

HOUSE BILL NO. 1170

Introduced by

Agriculture Committee

(At the request of the Agriculture Commissioner)

1 A BILL for an Act to amend and reenact sections 4-30-03.1, 4-30-03.2, 4-30-03.3, 4-30-03.4,
2 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,
3 and 4-30-36.4 of the North Dakota Century Code, relating to elimination of references to the
4 sale of cream and to update references to federal laws and regulations; and to repeal sections
5 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
6 Century Code, relating to standards for production and sale of cream.

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

8 **SECTION 1. AMENDMENT.** Section 4-30-03.1 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **4-30-03.1. Financial condition - Assurance of prompt payment.** Each applicant for
11 a license under section 4-30-02 who purchases milk ~~or cream~~ from a dairy producer shall have
12 first satisfied the department that the applicant's financial condition is such as to reasonably
13 assure prompt payment to the dairy producers for purchased milk ~~and cream~~.

14 **SECTION 2. AMENDMENT.** Section 4-30-03.2 of the 1999 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **4-30-03.2. Statement of business operations or financial condition - Filing -**
17 **Review by Bank of North Dakota - Confidential - Audited.** Each applicant for a license
18 under section 4-30-02 who purchases milk ~~or cream~~ from a dairy producer shall annually file
19 with the department an audited financial statement prepared by an independent certified public
20 accountant or licensed public accountant in accordance with generally accepted accounting
21 practices and principles, verified by the accountant as accurately representing business
22 operations and financial conditions of the plant business for which the statement is rendered,
23 prepared as of the close of the plant's most recent fiscal year. In lieu of filing an audited
24 financial statement an applicant may file other forms of security as provided in section

1 4-30-03.3. All audited financial statements shall be reviewed by the Bank of North Dakota. All
2 statements shall be confidential and shall not be open for public inspection. The department
3 may require additional statements to be audited by a certified public accountant or a licensed
4 public accountant.

5 **SECTION 3. AMENDMENT.** Section 4-30-03.3 of the 1999 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

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

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

or draft must be held for the purpose of protecting, and for the benefit of, any dairy producer, and the full and complete payment to ~~the seller~~ that dairy producer for all milk ~~or cream~~ purchased by the licensee. The aggregate liability of the bonding company or the department to all dairy producers must in no event exceed the amount of the bond.

2. The providing of an amount of protection for dairy producers, from whom milk ~~or cream~~ is purchased, equal to the amount of protection provided in subsection 1, whereby the security is to be held by the department solely for the protection of dairy producers, in one or more of the following forms:
 - a. Cash deposited with a bank or trust company and held under an escrow agreement with the department.
 - b. Bonds of the United States deposited with the department.
 - c. Stocks, bonds, or other marketable securities at current market values, which securities have regularly reported quotations, deposited with the department.
 - d. A certified bank draft, certified check, irrevocable letter of credit, or certificate of deposit held in favor of the department.
3. The filing of an agreement providing for the complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the dairy producers. The trustee shall make and file a trustee's bond and contracts signed by the owner or operator and the purchaser of the dairy products requiring that payment for all dairy products sold be made to the trustee. The trustee shall maintain a separate bank account for that purpose and shall at least annually render a true and correct account of trustee dealings to the department and to the dairy producers.

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

4-30-03.4. Financial basis for license - Statement to producer - Notification to department. All milk ~~or cream~~ purchasers licensed under section 4-30-02 shall inform producers delivering milk ~~and cream~~ of the financial basis on which the license was issued including the type and amount of security, if any, filed under section 4-30-03.3 by a written statement to each producer patron at least once every year. No person may receive milk ~~or~~

1 ~~cream~~ which will increase the amount due and accrued beyond the amount represented as a
2 basis for the issuance of a license without first notifying the department.

3 **SECTION 5. AMENDMENT.** Section 4-30-03.6 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **4-30-03.6. Filing of security before license year.** Surety bonds or other security for
6 the license year must be filed with the department not later than the first day of the month
7 before the beginning of each license year. If any applicant or licensee who purchases or
8 receives milk ~~or cream~~ from dairy producers has not filed a surety bond or other security, and
9 has not been relieved from filing a surety bond or other security, by the first day of the month of
10 the license year, the department shall notify producers selling milk ~~or cream~~ to the applicant or
11 licensee that the applicant or licensee has not filed any security or made other provisions for
12 assuring payments for milk ~~or cream~~ purchases, for the license year.

13 **SECTION 6. AMENDMENT.** Section 4-30-03.7 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **4-30-03.7. Failure to file security - Notice to producers.** Whenever an applicant or
16 licensee fails to file a surety bond or other security within the time fixed by section 4-30-03.6 or
17 the department's demand for additional security, the department shall publish in a newspaper or
18 newspapers having circulation in the area or areas in which the producers whose milk ~~or cream~~
19 is sold or delivered to the applicant or licensee reside, a notice stating that the department
20 made demand or request of the applicant or licensee; that the applicant or licensee has failed to
21 comply; that the department does not have on file a surety bond or other security as demanded;
22 and that adequate security to protect producers may not be available to them. In addition to
23 published notice to producers, the department shall send by registered mail, a copy of the
24 notice to each producer delivering milk ~~or cream~~ to the applicant or licensee as may be able to
25 be determined from available records and the notice must be addressed to the producer's last
26 known place of residence.

27 **SECTION 7. AMENDMENT.** Section 4-30-03.8 of the 1999 Supplement to the North
28 Dakota Century Code is amended and reenacted as follows:

29 **4-30-03.8. Out-of-state dealers, processors, or producers not exempt.** Sections
30 4-30-03.1 through 4-30-03.10 apply to all milk ~~or cream~~ purchasers licensed under section
31 4-30-02 doing business in whole or in part within the state. The protection to producers

1 afforded by sections 4-30-03.1 through 4-30-03.10 is available to the producers of any state
2 selling milk ~~or cream~~ to any licensee licensed under section 4-30-02, but the surety bond or
3 other security required by sections 4-30-03.3 and 4-30-03.5 is payable only for the benefit of
4 producers who are located within this state.

5 **SECTION 8. AMENDMENT.** Section 4-30-13.1 of the 1999 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **4-30-13.1. Commissioner to investigate complaint.** Upon receiving a ~~written~~
8 statement claiming that any provision of this chapter or the rules of the department have been
9 violated, the commissioner shall investigate the complaint as thoroughly and as soon as
10 possible and practicable. If the commissioner finds upon conducting such investigation that a
11 provision of this chapter or the rules of the department have been violated, the commissioner
12 may take any action deemed appropriate.

13 **SECTION 9. AMENDMENT.** Section 4-30-18 of the 1999 Supplement to the North
14 Dakota Century Code is amended and reenacted as follows:

15 **4-30-18. Sampling and testing procedures - Equipment - Supplies.** The laboratory
16 procedures, equipment, chemicals, and other apparatus or substances used in the sampling,
17 hauling, or testing of milk or milk products must conform to that described in the ~~latest~~ sixteenth
18 edition of "Standard Methods for the Examination of Dairy Products" published by the American
19 public health association, incorporated, a copy of which shall be on file in the department. No
20 equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing
21 of milk or milk products which is not in conformance with the requirements of this chapter may
22 be sold or offered for sale. The commissioner through the adoption of rules may alter, amend,
23 or prohibit any specific requirement of this section and may approve other sampling, hauling, or
24 testing procedures or equipment. The commissioner, where appropriate, may check calibration
25 of farm bulk milk tanks and equipment.

26 **SECTION 10. AMENDMENT.** Section 4-30-20 of the 1999 Supplement to the North
27 Dakota Century Code is amended and reenacted as follows:

28 **4-30-20. Sampling of milk.** Every purchaser of milk from a dairy producer shall collect
29 a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a
30 producer. Samples must be collected and maintained in accordance with those procedures
31 contained in the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy

Products" published by the American public health association, incorporated. Records must be kept which readily identify the sample with those items used to determine payment for the milk. Such items must include: weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk. ~~All milk samples must be kept for at least twenty four hours after testing has been completed.~~

SECTION 11. AMENDMENT. Section 4-30-36 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 12. AMENDMENT. Section 4-30-36.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines. The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Supplies - ~~1989~~ 1999 revision corrected Edition" and the sampling of milk and dairy products must be in accordance with the guidelines recommended in the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.

1 **SECTION 13. AMENDMENT.** Section 4-30-36.3 of the 1999 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines.** The milk
4 laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy
5 products laboratories within the state. Evaluations and certification of milk laboratories must be
6 made in accordance with the ~~latest~~ sixteenth edition of "Standard Methods for the Examination
7 of Dairy Products" published by the American public health association and the procedures
8 outlined in the public health service/food and drug administration publication entitled
9 "Evaluation of Milk Laboratories - ~~1989~~ 1995 Edition".

10 **SECTION 14. AMENDMENT.** Section 4-30-36.4 of the 1999 Supplement to the North
11 Dakota Century Code is amended and reenacted as follows:

12 **4-30-36.4. Grade A pasteurized milk ordinance.** Dairy producers, processors, and
13 manufacturers shall comply with the "Grade A Pasteurized Milk Ordinance of ~~1989~~ 1999" and
14 its supplements and follow the procedures standards set by "Governing the Cooperative
15 State-Public Health Service Food and Drug Administration Program of the National Conference
16 on Interstate Milk Shipments 1999 revisions".

17 **SECTION 15. REPEAL.** Sections 4-30-19, 4-30-21, 4-30-22, 4-30-23, 4-30-24,
18 4-30-25, 4-30-26, and 4-30-42 of the North Dakota Century Code are repealed.