

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1420

Introduced by

Representatives Belter, Onstad

Senators Christmann, Nichols

1 A BILL for an Act to create and enact two new sections to chapter 4-34 of the North Dakota
2 Century Code, relating to records of cattle transactions; to amend and reenact sections
3 4-34-02, 4-34-03, 4-34-04, 4-34-05, 4-34-06, 4-34-08, and 4-34-10 of the North Dakota Century
4 Code, relating to the North Dakota beef commission; and to provide a penalty.

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

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

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

- 10 1. The commission may adopt rules requiring the purchaser of cattle subject to
11 assessment under this chapter to furnish the commission with the names of
12 persons from whom the cattle were purchased. Any person who knowingly
13 refuses to furnish the commission with required information is guilty of a class B
14 misdemeanor.
- 15 2. Except as otherwise provided by law, the following records are not subject to
16 section 44-04-18 and section 6 of article XI of the Constitution of North Dakota:
- 17 a. Records furnished to the commission pursuant to subsection 1;
18 b. Records furnished pursuant to section 2 of this Act; and
19 c. The identity of a person requesting refund of an assessment under section
20 4-34-11, and the amount of the person's requested refund.
- 21 3. This section does not limit the issuance of general statements based upon the
22 reports of persons subject to this chapter, or the publication by the commission of
23 the name of any person violating this chapter and a statement of the manner of
24 violation by that person.

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

3 **Records of cattle transactions - Inspection by commission.**

- 4 1. Each selling agency, livestock auction market, livestock dealer, and any other
5 person subject to assessment under this chapter shall keep a record of:
6 a. The number of cattle purchased, initially transferred, or otherwise subject to
7 assessment, and the date of such transaction;
8 b. The identification of the seller of cattle;
9 c. The number of cattle imported or the equivalent of beef or beef products;
10 d. The amount of assessment remitted;
11 e. The basis, if necessary, to show why the remittance is less than the number
12 of head of cattle multiplied by the per head assessment; and
13 f. The date any assessment was paid.
14 2. Each person subject to this section shall maintain and make available for
15 inspection by the commission or its agents the records required by this section,
16 including records necessary to verify any required reports. The records must be
17 maintained for the period of time that the commission may prescribe by rule, but
18 the records must be maintained for at least three years.

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

21 **4-34-02. Definitions.** Unless the context otherwise requires:

- 22 1. "Beef producer" means any person or firm engaged in the production of cattle.
23 2. "Cattle" means live domesticated bovine animals regardless of age.
24 3. "Cattle feeder" means any person or firm engaged in the growing of cattle or
25 finishing of cattle for slaughter.
26 4. "Commission" means the North Dakota beef commission.
27 5. "Dairy producer" means any person or firm engaged in the production and sale of
28 milk from cows.
29 6. "Livestock auction markets" has the same definition as contained in subsection 2
30 of section 36-05-01.
31 7. "Livestock dealer" has the same definition as contained in section 36-04-01.

- 1 8. "Participating producer" means a person who has not claimed a refund for the
2 payment of assessment on the sale of cattle under this chapter for the preceding
3 three years.
- 4 9. "Person" includes individuals, corporations, limited liability companies,
5 partnerships, trusts, associations, cooperatives, and any and all other business
6 units.
- 7 9- 10. "Selling agency" means any person engaged in the business of buying or selling in
8 commerce livestock on a commission basis.

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

11 **4-34-03. North Dakota beef commission - Appointments - Vacancies -**
12 **Qualifications.**

- 13 1. There is hereby created a North Dakota beef commission consisting of nine
14 members who must be appointed by the governor. The commission must be
15 composed of three beef producers, one cattle feeder, one dairy producer, one
16 public livestock market representative, and three representatives at large. ~~The~~
17 Subject to section 4-34-05, the commission may also appoint up to two nonvoting
18 ~~ex officio~~ members.
- 19 2. Three initial members must be appointed for one year; three members must be
20 appointed for two years; and three members must be appointed for three years.
21 All subsequent members must be appointed for three years unless the
22 appointment is to fill a vacancy in which case such appointment must be for the
23 unexpired term. No members may serve more than two successive three-year
24 terms. In the event a position on the commission becomes vacant for any reason,
25 the unexpired term of such position must be filled in the same mode and manner
26 as the original appointments. In addition to those causes enumerated under
27 section 44-02-01, a position on the commission is deemed vacant if a member fails
28 to attend, without justification, three consecutive meetings of the commission.
- 29 3. Each member must:
30 a. Be a United States citizen and a resident of this state;

- 1 b. Be actually engaged in that phase of the cattle industry the member
- 2 represents;
- 3 c. Have been actually engaged in that phase of the cattle industry for a period of
- 4 five years; ~~and~~
- 5 d. Have during that period derived a substantial portion of the member's income
- 6 therefrom; and
- 7 e. Except for the public livestock market representative, be a participating
- 8 producer.

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

11 **4-34-04. Nomination of members.** With the exception of the representatives at large,
12 who must be of the governor's ~~own~~ choosing, the voting members of the commission must be
13 appointed by the governor from nominations made to him by the following organizations: to
14 represent beef producers, by the North Dakota stockmen's association; to represent cattle
15 feeders, by the North Dakota cattle feeders council; to represent dairy producers, by the North
16 Dakota state milk producers association; and to represent public livestock markets, by the
17 North Dakota livestock marketing association.

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

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

25 **4-34-05. Powers and duties of commission.**

- 26 1. The commission shall administer and enforce the provisions of this chapter and do
- 27 all things reasonably necessary to effectuate the purposes of this chapter.
- 28 2. The commission shall elect a ~~chairman~~ presiding officer and such other officers as
- 29 it ~~deems~~ determines advisable.
- 30 3. The commission shall employ and discharge at its discretion such personnel,
31 including agents, as the commission determines are necessary to carry out the

- 1 purposes of this chapter, and to prescribe their duties and powers and to fix their
2 compensation.
- 3 4. The commission is empowered to adopt, ~~rescind, and amend reasonable~~ rules;
4 ~~regulations~~, and orders for the exercise of its powers ~~hereunder~~. The provisions of
5 chapter 28-32 ~~shall~~ apply to this chapter.
- 6 5. The commission is authorized to establish by resolution a headquarters centrally
7 located within the state of North Dakota which shall continue until so changed by
8 the commission.
- 9 6. The commission may require that the person or persons who receive and disburse
10 the moneys of the commission must be bonded, by and in the amount to be
11 determined by the commission. The premium for such bond or bonds must be
12 paid by the commission from assessments collected.
- 13 7. The commission shall deposit its funds in a special account in the state treasury.
- 14 8. The commission may incur expenses and enter into contracts and create such
15 liabilities as may be reasonably necessary for the enforcement of this chapter.
- 16 9. The commission may borrow money, not in excess of its estimate of revenue from
17 the current year's assessments.
- 18 10. The commission shall keep or cause to be kept accurate records of all
19 assessments, expenditures, moneys, and other financial transactions performed
20 pursuant to this chapter. Such records, books, and accounts must be audited by
21 the state auditor, in accordance with established auditing and accounting
22 procedures.
- 23 11. The commission may prosecute in the name of the state any action to enforce
24 collection or assure payment of the assessment authorized by this chapter, and
25 sue and be sued as a commission without individual liability for acts of the
26 commission within the scope and powers conferred upon it by this chapter.
- 27 12. The commission is empowered to cooperate with any person or any local, state, or
28 national commission, organization, or agency, whether voluntary or established by
29 state or federal law, including recognized livestock groups, engaged in activities
30 similar to the work of the commission and to make contracts and agreements for

1 carrying out programs consistent with the purpose and intent of this chapter and to
2 expend funds in connection with this chapter.

3 13. The commission may appoint up to two nonvoting ~~ex-officio~~ members for a term of
4 one year that may be extended on an annual basis and the commission shall
5 adopt policies to further define ~~ex-officio~~ nonvoting member eligibility and term
6 limitations.

7 14. The commission may accept grants, donations of funds, property, and services, or
8 other assistance, financial or otherwise, from federal, state, and other public or
9 private sources for the purpose of aiding and promoting the work and objectives of
10 the commission, and shall deposit all funds received under this subsection in the
11 North Dakota beef commission fund in the state treasury.

12 15. The commission may contract with similar entities and qualified beef councils in
13 other states.

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

16 **4-34-06. Meetings.** ~~The commission shall hold an annual meeting at which time an~~
17 ~~annual report and proposed budget must be presented.~~ The commission shall hold at least ~~two~~
18 ~~other~~ three regular meetings each year at the call of the ~~chair~~ presiding officer, and may hold
19 special meetings at the call of the presiding officer or by request of any three voting members
20 of the commission. The ~~chairman~~ presiding officer shall establish the time, manner, and place
21 of all meetings and shall give reasonable notice to the members. A majority of voting members
22 constitutes a quorum for the transaction of any business.

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

25 **4-34-08. Assessment for sale of cattle - Penalty.**

26 1. There is ~~hereby~~ levied on each ~~person who is~~ a resident of this state selling cattle
27 within the state or from the state, an assessment of fifty cents per head for each
28 animal sold, or the amount assessed pursuant to the federal Beef Promotion and
29 Research Act of 1985 [7 U.S.C. 2901 et seq.] and applicable regulations,
30 whichever is greater. The moneys collected pursuant to this chapter must be paid

1 to the commission pursuant to this chapter and must be expended by the
2 commission only as authorized by this chapter.

3 2. For the purposes of this chapter, a person is not considered to have sold cattle if
4 ~~the~~ and the assessment may not apply to cattle owned by a person if that person
5 certifies to the commission, on forms provided by the commission, that:

6 a. The person's only share in the proceeds of a sale of cattle is a sales
7 commission, handling fee, or other service fee, ~~or the; or~~

8 b. The person acquired ownership of cattle to facilitate the transfer of ownership
9 of the cattle from the seller to a third party, resold the cattle no later than ten
10 days from the date on which the person acquired ownership, and ~~certified, as~~
11 ~~required by regulations prescribed by the cattlemen's beef promotion and~~
12 ~~research board and approved by the secretary of agriculture of the United~~
13 ~~States, that the requirements of 7 CFR 1260.116 have been satisfied. The~~
14 ~~moneys collected pursuant to this chapter must be paid to the commission~~
15 ~~pursuant to this chapter and must be expended by the commission only as~~
16 ~~authorized by this chapter~~ that the assessment levied upon the person from
17 who the person purchased cattle, if an assessment was due, has been
18 collected and has been remitted, or will be remitted in a timely fashion.

19 3. Any person seeking nonproducer status under this section who willfully provides a
20 false or misleading certification to the commission is guilty of a class B
21 misdemeanor.

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

24 **4-34-10. Remittance of assessments collected - Penalties.** All assessments
25 collected by licensed dealers, selling agencies at terminal markets, or auction markets, or
26 required to be paid by any other person as provided in this chapter must be remitted to the
27 North Dakota beef commission no later than the fifteenth day of the month following the month
28 in which the cattle were sold. The assessments must be accompanied by remittance forms as
29 prescribed and furnished by the commission. All moneys collected by the commission pursuant
30 to this chapter must be remitted by the commission to the state treasurer and deposited by the
31 state treasurer in the North Dakota beef commission fund and are hereby appropriated to the

1 commission and must be disbursed by the commission in accordance with this chapter. Any
2 licensed dealer, selling agency at terminal markets, auction markets, or any other person
3 required to remit assessments but who fails to remit the assessments as required by this
4 chapter within thirty days following the month in which the cattle were sold is guilty of a class B
5 misdemeanor. Any licensed dealer, owner or operator of a selling agency at a terminal market,
6 livestock auction market operator or any other person required to collect assessments but who
7 fails to collect assessments as required by this chapter is guilty of a class B misdemeanor. Any
8 person who sells cattle from the state of North Dakota outside the state or to an out-of-state
9 buyer who fails to remit the assessments required by this chapter within thirty days following
10 the month in which the cattle were sold is guilty of a class B misdemeanor. Any unpaid
11 assessments due pursuant to this chapter ~~must~~ may be increased by two percent each month
12 beginning with the day following the date the assessments were due. Any remaining amount
13 due which includes any unpaid charges previously due pursuant to this section, ~~must~~ may be
14 increased at the same rate on the corresponding day of each month thereafter until paid. The
15 timeliness of the remittance of an assessment as required by this chapter must be based on the
16 applicable postmark date or the date the assessment is actually received by the commission.
17 The commission ~~is authorized to~~ may sue for and collect assessments and any penalties on
18 unpaid assessments.