairy plant which last processed, manufactured, or packaged the product either by having the name and location of said plant printed on the container or by registering with the dairy department, a code or mark of identity, which may be a number, name, letter, or any other mark of identity and having this mark plainly painted or stamped on each container. The dairy commissioner shall keep record of all such marks of identity and shall not register any mark which is identical to or is so similar to any mark already registered by another person that it would be difficult to differentiate between them. Lettering on all labels on or attached to all such containers shall be readily legible and all information required by this section shall appear on at least one single panel of all containers. No person, firm, or corporation shall use, in connection or association with the sale, exposure for sale, or advertisement of any substance designed to be used as a substitute for butter, the word "butter", "creamery", or "dairy", except as otherwise required by the laws of this state, nor use the name or representation of any breed of dairy cattle, any combination of such word or words and representation, or any other words, or symbols, or combination thereof commonly used in the sale of butter.

§ 45. Reports—Blanks—When Made—Contents—Penalty.)

The dairy commissioner shall furnish blanks to all licensed creameries, cheese factories, condenseries, drying plants, ice cream plants, ice milk plants, cream stations, milk plants, and producer-distributors for the purpose of making a report of the amount of milk and milk products handled. Each proprietor or manager of such businesses shall report on the last day of June and of December of each year, or within thirty days thereafter, to the commissioner. The pounds of butterfat in cream, the gallons of manufacturing grade milk, and the gallons of bottling milk purchased during the period covered by the report, the aggregate amount paid for each, the number of pounds of butter and cheese, and the number of gallons of ice cream and ice milk manufactured during such period.

§ 46. Dispute Over Test—Official Test Made—By Whom.)

If a disagreement between a seller and a buyer or the legal representatives of both or either arises over the percentage of butterfat contained in any quantity of milk or cream sold or offered for sale at the request of the owner and in his presence, a sample of such milk or cream obtained as provided in sections 18 and 19 and mutually agreed upon by the interested parties as being a representative sample, shall be sealed satisfactorily and mailed by the buyer to the office of the dairy commissioner. There shall accompany each sample a statement giving the name and address of the seller and the buyer of the milk or cream in question, the net weight thereof, the percentage and amount of butterfat contained therein, the price per pound for butterfat, and the amount of money paid or offered in payment for the same and bearing the signature of the seller and the buyer. The commissioner or his agent shall determine the percentage of butterfat contained in the sample and shall make a report of the result in triplicate, the original to be filed in his office, one copy to be sent to the seller, and one to the buyer of the milk or cream. The percentage of butterfat so determined and reported shall constitute the "official butterfat test" and shall be the basis on which final settlement shall be made.

§ 47. Failure to Agree on Sample for Official Test—Procedure To Be Followed.) Whenever it shall be impossible to secure or mutually agree upon a sample of milk or cream as provided in section 46, then the party selling or offering for sale such milk or cream may require that the buyer or prospective buyer forward to the office of the dairy commissioner the sample taken in compliance with sections 18 and 19. Each sample so forwarded shall be accompanied by a statement in the form of an affidavit from the buyer or prospective buyer, stating that the sample was taken in compliance with the provisions of sections 18 and 19, and the statement also shall

contain all information required in section 46, except that the signature of the seller is not required thereon. Each sample shall be tested and reported on as prescribed in section 46, and the percentage of butterfat so determined and reported shall constitute the "official butterfat test" and shall be the basis on which final settlement shall be made.

§ 48. Standards Considered Minimum — Municipality May Provide More Stringent Standards.) The standards set forth in this chapter shall be considered as minimum standards only. Nothing in this chapter shall be construed to prevent any municipality from providing by ordinance more stringent or comprehensive standards than are contained herein nor is anything in this chapter or in the rules and regulations of the dairy department to be construed to prevent any person, business, or organization concerned with dairying from using standards, inspections, or other practices or procedures which are more stringent or comprehensive.

§ 49. Fees and Penalties Collected To Be Placed in General Fund.) All fees and penalties, collected under this chapter, shall be deposited with the state treasurer and credited to the general fund.

§ 50. Commissioner to Investigate Complaints.) Upon receiving a written statement claiming that any provisions of this chapter or the rules and regulations of the dairy department have been violated, the dairy commissioner shall investigate said complaint as thoroughly and as soon as possible and practicable. If the commissioner finds upon conducting such investigation that the provisions of this chapter or the rules and regulations of the dairy department have been violated, he shall take any action he shall deem appropriate.

§ 51. Disposal of Illegal Milk or Milk Products.) Any milk or cream offered for sale and which is in violation of any provisions of this chapter or the rules and regulations of the dairy department shall be colored with a harmless food coloring and returned to the owner. Any other milk product which is in violation of this chapter or the rules and regulations of the dairy department and has been seized or ordered held by the dairy commissioner shall be disposed of as any other illegal food or drug as outlined in chapter 19-02 of the North Dakota Century Code.

§ 52. Penalty for Violation of Chapter.) Any person violating any of the provisions of this chapter or the rules and regulations of the dairy department for which another penalty is not specifically provided is guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than

twenty-five dollars nor more than one hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

§ 53. State's Attorney's Endorsement to Complaint Unnecessary Upon Violation of Chapter.) It shall be unnecessary to have the endorsement of the state's attorney to a complaint made for a violation of the provisions of this chapter, but when the justice of the peace or other court before whom a complaint is made shall be satisfied of the truthfulness of such complaint, he shall issue a warrant thereon.

§ 54. Sale of Raw Milk or Raw Milk Products Restricted.) After the effective date of this chapter, no person may begin selling or offering for sale at wholesale any milk or milk products which are not pasteurized unless specific approval is granted by the dairy commissioner or the local health officer.

§ 55. Enforcement.) The dairy commissioner is authorized and directed to administer and supervise the enforcement of this chapter; to provide for such periodic inspections and investigations as he may deem necessary to disclose violations; to receive and provide for the investigation of complaints; and to provide for the institution and prosecution of civil or criminal actions or both. The provisions of this chapter may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and filled dairy products illegally held or otherwise involved in violation of this chapter shall be subject to seizure and disposition in accordance with an appropriate court order.

§ 56. Repeal.) Chapters 4-18, 4-18A, and 4-18B, of the North Dakota Century Code, are hereby repealed.

Approved March 7, 1963.

CHAPTER 88

S. B. No. 308

(Wadeson, Morgan, Kjos, Nelson, Tuff, Sinner, Van Horn)

GRASSHOPPER CONTROL PROGRAMS

AN ACT

Relating to programs for the emergency control of grasshoppers and other insects capable of inflicting substantial damage to agricultural crops, to provide for an advisory committee and to define its duties, and to authorize boards of county commissioners to provide for the control of such insects and levy taxes therefor, and to repeal chapter 4-15 and subdivision c of subsection 3 of section 57-15-06 of the North Dakota Century Code, relating to the grasshopper extermination fund, the control and regulation thereof, and the tax levied for such purpose.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Advisory Committee—Membership.) The advisory committee on grasshoppers and other insects capable of inflicting substantial damage to agricultural crops, hereinafter to be referred to as the advisory committee, shall consist of the commissioner of agriculture and labor and four members who shall be qualified electors of the state, appointed by the commissioner of agriculture and labor, to serve at the will of the commissioner for terms of four years, arranged so that the term of one member shall expire on December thirty-first of each year. At least one of the members shall be an experienced entomologist from North Dakota State University and the others shall be persons actively engaged in farming or ranching.

§ 2. Advisory Committee Meetings — Quorum — Compensation.) The commissioner of agriculture and labor shall act as chairman of the advisory committee. Meetings shall be held at the call of and at the place designated by the commissioner of agriculture and labor. Three members shall constitute a quorum and no action may be taken without a majority vote of the members present.

§ 3. General Duties of Advisory Committee.) It shall be the duty of the advisory committee to study and evaluate the potential and actual danger that grasshoppers or other insects pose to present or future agricultural crops of the state. Not more than five days after such meeting the advisory committee shall submit to the commissioner of agriculture and labor a full report of its findings, together with recommendations for any control program it may deem necessary. In the event the

advisory committee determines an actual or potential emergency situation exists in any part of any county in the state it shall submit its report and recommendations to the commissioner of agriculture and labor within forty-eight hours after such determination is made. The commissioner shall immediately forward a copy of such report in regard to the emergency situation, together with the advisory committee's recommendations, to the county commissioners of all counties involved.

§ 4. Powers and Duties of County Commissioners.) Within three days after the receipt of such report and recommendations the county commissioners shall meet with the county agent and the commissioner of agriculture and labor, or his representative, to review the report and recommendations. If the board of county commissioners shall find that an actual or potential emergency situation exists, they may immediately proceed to institute a control program as recommended by the advisory committee. In the event more than one county is involved the county commissioners of all counties involved may meet jointly with their county agents and the commissioner of agriculture and labor, or his representative, but findings in regard to such emergency for each county shall be determined separately by the respective boards of county commissioners. The county commissioners shall provide for or promulgate rules and regulations governing the distribution and application of poisons, chemicals and materials.

§ 5. Financing Control Program—Tax Levy.) The board of county commissioners shall determine the portion, if any, of program costs that shall be paid by the county or townships. County costs of the control program shall be paid from moneys in the county emergency fund. In the event the emergency fund is not sufficient to carry out the program the county commissioners may expend moneys from the county general fund and in such event the county commissioners may levy a tax during the following year upon all the taxable property in the county to fully reimburse the county general fund for the amount expended except that such levy shall not exceed one mill on all taxable property in the county. The levy herein authorized shall be in addition to any mill levy limitation provided by law.

§ 6. Repeal.) Chapter 4-15 and subdivision c of subsection 3 of section 57-15-06 of the North Dakota Century Code are hereby repealed.

Approved March 8, 1963.