

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1170

2001 HOUSE AGRICULTURE

HB 1170

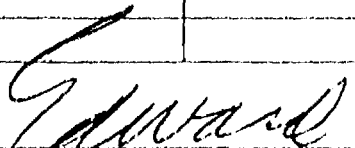
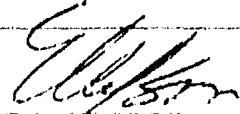
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1170

House Agriculture Committee

☐ Conference Committee

Hearing Date 1-19-2001

Tape Number	Side A	Side B	Meter #
ONE	A		00 to 572
Committee Clerk Signature  			

Minutes:

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

1A:00: VICE CHAIRMAN DENNIS JOHNSON: We will now go to HB 1170.

1A:74: Wayne Carlson, Livestock Services Coordinator N.D.D.A.: I am also the acting Dairy Director for the Department. I am here to testify on HB 1170. I am also presenting a proposed amendment to the bill with my written testimony. Please see written testimony attached.

1A:315 Representative Renner: Wayne, am I reading this correctly? Is the sale of farm cream prohibited. Is there any exceptions, I know this is going on. We know there are sales of farm cream to neighbors and yes it is strictly illegal. It is transactions going on between neighbors. We do try to stop it if we can. We can't get or don't want to get into what is going on between farmers. Yes, we have received complaints. Yes we will investigate it. Give them a phone call and say its illegal.

1A:450: REPRESENTATIVE RENNEN: Why is it illegal for someone to sell a couple of quarts of cream to supplement there income. The law was put in for health reasons. It protects the general public. Farm cream is not pasteurized. It is not properly handled. There is no inspection of the cream. Because of those reasons the U.S.D.A would eliminate those problems by prohibiting the sales.

1A:541: Chairman D. Johnson: Are there any other questions? Others to testify in support of this bill and amendments. Any opposition We will close the hearing on HB 1170.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1170

House Agriculture Committee

☐ Conference Committee

Hearing Date 1-19-01

Tape Number	Side A	Side B	Meter #
THREE	A		00 TO 324
Committee Clerk Signature			

Minutes:

1A:00 CHAIRMAN NICHOLAS: Chairman Nicholas opened on HB 1170. Amendments were discussed. It was decided that the Amendments were not in proper form and the committee closed on HB1170. The Committee will reopen on this Bill next week. The Committee will take action at that time.

1A:320 CHAIRMAN NICHOLAS: Chairman Nicholas closed on HB 1170

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HBO 1170

HOUSE AGRICULTURE Committee

☐ Conference Committee

Hearing Date 2--1--01

Tape Number	Side A	Side B	Meter #
ONE	A		2680 TO 2931
Committee Clerk Signature <i>Samuel D. Elphinstone</i>			

Minutes:

CHAIRMAN NICHOLAS: Committee Members please open your Bill Books to HBO 1170.

We have the amendments. We have heard the Bill. I think that we can dispose of it.

Representative Lemieux moves for the Amendments. Seconded by Rep. Renner. All in favor

say yes. O.K. THE HOUSE WILL ENTERTAIN A MOTION ON HBO 1170 AS

AMENDMENTED. REPRESENTATIVE LEMIEUX MAKES A MOTION FOR A DO PASS.

IT WAS SECONDED BY REP. KINGSBURY. THE CLERK WILL TAKE THE ROLL.

THERE WERE ""12 YES""0 NO""3 ABSENT""

REPRESENTATIVE KINGSBURY WILL CARRY THE BILL

FISCAL NOTE

Requested by Legislative Council
12/26/2000

Bill/Resolution No.: HB 1170

Amendment to:

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill has no fiscal impact to the state. It eliminates the reference to the sale of cream in the existing law, clears up some confusion regarding who is eligible to file for bond claims, and updates the references to latest editions of FDA and USDA requirements.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

None

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

None

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for*

expenditures and appropriations.

None

Name:	Jeff Weispfenning	Agency:	Agriculture
Phone Number:	328-4758	Date Prepared:	12/28/2000

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1170

Page 1, line 1, after "sections" insert "4-30-01, 4-30-02, 4-30-02.1," and after "4-30-03.4" insert
", 4-30-03.5"

Page 1, line 3, remove "and" and after "4-30-36.4" insert ", 4-30-37, 4-30-38, 4-30-47, and
4-30-48"

Page 1, after line 7, insert:

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

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

1. "Approved laboratory" means a laboratory in which the entire facilities and
equipment have been approved by the department as being adequate to
perform the necessary official tests in accordance with the North Dakota
laws and the rules of the department.
2. "Cheese factory" means a place where cheese is made for commercial
purposes.
3. "Commissioner" means the agriculture commissioner ~~of agriculture or the~~
commissioner's designee.
4. "Composite sample" means 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.
5. "Condensery" means 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.
6. ~~"Cream station" means any place other than a creamery where deliveries
of cream are weighed, graded, sampled, tested, or collected for purchase.~~
7. ~~"Creamery" means a place where butter is made for commercial purposes.~~
8. "Dairy animal" means any mammal maintained for the commercial
production of milk to be offered for sale for use in the processing or
manufacturing of milk or dairy products.
9. 7. "Dairy or dairy farm" means a place where one or more dairy animals are
kept, a part or all of the milk or milk products from which is sold or offered
for sale.
10. 8. "Department" means the department of agriculture.

- ~~44~~ 9. "Distributor" means a person who purchases milk or milk products and transports them to a retail dealer or a consumer.
- ~~42~~ 10. "Drying plant" means a place which manufactures dry milk products obtained by the removal of water from milk or milk products.
- ~~43~~ 11. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, 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 milkfat 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 per centum of the weight of the finished product, used as a carrier of such vitamins; or
 - c. Oleomargarine.
- ~~44~~ 12. "Grading" means 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.
- ~~45~~ 13. "Ice cream plant" means a place where ice cream is made for commercial purposes.
- ~~46~~ 14. "Ice milk plant" means a place where ice milk is made for commercial purposes.
- ~~47~~ 15. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:
- a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.
 - b. The packaging used resembles the packaging used for milk or for a milk product.
 - c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.

- d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.
 - e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.
- ~~18.~~ 16. "Milk ~~or cream hauler~~" means a person who owns vehicles used to transport raw milk from a dairy farm to a dairy facility.
 - ~~19.~~ 17. "Milk plant or bottling plant" means a place where milk or milk products are collected, handled, processed, stored, and prepared for distribution.
 - ~~20.~~ 18. "Milk solids or total solids" means the total amount of solids in milk.
 - ~~21.~~ 19. "Overrun" means the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes.
 - ~~22.~~ 20. "Pasteurization" as applied to milk or skim milk means the process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], 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 [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], 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 [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds. Nothing contained in this definition may 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.
 - ~~23.~~ 21. "Peddler" means 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.
 - ~~24.~~ 22. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.
 - ~~25.~~ 23. "Processing or manufacturing" means 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.
 - ~~26.~~ 24. "Producer dairy" means a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing.

- 27- 25. "Producer-processor" or "producer-distributor" means a producer who is also a processor or distributor.
- 28- 26. "Raw milk or raw milk products" means products which have not been treated by the process of pasteurization as defined in this section.
- 29- 27. "Receiving and transfer station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
- 30- 28. "Retail" means the sale of milk or milk products directly to the consumer.
- 31- 29. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use or raw milk or milk products from a dairy farm to a dairy facility.
- 32- 30. "Sampling" means a procedure whereby a portion or specimen of milk or milk products is taken for the purpose of grading or testing.
- 33- 31. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.
- 34- 32. "Testing" means an examination of milk, or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof.
- 35- 33. "3A Standards" means 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.
- 36- 34. "Transfer station" means 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.
- 37- 35. "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of resale.

SECTION 2. AMENDMENT. Section 4-30-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-02. Licenses required - Fees - Term. Every producer-processor, peddler, distributor, 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, every other business engaged in the processing or manufacturing of milk or milk products and every organization acquiring milk or milk products as an agent for sale on behalf of others and doing business within this state shall obtain the license required by this section for each such place of business. Application for license must be made to the commissioner upon forms as the commissioner may require. Upon making application for license, it is implied that consent is given by the applicant for inspection by the department. If the commissioner finds that the applicant conforms to the North Dakota laws and the rules and regulations of the department, the commissioner shall issue a license for conducting those operations listed on the application form. If a licensee wishes to conduct operations other than those listed, the licensee 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 of the department, the commissioner shall approve them. The license must be posted conspicuously in each

licensed business. All licenses issued under this section must expire on the thirtieth day of June of each year and are not transferable. The fee for licenses is twenty-five dollars. Every organization acquiring milk or milk products as an agent for sale on behalf of others is, for the purposes of this chapter, deemed to be a purchaser of milk ~~or cream~~ from a dairy producer.

SECTION 3. AMENDMENT. Section 4-30-02.1 of the 1990 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

Page 4, after line 2, Insert:

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

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

Page 7, after line 16, Insert:

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

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

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

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

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

4-30-47. Dispute over test - Official test made - By whom - Other tests - Fees. 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 the owner's presence, a sample of such milk ~~or cream~~ obtained as provided in ~~sections 4-30-19 and section~~ 4-30-20 and mutually agreed upon by the interested parties as being a representative sample, must be sealed satisfactorily and mailed by the buyer to the office of the dairy commissioner. There must 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 [.45 kilogram] 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 the commissioner's 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 the commissioner's 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 constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the making of the official butterfat test and any other tests required must be in such amount as set by regulation of the dairy commissioner, considering the actual costs of making the test, and such fee must be mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat or other test.

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

4-30-48. Failure to agree on sample for official test - Procedure to be followed. Whenever it is impossible to secure or mutually agree upon a sample of milk ~~or cream~~ as provided in section 4-30-47, then the party selling or offering for sale such milk ~~or cream~~ may require that the buyer or prospective buyer forward to the department the sample taken in compliance with sections 4-30-19 and 4-30-20. Each sample so forwarded must 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 4-30-19 and 4-30-20, and the statement also must contain all information required in section 4-30-47, except that the signature of the seller is not required thereon. Each sample must be tested and reported on as prescribed in section 4-30-47, and the percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made."

Renumber accordingly

Date: 2-1-01
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1170

House AGRICULTURE Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number 18188, 0101

Action Taken DO PASS 11/11/01

Motion Made By LEMIEUX Seconded By KINGSBURY

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chairman	✓		Rod Froelich	✓	
Dennis E. Johnson - Vice Chairman			Doug Lemieux	✓	
Rick Berg	✓		Philip Mueller	✓	
Michael Brandenburg			Kenton Onstad	✓	
Joyce Kingsbury	✓		Sally M. Slandvig	✓	
Myron Koppang			Dennis J. Renner	✓	
Edward H. Lloyd	✓		Dwight Wrangham	✓	
Bill Pietsch	✓				

Total (Yes) 12 No _____

Absent 3

Floor Assignment KINGSBURY

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1170: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1170 was placed on the Sixth order on the calendar.

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Page 1, line 3, remove "and" and after "4-30-36.4" insert ", 4-30-37, 4-30-38, 4-30-47, and 4-30-48"

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2. "Cheese factory" means a place where cheese is made for commercial purposes.
3. "Commissioner" means the agriculture commissioner ~~of agriculture~~ or the commissioner's designee.
4. "Composite sample" means 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.
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- ~~44~~ 9. "Distributor" means a person who purchases milk or milk products and transports them to a retail dealer or a consumer.
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 - 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 milkfat 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 per centum of the weight of the finished product, used as a carrier of such vitamins; or
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 - e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.
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- ~~20~~ 18. "Milk solids or total solids" means the total amount of solids in milk.
- ~~21~~ 19. "Overrun" means the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes.
- ~~22~~ 20. "Pasteurization" as applied to milk or skim milk means the process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], 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 [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], 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 [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds. Nothing contained in this definition may 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.
- ~~23~~ 21. "Peddler" means 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.
- ~~24~~ 22. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.
- ~~25~~ 23. "Processing or manufacturing" means 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.

- ~~26.~~ 24. "Producer dairy" means a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing.
- ~~27.~~ 25. "Producer-processor" or "producer-distributor" means a producer who is also a processor or distributor.
- ~~28.~~ 26. "Raw milk or raw milk products" means products which have not been treated by the process of pasteurization as defined in this section.
- ~~29.~~ 27. "Receiving and transfer station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
- ~~30.~~ 28. "Retail" means the sale of milk or milk products directly to the consumer.
- ~~31.~~ 29. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use or raw milk or milk products from a dairy farm to a dairy facility.
- ~~32.~~ 30. "Sampling" means a procedure whereby a portion or specimen of milk or milk products is taken for the purpose of grading or testing.
- ~~33.~~ 31. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.
- ~~34.~~ 32. "Testing" means an examination of milk, or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof.
- ~~35.~~ 33. "3A Standards" means 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.
- ~~36.~~ 34. "Transfer station" means 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.
- ~~37.~~ 35. "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of resale.

SECTION 2. AMENDMENT. Section 4-30-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-02. Licenses required - Fees - Term. Every producer-processor, peddler, distributor, 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, every other business engaged in the processing or manufacturing of milk or milk products and every organization acquiring milk or milk products as an agent for sale on behalf of others and doing business within this state shall obtain the license required by this section for each such place of business. Application for license must be made to the

commissioner upon forms as the commissioner may require. Upon making application for license, it is implied that consent is given by the applicant for inspection by the department. If the commissioner finds that the applicant conforms to the North Dakota laws and the rules and regulations of the department, the commissioner shall issue a license for conducting those operations listed on the application form. If a licensee wishes to conduct operations other than those listed, the licensee 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 of the department, the commissioner shall approve them. The license must be posted conspicuously in each licensed business. All licenses issued under this section must expire on the thirtieth day of June of each year and are not transferable. The fee for licenses is twenty-five dollars. Every organization acquiring milk or milk products as an agent for sale on behalf of others is, for the purposes of this chapter, deemed to be a purchaser of milk ~~or cream~~ from a dairy producer.

SECTION 3. AMENDMENT. Section 4-30-02.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

Page 4, after line 2, insert:

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

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

Page 7, after line 16, insert:

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

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

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

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

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

4-30-47. Dispute over test - Official test made - By whom - Other tests - Fees. 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 the owner's presence, a sample of such milk or cream obtained as provided in sections 4-30-19 and section 4-30-20 and mutually agreed upon by the interested parties as being a representative sample, must be sealed satisfactorily and mailed by the buyer to the office of the dairy commissioner. There must 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 [.45 kilogram] 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 the commissioner's 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 the commissioner's 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 constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the making of the official butterfat test and any other tests required must be in such amount as set by regulation of the dairy commissioner, considering the actual costs of making the test, and such fee must be mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat or other test.

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

4-30-48. Failure to agree on sample for official test - Procedure to be followed. Whenever it is impossible to secure or mutually agree upon a sample of milk or cream as provided in section 4-30-47, then the party selling or offering for sale such milk or cream may require that the buyer or prospective buyer forward to the department the sample taken in compliance with sections 4-30-19 and 4-30-20. Each sample so forwarded must 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 4-30-19 and 4-30-20, and the statement also must contain all information required in section 4-30-47, except that the signature of the seller is not required thereon. Each sample must be tested and reported on as prescribed in section 4-30-47, and the percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made."

Renumber accordingly

2001 SENATE AGRICULTURE

HB 1170

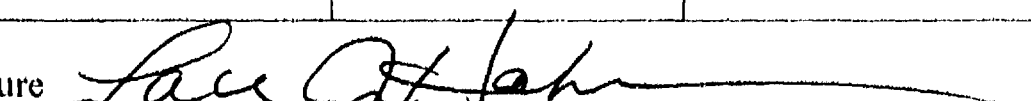
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1170

Senate Agriculture Committee

☐ Conference Committee

Hearing Date March 2, 2001

Tape Number	Side A	Side B	Meter #
March 2 2	X		0.0 - 12.0
Committee Clerk Signature 			

Minutes:

WAYNE CARLSON; ND Dept. Of Agriculture, testified in support of this bill. See attached testimony.

SENATOR ERBELE; With regard eliminating the word written, why do these people not want to identify themselves??

WAYNE CARLSON; Sometimes the complaints come from neighbors or someone they are doing business with.

SENATOR ERBELE; Are you following up on the complaints?

WAYNE CARLSON; Yes, we have. We feel that when it comes to food safety we have to follow them.

SENATOR ERBELE; Is there a cost for the inspections?

WAYNE CARLSON; There is no cost, it is part of our budget.

The hearing was closed.

Page 2
Senate Agriculture Committee
Bill/Resolution Number HB 1170
Hearing Date March 2, 2001

Discussion was held.

SENATOR ERBELE moved the amendments.

SENATOR NICHOLS seconded the motion.

Amendments were adopted.

SENATOR NICHOLS moved for a DO PASS.

SENATOR ERBELE seconded the motion.

SENATOR NICHOLS will carry the bill.

Date: 3-2-01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1176

Senate _____ Agriculture _____ Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number 18188.0201

Action Taken Do Pass - amendments

Motion Made By _____ Seconded
By _____

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroeplin	✓	
Senator Erbele - Vice Chairman	✓		Senator Nichols	✓	
Senator Klein					
Senator Urlacher	✓				

Total (Yes) 5 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

VOICE

Date: 3-2-01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1170

Senate _____ Agriculture _____ Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Sen. Nichols Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroeplin	✓	
Senator Erbele - Vice Chairman	✓		Senator Nichols	✓	
Senator Klein					
Senator Urlacher	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Sen. Nichols

If the vote is on an amendment, briefly indicate intent:

RETAKE

DATRUE

**2705 Twin City Dr
Mandan, ND 58554
701-663-8930**

[illegible]

Date: 3-2-01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1170

Senate _____ Agriculture _____ Committee _____

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Sen. Nichols Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroeplin	✓	
Senator Erbele - Vice Chairman	✓		Senator Nichols	✓	
Senator Klein					
Senator Urlacher	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Sen. Nichols

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 2, 2001 2:19 p.m.

Module No: SR-36-4754
Carrier: Nichols
Insert LC: 18188.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1170, as engrossed: Agriculture Committee (Sen. Wanzek, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1170 was placed on the Sixth order on the calendar.

Page 4, line 4, remove the overstrike over "hauler"

Renumber accordingly

2001 TESTIMONY

HB 1170

**Testimony of Wayne R. Carlson
Livestock Services Coordinator/Acting Dairy Director
North Dakota Department of Agriculture
House Bill 1170
House Agriculture Committee
Peace Garden Room
January 19, 2001**

Chairman Nicholas and Committee members, for the record, my name is Wayne Carlson. I am the Livestock Services Coordinator/Acting Dairy Director for the Department of Agriculture. I am here to testify in support of House Bill 1170. I am also submitting a proposed amendment to the bill with my written testimony

The House Agriculture Committee, at the request of the Agriculture Commissioner, introduced this bill. It would change four provisions of NDCC §4-30 as it pertains to our current dairy law.

The first item concerns the sale of cream by dairy producers. The sale of farm cream has been prohibited by United States Department of Agriculture (USDA) since July 1992. The North Dakota Department of Agriculture adheres to the regulations set forth by that agency. The elimination of "cream" in the code, therefore, will reflect this change and eliminate any confusion in the current law. The amendment includes other references to "cream" which were unintentionally left out of the bill when it was drafted.

The second item is the reference to federal guidelines and regulations the state has adopted as part of the existing Century Code. This bill updates these references to the current edition of regulations required by USDA.

The third item is on page 5, line 7. The department proposes to eliminate the word **written**. Most of the complaints we receive are by phone. In fact, most individuals will not leave their name or provide the office with a written complaint. If the complaints deal with food safety, we feel it is imperative for our office to investigate them. The welfare of the general public may be threatened if we can investigate only those cases with written complaints.

The last issue is on page 3, line 2. This bill replaces the word **seller** with the words "dairy producer." This is to eliminate any confusion as to who is eligible for bond payments in case of default. I believe the law clearly intends bond protection for the dairy farmer. However, the present language could be interpreted to mean the bond is also for sellers of milk such as retailers, wholesales, and processors. This change in language will ensure that the dairy farmers receive the bond protection.

Mr. Chairman and committee members, I urge a "do pass" on House Bill 1170. Thank you. I would be happy to answer any questions you may have.

PROPOSED AMENDMENTS TO HB1170:

On page 7, line 18 after the period insert:

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

1. "Approved laboratory" means a laboratory in which the entire facilities and equipment have been approved by the department as being adequate to perform the necessary official tests in accordance with the North Dakota laws and the rules of the department.
2. "Cheese factory" means a place where cheese is made for commercial purposes.
3. "Commissioner" means the commissioner of agriculture or the commissioner's designee.
4. "Composite sample" means 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.
5. "Condensery" means 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.
6. ~~"Cream station" means any place other than a creamery where deliveries of cream are weighed, graded, sampled, tested, or collected for purchase.~~
7. ~~"Creamery" means a place where butter is made for commercial purposes.~~
8. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.
9. "Dairy or dairy farm" means a place where one or more dairy animals are kept, a part or all of the milk or milk products from which is sold or offered for sale.
10. "Department" means the department of agriculture.
11. "Distributor" means a person who purchases milk or milk products and transports them to a retail dealer or a consumer.
12. "Drying plant" means a place which manufactures dry milk products obtained by the removal of water from milk or milk products.

13. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, 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 milkfat 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 per centum of the weight of the finished product, used as a carrier of such vitamins; or

c. Oleomargarine.

14. "Grading" means 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.

15. "Ice cream plant" means a place where ice cream is made for commercial purposes.

16. "Ice milk plant" means a place where ice milk is made for commercial purposes.

17. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:

a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.

b. The packaging used resembles the packaging used for milk or for a milk product.

c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.

d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.

e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.

18. "Milk ~~or cream~~ hauler" means a person who owns vehicles used to transport raw milk from a dairy farm to a dairy facility.

19. "Milk plant or bottling plant" means a place where milk or milk products are collected, handled, processed, stored, and prepared for distribution.

20. "Milk solids or total solids" means the total amount of solids in milk.

21. "Overrun" means the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes.

22. "Pasteurization" as applied to milk or skim milk means the process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], 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 [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], 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 [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds. Nothing contained in this definition may 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.

23. "Peddler" means 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.

24. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.

25. "Processing or manufacturing" means 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.

26. "Producer dairy" means a dairy farm which sells milk ~~or cream~~ to a dairy plant for processing or manufacturing.

27. "Producer-processor" or "producer-distributor" means a producer who is also a processor or distributor.

28. "Raw milk or raw milk products" means products which have not been treated by the process of pasteurization as defined in this section.

29. "Receiving and transfer station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.

30. "Retail" means the sale of milk or milk products directly to the consumer.

31. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use or raw milk or milk products from a dairy farm to a dairy facility.

32. "Sampling" means a procedure whereby a portion or specimen of milk or milk products is taken for the purpose of grading or testing.

33. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.

34. "Testing" means an examination of milk, or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof.

35. "3A Standards" means 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.

36. "Transfer station" means 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.

37. "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of resale.

4-30-02. Licenses required - Fees - Term. Every producer-processor, peddler, distributor, 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, every other business engaged in the processing or manufacturing of milk or milk products and every organization acquiring milk or milk products as an agent for sale on behalf of others and doing business within this state shall obtain the license required by this section for each such place of business. Application for license must be made to the commissioner upon forms as the commissioner may require. Upon making application for license, it is implied that consent is given by the applicant for inspection by the department. If the commissioner finds that the applicant conforms to the North Dakota laws and the rules and regulations of the department, the commissioner shall issue a license for conducting those operations listed on the application form. If a licensee wishes to conduct operations other than those listed, the licensee 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 of the department, the commissioner shall approve them. The license must be posted conspicuously in each licensed business. All licenses issued under this section must expire on the thirtieth day of June of each year and are not transferable. The fee for licenses is twenty-five dollars. Every organization acquiring milk or milk products as an agent for sale on behalf of others is, for the purposes of this chapter, deemed to be a purchaser of milk ~~or cream~~ from a dairy producer.

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

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

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

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

4-30-47. Dispute over test - Official test made - By whom - Other tests - Fees. 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 the owner's presence, a sample of such milk ~~or cream~~ obtained as provided in sections 4-30-19 and 4-30-20 and mutually agreed upon by the interested parties as being a representative sample, must be sealed satisfactorily and mailed by the buyer to the office of the dairy commissioner. There must 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 [.45 kilogram] 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 the commissioner's 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 the commissioner's 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 constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the making of the official butterfat test and any other tests required must be in such amount as set by regulation of the dairy commissioner, considering the actual costs of making the test, and such fee must be mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat or other test.

4-30-48. Failure to agree on sample for official test - Procedure to be followed. Whenever it is impossible to secure or mutually agree upon a sample of milk ~~or cream~~ as provided in section 4-30-47, then the party selling or offering for sale such milk ~~or cream~~ may require that the buyer or prospective buyer forward to the department the sample taken in compliance with sections 4-30-19 and 4-30-20. Each sample so forwarded must 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 4-30-19 and 4-30-20, and the statement also must contain all information required in section 4-30-47, except that the signature of the seller is not required thereon. Each sample must be tested and reported on as prescribed in section 4-30-47, and the percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made.

SECTION 1. AMENDMENT. Subsection 1 of section 4-05.1-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The state board of agricultural research and education consists of:
 - a. The president of North Dakota State University or the president's designee;
 - b. The vice president of agricultural affairs at North Dakota State University;
 - c. The administrator of the agricultural experiment station;
 - d. The five persons appointed to the agricultural consultation board by the ag coalition and serving in that capacity on July 1, 1997;
 - e. The five persons appointed to the agricultural consultation board by the extension services' multicounty program units and serving in that capacity on July 1, 1997;
 - f. The two persons appointed to the agricultural consultation board by the president of North Dakota State University as representatives by the president of North Dakota State University as representatives of the state's research extension centers and serving in that capacity on July 1, 1997;
 - g. The agriculture commissioner, who serves in an ex officio nonvoting capacity; and
 - h. The director of the North Dakota State University extension service.

**Testimony of Wayne R. Carlson
Livestock Services Coordinator/Acting Dairy Director
North Dakota Department of Agriculture
House Bill 1170
Senate Agriculture Committee
Roosevelt Park Room
March 2, 2001**

Chairman Wanzek and Committee members, for the record, my name is Wayne Carlson. I am the Livestock Services Coordinator/Acting Dairy Director for the Department of Agriculture. I am here to testify in support of House Bill 1170.

The House Agriculture Committee, at the request of the Agriculture Commissioner, introduced this bill. It would change four provisions of NDCC §4-30 as it pertains to our current dairy law.

The first item concerns the sale of cream by dairy producers. The sale of farm cream has been prohibited by United States Department of Agriculture (USDA) since July 1992. The North Dakota Department of Agriculture adheres to the regulations set forth by that agency. The elimination of "cream" in the code, therefore, will reflect this change and eliminate any confusion in the current law.

The second item is the reference to federal guidelines and regulations the state has adopted as part of the existing Century Code. This bill updates these references to the current edition of regulations required by USDA.

The third item is on page 5, line 7. The department proposes to eliminate the word **written**. Most of the complaints we receive are by phone. In fact, most individuals will not leave their name or provide the office with a written complaint. If the complaints deal with food safety, we feel it is imperative for our office to investigate them. The welfare of the general public may be threatened if we can investigate only those cases with written complaints.

The last issue is on page 3, line 2. This bill replaces the word **seller** with the words "dairy producer." This is to eliminate any confusion as to who is eligible for bond payments in case of default. I believe the law clearly intends bond protection for the dairy farmer. However, the present language could be interpreted to mean the bond is also for sellers of milk such as retailers, wholesales, and processors. This change in language will ensure that the dairy farmers receive the bond protection.

Mr. Chairman and committee members, I urge a "do pass" on House Bill 1170. Thank you. I would be happy to answer any questions you may have.