

March 2008

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 4-13.1 of the North Dakota
2 Century Code, relating to required consultations with the North Dakota turkey federation; to
3 amend and reenact sections 4-13.1-02, 4-13.1-03, 4-13.1-04, 4-13.1-05, 4-13.1-06, 4-13.1-07,
4 4-13.1-08, 4-13.1-09, 4-13.1-10, 4-13.1-12, and 4-13.1-13 of the North Dakota Century Code,
5 relating to turkey assessments; to repeal sections 4-13.1-01 and 4-13.1-11 of the North Dakota
6 Century Code, relating to the collection of unpaid assessments and the titling of this chapter; to
7 provide a penalty; and to provide a continuing appropriation.

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

9 **SECTION 1. AMENDMENT.** Section 4-13.1-02 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-13.1-02. Definitions.** ~~The following definitions are given for purposes of~~ As used in
12 this chapter:

- 13 1. "Commissioner" means the agriculture commissioner.
14 2. ~~"Federation" means the North Dakota turkey federation.~~

NOTE: Because the North Dakota Turkey Federation is referenced only in NDCC
Section 4-13.1-08, it is more efficient to name the federation in that section, rather than
provide a definition for the term "federation."

- 15 3. ~~"Integrator" means a person who both produces and processes turkeys. When~~
16 ~~applicable, an integrator may be included in the definitions of both a producer and~~
17 ~~a processor.~~

NOTE: Because the term is not used elsewhere in this chapter, it is not necessary to
include its definition.

- 18 4. ~~"Market development" means research and education programs directed toward~~
19 ~~better and more efficient production, marketing, and utilization of turkeys and~~
20 ~~turkey products produced for resale. The term also means the use of other~~

1 ~~methods, including public relations and other promotion techniques, for the~~
2 ~~maintenance of present turkey markets, for the development of new or larger~~
3 ~~domestic or foreign markets, for the sale of turkeys, and for prevention,~~
4 ~~modification, or elimination of trade barriers which obstruct the free flow of~~
5 ~~agricultural commodities to market. The term includes providing promotion and~~
6 ~~research funds for North Dakota's participation in activities such as the national~~
7 ~~turkey federation research fund and such other activities as may be authorized by~~
8 ~~the commissioner.~~

NOTE: Because the term is not used elsewhere in this chapter, it is not necessary to include its definition.

9 ~~5.~~ "Processor" means any person who purchases more than one thousand turkeys
10 each year for slaughter.

11 ~~6.~~ 3. "Producer" means any person doing business within this state who raises turkeys
12 for slaughter each year.

13 ~~7.~~ ~~"Secretary" means the agriculture commissioner.~~

NOTE: Because the term is not used elsewhere in this chapter, it is not necessary to include its definition.

14 ~~8.~~ ~~"Turkeys" means turkeys raised for slaughter.~~

15 **SECTION 2. AMENDMENT.** Section 4-13.1-03 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **4-13.1-03. Assessment.** ~~There is hereby levied on producers an~~

18 1. An assessment upon each turkey delivered for processing. The assessment rate
19 is of one cent for is imposed upon each turkey weighing that is delivered for
20 processing and has a live weight of less than ten pounds [4.54 kilograms] live
21 weight, and up to; and

22 2. An assessment of two cents for is imposed upon each turkey weighing that is
23 delivered for processing and has a live weight of ten or more pounds [4.54 or more
24 kilograms] live weight or more.

NOTE: Present law provides that the assessment rate is "up to" two cents for turkeys in the larger category. Since the statute does not provide either the circumstances under which the rate varies or the method by which a varying rate is to be determined, the rewrite simply provided that the assessment is one cent for turkeys under ten pounds and two cents for those that are larger.

1 **SECTION 3. AMENDMENT.** Section 4-13.1-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-13.1-04. Assessment collected and remitted by processor.**

- 4 1. ~~The processor shall collect the assessment must be collected by the processor at~~
5 the time the turkey is delivered to a processing plant.~~It must be deducted by the~~
6 ~~processor from the price the processor pays by deducting the amount required~~
7 under section 4-13.1-03 from the price paid to the producer. The
8 2. ~~A processor shall quarterly remit the~~ submit all assessments ~~the processor collects~~
9 collected under this chapter to the commissioner ~~for deposit in a special fund in the~~
10 ~~state treasury, within thirty days after the conclusion of each calendar quarter.~~

NOTE: Current law is not clear regarding the date by which assessments must be submitted. The rewrite suggests submission by the 30th day after conclusion of each quarter. The timeframe for submission can certainly be lengthened or shortened. However, because the chapter imposes a mandatory penalty on late submissions and subjects a violator to a Class B misdemeanor, it is important that the timeframe for submitting assessments be clearly articulated.

Under current law, assessments are placed only on those turkeys taken to processors who annually purchase more than 1,000 turkeys for slaughter. Is this in fact the intent?

11 **SECTION 4. AMENDMENT.** Section 4-13.1-05 of the North Dakota Century Code is
12 amended and reenacted as follows:

- 13 **4-13.1-05. Special fund - Continuing appropriation.** ~~The state treasurer~~
14 commissioner shall deposit forward all moneys received under this chapter to the state
15 treasurer for deposit in a special ~~revolving~~ fund ~~to be known as the turkey fund.~~ All moneys
16 ~~deposited~~ in the turkey fund are appropriated to the commissioner on a continuing basis, ~~to the~~
17 ~~commissioner for use pursuant to carry out~~ this chapter.

NOTE: Current law does not indicate the purposes for which money raised under this chapter should be used.

18 **SECTION 5. AMENDMENT.** Section 4-13.1-06 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-13.1-06. Processor to give invoice to producer.** ~~The~~

- 21 1. ~~At the time turkeys are delivered to a processor, the processor shall, at the time of~~
22 ~~delivery, sign and give to the producer separate invoices for each purchase.~~
23 prepare, sign, and date an invoice documenting:
24 a. ~~The invoice must show the name and address of the producer and;~~

- 1 b. The name and address of the seller, if the producer is not the seller is not the
2 producer; the;
3 c. The name and address of the processor; the
4 d. The number of turkeys sold; the amount of in that particular transaction;
5 e. The assessment collected on that particular transaction; and the
6 f. The date of delivery.
7 2. The commissioner ~~shall have the authority to~~ may require ~~such other records as~~
8 may be the preparation and submission of any other documents necessary to
9 expedite the collection and remittance of the assessment.

NOTE: In subsection 2, the commissioner is authorized to require other records, i.e., documents for the purpose of "expediting" the collection and remittance of the assessment. Is the purpose really one of expeditiousness?

10 **SECTION 6. AMENDMENT.** Section 4-13.1-07 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **4-13.1-07. Refunds.** ~~Any~~ To receive a refund of any assessment paid in accordance
13 with this chapter, a producer who makes a written shall obtain an application therefor to form
14 from the commissioner within. The producer shall return the completed form to the
15 commissioner no later than sixty days of the delivery of from the date the producer's turkeys
16 were delivered to a processor shall receive a refund of the assessment deducted from the
17 producer.

NOTE: At the direction of the committee, other commodity groups have been given 60 days from the date of the assessment within which to request an application form and 90 days from the date of assessment within which to return the completed form. Should the timeframes be made consistent?

18 **SECTION 7. AMENDMENT.** Section 4-13.1-08 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-13.1-08. Commissioner to effectuate purposes of this chapter—Advice of**

21 **federation sought - Powers.** The commissioner is hereby authorized to expend may:

- 22 1. Expend moneys appropriated under this chapter; and take the actions it deems
23 2. Do all things necessary and proper to effectuate the purposes and policies of
24 enforce and administer this chapter. The commissioner shall request the advice,
25 review, and comment of a committee appointed by the federation regarding the

1 ~~projects, programs, and policies undertaken to carry out the provisions of this~~
2 ~~chapter.~~

NOTE: Because the requirement that the commissioner request certain "advice, review, and comment" is a mandate, it was placed in a separate section.

3 **SECTION 8.** A new section to chapter 4-13.1 of the North Dakota Century Code is
4 created and enacted as follows:

5 **Commissioner - Consultation with federation.** The commissioner shall consult with
6 a committee appointed by the North Dakota turkey federation regarding the activities and
7 requirements of this chapter.

NOTE: NDCC Section 4-13.1-08.

8 **SECTION 9. AMENDMENT.** Section 4-13.1-09 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **4-13.1-09. Out-of-state processors.** ~~The commissioner is hereby authorized to enter~~
11 ~~into negotiations and agreements~~ may contract with out-of-state processors for the collection
12 and remittance of the assessment required by section 4-13.1-03.

13 **SECTION 10. AMENDMENT.** Section 4-13.1-10 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **4-13.1-10. Turkey information in report.** ~~The~~ When compiling the report required by
16 section 54-06-04, the commissioner shall include provide information concerning its regarding
17 ~~activities under the provisions of this chapter, including a complete listing of the amount of~~
18 ~~assessments collected and the manner in which the moneys were spent under this chapter, in~~
19 ~~its report to the governor.~~

20 **SECTION 11. AMENDMENT.** Section 4-13.1-12 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **4-13.1-12. Delinquent assessment remittances - Penalty.** ~~Any~~ If a processor who
23 ~~fails to remit~~ submit the assessments ~~the processor has collected on the date they become~~
24 ~~due, as required by section 4-13.1-04, the payment is delinquent and the commissioner shall~~
25 ~~levy a penalty assessment of equal to five percent of the assessment amount due, plus interest~~
26 ~~at the rate of six percent per annum, from the due date. The penalty and interest must be~~
27 ~~collected in the manner described in section 4-13.1-11.~~

NOTE: Other commodity group chapters authorize the imposition of a penalty but do not require it.

The authority to enforce the chapter is given to the commissioner in NDCC Section 4-13.1-08.

1 **SECTION 12. AMENDMENT.** Section 4-13.1-13 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-13.1-13. Penalty.** ~~A willful violation of~~ Any person who willfully violates this chapter
4 is guilty of a class B misdemeanor.

5 **SECTION 13. REPEAL.** Sections 4-13.1-01 and 4-13.1-11 of the North Dakota
6 Century Code are repealed.

NOTE: NDCC Section 4-13.1-01 provides that the chapter must be known as the North Dakota Turkey Promotion Act. In accordance with Legislative Council drafting policy, chapters are not to be titled.

NDCC Section 4-13.1-11 provides that if a processor fails to collect or remit the proper assessments, the commissioner may enforce the collection or remittance in any court of competent jurisdiction in the state. The authority to enforce the chapter is given to the commissioner in Section 4-13.1-08.