

Introduced by

1 A BILL for an Act to create and enact two new sections to chapter 4-34 of the North Dakota  
2 Century Code, relating to the appointment of nonvoting members to the North Dakota beef  
3 commission and commission powers; to amend and reenact sections 4-34-01, 4-34-02,  
4 4-34-03, 4-34-05, 4-34-06, 4-34-07, 4-34-08, 4-34-09, 4-34-10, 4-34-11, 4-34-12, 4-34-13, and  
5 4-34-14 of the North Dakota Century Code, relating to the beef commission and the imposition  
6 and collection of assessments on beef cattle; to repeal section 4-34-04 of the North Dakota  
7 Century Code, relating to the nomination of beef commission members; to provide a penalty;  
8 and to provide a continuing appropriation.

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

10 **SECTION 1. AMENDMENT.** Section 4-34-01 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **4-34-01. Purposes.** ~~The purposes of this chapter are~~ commission shall:

- 13 1. ~~To provide~~ Provide and participate in programs to increase the consumption of  
14 domestic beef through such means as advertising, research, consumer  
15 information, industry information, sales promotion, and education, ~~but at no time~~  
16 ~~may false or unwarranted claims be made on behalf of the beef industry.~~
- 17 2. ~~To support~~ Support beef promotion, research, and education activities of the  
18 national beef promotion and marketing organizations.
- 19 3. ~~To initiate~~ Initiate, encourage, and sponsor research designed to solve problems in  
20 the beef industry.
- 21 4. ~~To enhance~~ Encourage and promote the sale ~~and production~~ of North Dakota beef  
22 cattle.

**NOTE:** Although the title indicates that this section sets forth the purposes of the chapter, it appears to be setting forth duties of the beef commission. The section has

been amended to reflect this. If accepted by the committee, the amended section would be moved to a more appropriate location within the chapter.

1       **SECTION 2. AMENDMENT.** Section 4-34-02 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **4-34-02. Definitions.** ~~Unless the context otherwise requires~~ As used in this chapter:

4       1. "Beef producer" means any person ~~or firm~~ engaged in the production of cattle.

**NOTE:** An employee could be engaged in the production of cattle but might not meet the intent of this chapter. The federal law defines a producer as a "person who owns or acquires ownership of cattle".

5       2. "Cattle" means live domesticated bovine animals ~~regardless of age~~.

6       3. "Cattle feeder" means any person ~~or firm~~ engaged in the growing of cattle or  
7 finishing of cattle for slaughter.

**NOTE:** It is recommended that the committee examine the definition of a "beef producer" and that of a "cattle feeder" to determine if they are sufficiently distinguishable.

8       4. "Commission" means the North Dakota beef commission.

9       5. "Dairy producer" means any person ~~or firm~~ engaged in the production and sale of  
10 milk from cows.

**NOTE:** An employee could be engaged in the production and sale of milk from cows but might not meet the intent of this chapter. Should the element of ownership be included in the definition?

11       6. "Livestock auction markets" ~~has the same definition as contained in subsection 2~~  
12 ~~of section 36-05-01~~ means a for-profit public market or private buying station, in  
13 which livestock is offered for sale or sold or offered for sale.

**NOTE:** NDCC Section 35-05-01 defines a livestock auction market as "a place or establishment conducted or operated for compensation or profit as a public market or a private buying station, consisting of pens or other enclosures and their appurtenances, in which livestock is received, held, or kept for sale and where the livestock is sold or offered for sale, at either public auction or private sale."

14       7. "Livestock dealer" ~~has the same definition as contained in section 36-04-01~~ means  
15 any person who purchases horses, mules, cattle, hogs, goats, sheep, or wool from  
16 a producer, terminal market, or livestock auction market, for resale, slaughter, or  
17 shipment.

**NOTE:** NDCC Section 36-04-01 defines a livestock dealer as "any person engaged in the business of buying or dealing in horses, mules, cattle, hogs, goats, sheep, or wool from the producer, terminal market, or livestock auction market for resale, slaughter, or shipment within or without the state, and also resale in the local market."

Is it necessary to define a livestock dealer?

- 1 8. "Participating producer" means a person who has not claimed a refund for the  
2 payment of assessment on the sale of cattle under this chapter for the preceding  
3 three years.

**NOTE:** Should the definition use the phrase "claimed a refund" or "obtained a refund?"

- 4 9: ~~"Person" includes individuals, corporations, limited liability companies,~~  
5 ~~partnerships, trusts, associations, cooperatives, and any and all other business~~  
6 ~~units.~~

**NOTE:** NDCC Section 1-01-49 already defines a "person" as a human being, foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, any legal or commercial entity, government, political subdivision, or government agency or instrumentality. Because that definition is applicable to the entire code, it is not necessary to include it in this chapter.

- 7 10: ~~"Selling agency" means any person engaged in the business of buying or selling in~~  
8 ~~commerce livestock on a commission basis.~~

**NOTE:** The definition of a "selling agency" appears to be included in the definition of a livestock dealer.

9 **SECTION 3. AMENDMENT.** Section 4-34-03 of the North Dakota Century Code is  
10 amended and reenacted as follows:

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

- 13 1. ~~There is hereby created a The North Dakota beef commission consisting of nine~~  
14 ~~members who must be appointed by the governor. The commission must be~~  
15 ~~composed of three consists of:~~  
16 ~~a. Three beef producers, ~~one~~;~~  
17 ~~b. One cattle feeder, ~~one~~;~~  
18 ~~c. One dairy producer, ~~one~~;~~  
19 ~~d. One representative of a public livestock market representative, and three; and~~  
20 ~~e. Three at-large representatives at large. Subject to section 4-34-05, the~~  
21 ~~commission may also appoint up to two nonvoting members.~~

**NOTE:** The addition of two nonvoting members is addressed in a separate section.

- 1           2. ~~Three initial members must be appointed for one year; three members must be~~  
2           ~~appointed for two years; and three members must be appointed for~~The governor  
3           ~~shall appoint:~~
- 4           a. Each beef producer from a list of at least two names submitted by the North  
5           Dakota stockmen's association;
- 6           b. The cattle feeder from a list of at least two names submitted by the North  
7           Dakota cattle feeders council;
- 8           c. The dairy producer from a list of at least two names submitted by the North  
9           Dakota milk producers' association;
- 10          d. The representative of a public livestock market from a list of at least two  
11          names submitted by the North Dakota livestock marketing association; and
- 12          e. The three at-large representatives.

**NOTE:** The language in subsection 2 was taken from NDCC Section 4-34-04.

- 13          3. a. The term of office for each member is three years. ~~All subsequent members~~  
14          ~~must be appointed for three years unless the appointment is to fill a vacancy~~  
15          ~~in which case such appointment must be~~ is valid for for the unexpired  
16          remainder of the term. ~~No members~~
- 17          b. A member may not serve more than two successive three-year terms. ~~In the~~  
18          ~~event~~
- 19          c. If a position on the commission becomes vacant for any reason, the  
20          ~~unexpired term of such, the position~~ position must be filled in the same mode  
21          and manner as the original appointments appointment. ~~In addition to these~~  
22          ~~causes~~
- 23          4. A vacancy is declared upon the occurrence of any event enumerated under in  
24          section 44-02-01, a position on and upon a determination by the commission is  
25          ~~deemed vacant if that a member fails~~ has failed to attend, without justification,  
26          three consecutive commission meetings of the commission without justification.
- 27          3- 5. a. Each member of the commission must:
- 28               a- (1) Be a United States citizen and a resident of this state;
- 29               b- (2) Be actually engaged in that phase of the cattle industry the member  
30               represents;

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

**NOTE:** It is recommended that the committee review the use of phrases such as "actually engaged" and "substantial portion." The committee might also want to determine whether the required experience needs to have been gained in this state or region.

8 **SECTION 4.** A new section to chapter 4-35 of the North Dakota Century Code is  
9 created and enacted as follows:

10 **Nonvoting members - Appointment.** The commission may appoint up to two  
11 nonvoting members. The term of office for a member appointed under this section is one year.  
12 The number of terms that may be served by a member under this section is not limited. The  
13 commission shall adopt policies governing the appointments and qualifications of nonvoting  
14 members.

**NOTE:** NDCC Section 4-35-05(13).

15 **SECTION 5. AMENDMENT.** Section 4-34-05 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **~~4-34-05. Powers and duties of commission~~ Commission - Duties.**

- 18 ~~4.~~ The commission shall:  
19 1. Do all things necessary and proper to enforce and administer and enforce the  
20 provisions of this chapter and do all things reasonably necessary to effectuate the  
21 purposes of this chapter.  
22 ~~2. The commission shall elect a presiding officer and such other officers as it~~  
23 ~~determines advisable.~~  
24 ~~3. The commission shall employ and discharge at its discretion such personnel,~~  
25 ~~including agents, as the commission determines are necessary to carry out the~~  
26 ~~purposes of this chapter, and to prescribe their duties and powers and to fix their~~  
27 ~~compensation.~~

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

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- 1        13. ~~The commission may appoint up to two nonvoting members for a term of one year~~  
2            ~~that may be extended on an annual basis and the commission shall adopt policies~~  
3            ~~to further define nonvoting member eligibility and term limitations.~~
- 4        14. ~~The commission may accept grants, donations of funds, property, and services, or~~  
5            ~~other assistance, financial or otherwise, from federal, state, and other public or~~  
6            ~~private sources for the purpose of aiding and promoting the work and objectives of~~  
7            ~~the commission, and shall deposit all funds received under this subsection in the~~  
8            ~~North Dakota beef commission fund in the state treasury.~~
- 9        15. ~~The commission may contract with similar entities and qualified beef councils in~~  
10           ~~other states.~~

**NOTE:** "Duties" are mandates placed on the commission. "Powers" are grants of authority. The rewrite proposes consolidating of the commission's duties in one section and the commission's powers in another.

Current subsection 2 directs the commission to elect various officers. This has been included in the proposed rewrite of NDCC Section 4-34-06.

Current subsection 3 authorizes the commission to employ and compensate personnel. This has been included in the "powers" section.

Current subsection 4 authorizes the commission to adopt rules. The commission is already authorized to adopt rules under chapter 28-32. It is not necessary to reiterate this authority.

Current subsection 6 authorizes the bonding of certain employees. This has been included in the "powers" section.

Current subsection 7 addresses the deposit of commission funds. This has been included in the proposed rewrite of NDCC Section 4-34-10.

Current subsection 8 authorizes the commission to incur expenses and enter into contracts. This has been included in the "powers" section.

Current subsection 9 authorizes the commission to borrow money. This has been included in the "powers" section.

Current subsection 10 (subsection 3 as rewritten) addresses the auditing of the commission's books. State auditing procedures are established in NDCC Chapter 54-10 and do not need to be reiterated.

Current subsection 11 authorizes the commission to enforce the chapter and sue and be sued. This has been included in the "powers" section.

Current subsection 12 authorizes the commission to cooperate and contract with other entities. there is no need for statutory authorization to "cooperate" and the authority to contract has been included in the "powers" section.

current subsection 13 addresses the appointment of up to two nonvoting commission members. That has been included in section 4 of this Act.

Current subsection 14 addresses the acceptance of gifts, grants, and donations. This has been included in the "powers" section.

Current subsection 15 also addresses the commission's authority to contract with other entities. This has been included in the "powers" section.

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

3           **Commission - Powers.** The commission may:

- 4           1. Contract for any purpose related to this chapter;  
5           2. Expend funds for any purpose related to this chapter.  
6           3. Accept gifts, grants, and donations of money, property, and services to carry out  
7           this chapter.  
8           4. Employ, bond, and compensate necessary personnel;  
9           5. Sue and be sued; and  
10          6. Borrow money, not in excess of its estimate of revenue from the current year's  
11          assessments.

**NOTE:** Subsection 1 - NDCC Section 4-34-05(8), (12) and (15)

Subsection 2 - NDCC Section 4-34-05(8) and (12)

Subsection 3 - NDCC Section 4-34-05(14)

Subsection 4 - NDCC Section 4-34-05(3) and (6)

Subsection 5 - NDCC Section 4-34-05(1) and (11)

Subsection 6 - NDCC Section 4-34-05(9). This subsection authorizes the commission to borrow money "not in excess of its estimate of revenue from the current year's assessment." It is recommended that the committee examine the language and clarify whether this to be the limit of the commission's indebtedness at any one time or whether the commission may obtain a long-term loan in this amount each year, without regard to prior debt.

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

14           **4-34-06. Chairman - Meetings.**

- 15           1. Annually, the commission shall elect one member to serve as the chairman.

- 1           2. The chairman shall call all meetings of the commission and must call a special  
2           meeting within seven days when petitioned to do so by three voting members of  
3           the commission.
- 4           3. ~~The commission shall hold at least three regular meetings each year at the call of~~  
5           ~~the presiding officer, and may hold special meetings at the call of the presiding~~  
6           ~~officer or by request of any three voting members of the commission. The~~  
7           ~~presiding officer shall establish the time, manner, and place of all meetings and~~  
8           ~~shall give reasonable notice to the members.~~
- 9           4. A majority of voting members constitutes a quorum for the transaction of any  
10          business.

**NOTE:** The authority of the chairman to call all meetings of the commission includes both regular and special meetings. If three members determine that a special meeting is needed, it is generally required that there be a petition--i.e., a "written" request, as opposed to an "oral" request. Because it is also advisable to have a set number of days within which the chairman must call a special meeting, if petitioned to do so, representatives of the commission agreed to insert "seven" days.

Under current law, the presiding officer is to give reasonable notice of commission meetings. This language, which is found in subsection 3 has been removed. NDCC Section 44-04-20 already establishes the notice requirements for meetings of all public entities.

11           **SECTION 8. AMENDMENT.** Section 4-34-07 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13           **4-34-07. Compensation - Expenses.** ~~The~~ Each member of the commission shall  
14 ~~determine the amount of~~ is entitled to receive compensation ~~payable to each member of the~~  
15 ~~commission. The amount payable may not exceed~~ in an amount established by the  
16 commission, but not exceeding seventy-five dollars per day plus reimbursement ~~of~~ for  
17 expenses as provided by law for state officers, ~~while~~ if the member is attending commission  
18 meetings or performing other ~~official~~ duties as directed by the commission. ~~The members of~~  
19 ~~the commission shall receive no other salary or compensation for their service on the~~  
20 ~~commission.~~

21           **SECTION 9. AMENDMENT.** Section 4-34-08 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23           **4-34-08. Assessment for sale of cattle - Penalty.**

- 1           1. ~~There is levied on each~~ Each resident of this state ~~selling who sells~~ who sells cattle ~~within~~  
2           the in this state or from ~~the~~ this state; must pay an assessment ~~of fifty~~ equal to the  
3           greater of:
- 4           a. Fifty cents ~~per head~~ for each animal sold; ~~the~~; or
- 5           b. The amount assessed pursuant to stated in the federal Beef Promotion and  
6           Research Act of 1985 [7 U.S.C. 2901 et seq.] and applicable regulations;  
7           ~~whichever is greater. The moneys collected pursuant to this chapter must be~~  
8           ~~paid to the commission pursuant to this chapter and must be expended by the~~  
9           ~~commission only as authorized by this chapter.~~
- 10          2. ~~For the purposes of this chapter, a person is not considered to have sold cattle and~~  
11          ~~the~~ The assessment may provided for in subsection 1 does not apply to cattle  
12          owned by a person ~~if that person~~ who certifies to the commission, on forms  
13          provided by the commission, that:
- 14          a. The person's only share in the proceeds of a sale of cattle is a sales  
15          commission, handling fee, or other service fee; or
- 16          b. (1) The person acquired ownership of the cattle to facilitate the transfer of  
17          ownership ~~of the cattle from the seller~~ to a third party; ;
- 18          (2) The person resold the cattle ~~no later than~~ within ten days from the date  
19          on which the person acquired ownership; ~~and that the~~
- 20          (3) Any assessment that was levied upon the ~~person from whom the~~  
21          ~~person purchased cattle, if an assessment was due, prior owner~~ has  
22          been collected and ~~has been~~ remitted; or will be remitted in a timely  
23          fashion.
- 24          3. Any person ~~seeking nonproducer status under this section~~ who willfully provides a  
25          false or misleading ~~certification~~ information to the commission under this section is  
26          guilty of a class B misdemeanor.

**NOTE:** Subsection 1 requires each "resident" of this state who sells cattle in this state to pay an assessment. Is the requirement of residency appropriate? What happens if a person resides across the border in South Dakota but owns land and raises cattle in this state?

27          **SECTION 10. AMENDMENT.** Section 4-34-09 of the North Dakota Century Code is  
28          amended and reenacted as follows:

1           **4-34-09. Manner of deductions - Payments of assessments to beef commission -**  
2 **Collections. The**

3           1. ~~Each livestock auction market and livestock dealer shall collect the assessments~~  
4 ~~provided in due under this chapter must be collected by selling agencies at~~  
5 ~~livestock terminal markets, livestock auction markets, and by all livestock dealers~~  
6 ~~licensed by the state of North Dakota by deducting the assessments from any~~  
7 ~~credit given or payment made to the person selling seller of the cattle at the time~~  
8 ~~credit is given or payment is made of the transaction.~~

9           2. a. ~~Persons who sell cattle from the state of~~ If a person sells North Dakota cattle  
10 ~~outside of the this state or if person sells North Dakota cattle to an~~  
11 ~~out-of-state buyer, the person shall remit the forward any assessments~~  
12 ~~directly due under this chapter to the commission, unless.~~

13           b. The provisions of this subsection do not apply if the assessment has been  
14 ~~paid to a brand inspector or a qualified state the beef council in another state.~~

15           3. Any other person selling cattle within the state shall remit the assessments  
16 ~~directly to the commission.~~

**NOTE:** Subsection 2(b) contains an exception for payments made to a brand inspector or a qualified beef council in another state. Does the phrase "in another state" pertain to the brand inspector as well as a qualified beef council?

17           **SECTION 11. AMENDMENT.** Section 4-34-10 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19           **4-34-10. Remittance of assessments collected - Penalties.** ~~All assessments~~  
20 ~~collected by licensed dealers, selling agencies at terminal markets, or auction markets, or~~  
21 ~~required to be paid by any other person as provided in this chapter must be remitted to the~~  
22 ~~North Dakota beef commission no~~

23           1. No later than the fifteenth day of the month following the month in which the cattle  
24 ~~were sold. The assessments must be accompanied by remittance, any person~~  
25 ~~who collected assessments on that sale, as required by this chapter, shall forward~~  
26 ~~the assessments to the commission, together with any forms as prescribed and~~  
27 ~~furnished by the commission. All~~

28           2. The commission shall forward all moneys collected by the commission pursuant to  
29 ~~under this chapter must be remitted by the commission to the state treasurer and~~

1 ~~deposited by the state treasurer for deposit~~ in the North Dakota beef commission  
2 fund and are hereby appropriated to the commission and must be disbursed by the  
3 ~~commission in accordance with this chapter.~~

4 3. Any licensed dealer, ~~selling agency at terminal markets, auction markets, or any~~  
5 ~~other person required to remit assessments but~~ person who fails to remit the  
6 assessments, as required by this chapter, within thirty days following the month in  
7 which the cattle were sold is guilty of a class B misdemeanor.

**NOTE:** Subsection 1 provides that the assessments are due on the 15th of the month. By waiting until the 30th day to impose a penalty, one is essentially providing that the assessments do not have to be submitted until the 30th day. Is this the intent or should the due dates be reconciled?

8 4. Any licensed dealer, ~~owner or operator of a selling agency at a terminal market,~~  
9 ~~livestock auction market operator or any other person required to collect~~  
10 ~~assessments but~~ person who fails to collect assessments, as required by this  
11 chapter, is guilty of a class B misdemeanor. ~~Any person who sells cattle from the~~  
12 ~~state of North Dakota outside the state or to an out-of-state buyer who fails to remit~~  
13 ~~the assessments required by this chapter within thirty days following the month in~~  
14 ~~which the cattle were sold is guilty of a class B misdemeanor.~~

**NOTE:** The content of the last sentence, which pertains to the establishment of a penalty for a person who fails to remit an assessment, is already addressed in subsection 3.

15 5. Any unpaid assessments due pursuant to this chapter ~~may~~ shall be increased by  
16 two percent on the sixteenth day of each month beginning with the day following  
17 ~~the date the assessments were due. Any remaining amount due which includes~~  
18 ~~any unpaid charges previously due pursuant to this section may be increased at~~  
19 ~~the same rate on the corresponding day of each month thereafter until paid.~~

**NOTE:** The changes to this subsection reflect the manner in which penalties are imposed by the commission.

20 6. ~~The timeliness of the remittance of an assessment as required by this chapter~~  
21 ~~must be based on the applicable postmark date or the date the assessment is~~  
22 ~~actually received by the commission. The commission may sue for and collect~~  
23 ~~assessments and any penalties on unpaid assessments. For purposes of this~~  
24 ~~section, an assessment is deemed to have been remitted:~~  
25 a. On the date of its postmarked, if mailed;

- 1           b. On the date of its verified shipment, if sent by courier; or  
2           c. On the date of its receipt by the commission if delivered personally or  
3           electronically.

**NOTE:** This section authorizes the commission to sue for and collect assessments and penalties on unpaid assessments. NDCC Section 4-34-05 directs the commission to enforce the chapter and NDCC Section 4-34-06 authorizes the commission to sue and be sued.

4           **SECTION 12. AMENDMENT.** Section 4-34-11 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6           **4-34-11. Refund of assessments.** Any person who has made payment of  
7 assessments under this chapter or who has had payment of assessments made on that  
8 person's behalf may request and receive a refund, unless prohibited by federal law, and  
9 provided that a written request and application for the refund is made within sixty days from the  
10 date the assessments were due. Applications for refunds must be made by the seller  
11 personally in such form as is reasonably required by the commission, and shall provide the  
12 commission with sufficient information to identify assessments.

**NOTE:** It is recommended that the committee determine whether this section should be retained or reworded in light of the existing federal law.

13           **SECTION 13. AMENDMENT.** Section 4-34-12 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15           **4-34-12. Title.** This chapter must be known as the North Dakota Beef Promotion Act.

**NOTE:** Because it is not necessary to provide statutory titles for North Dakota Century Code chapters, it is recommended that this section be repealed.

16           **SECTION 14. AMENDMENT.** Section 4-34-13 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18           **4-34-13. Cattle purchasers - List of sellers to commission - Certain records**  
19 **exempt from disclosure - Penalty.**

- 20           1. a. The commission may ~~adopt rules requiring~~ require the purchaser of cattle  
21           subject to assessment under this chapter to furnish the commission with ~~the~~  
22           ~~names~~ a list of persons from whom ~~the~~ cattle were purchased.  
23           b. Any person who knowingly refuses to furnish the commission with required  
24           information is guilty of a class B misdemeanor.

**NOTE:** It was not clear why the statute would authorize the commission to adopt rules requiring a purchaser to provide a list of buyers as opposed to merely authorizing the commission to obtain such information.

- 1           2.    Except as otherwise provided by law, the following records are not subject to  
2            section 44-04-18 and section 6 of article XI of the Constitution of North Dakota:  
3            a.    Records furnished to the commission pursuant to subsection 1;  
4            b.    Records furnished pursuant to section 4-34-14; and  
5            c.    The identity of a person requesting refund of an assessment under section  
6            4-34-11, and the amount of the person's requested refund.

**NOTE:** Because Chapter 44-04 is the principal chapter dealing with open records, it would be preferable to move any exceptions into that chapter. This subsection might need to be amended, depending on the committee's decision regarding refund provisions in NDCC Section 34-11.

- 7           3.    This section does not ~~limit the issuance of~~ preclude the commission from:  
8            a.    Issuing general statements based upon the reports of persons subject to this  
9            chapter, ~~or the publication by the commission of; or~~  
10           b.   Publishing the name of any person found guilty of violating this chapter and a  
11           statement of the manner of violation by that person and describing the offense  
12           committed.

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

15           **4-34-14. Records of cattle transactions - Inspection by commission.**

- 16           1.    ~~Each selling agency, livestock auction market, livestock dealer, and any other~~ Any  
17            person ~~subject to~~ required to pay or collect an assessment under this chapter shall  
18            keep a record of:  
19            a.    The number of cattle ~~purchased, initially transferred, or otherwise;~~  
20                (1)   Purchased;  
21                (2)   Initially transferred; and  
22                (3)   Otherwise subject to assessment, ~~and the~~ under this chapter, and  
23            b.    The date of ~~such~~ any transaction involving cattle referenced in subdivision a;  
24            ~~The identification of the seller of cattle;~~  
25            c.    The name of the person who sold the cattle;  
26            d.    The number of cattle imported or the equivalent of beef or beef products;

- 1           ~~e.~~ e. The amount of any assessment remitted;
- 2           e. ~~The basis, if necessary, to show why~~
- 3           ~~f.~~ f. The reason for any discrepancy between the remittance is less than amount
- 4           remitted and the dollar amount obtained when multiplying the number of head
- 5           of cattle multiplied referenced in subdivision a by the per head assessment;
- 6           and
- 7           ~~f.~~ g. The date on which any assessment was paid.
- 8           2. ~~Each person subject to~~ All records required by this section shall maintain and
- 9           ~~make~~ and any records required to verify other information provided to the
- 10           commission in accordance with this chapter must be:
- 11           a. Maintained for a period of at least three years; and
- 12           b. Made available for inspection by the commission or its agents the records
- 13           ~~required by this section, including records necessary to verify any required~~
- 14           ~~reports. The records must be maintained for the period of time that the~~
- 15           ~~commission may prescribe by rule, but the records must be maintained for at~~
- 16           ~~least three years upon request.~~

**NOTE:** Current law provides that the records must be maintained for the period of time that the commission may prescribe by rule but that period must be at least three years. The rewrite proposes that a specific period of time be included in the statute.

17           **SECTION 16. CONTINUING APPROPRIATION.** All money in the beef commission

18 fund is appropriated to the commission on a continuing basis for carrying out the purposes of

19 this chapter.

20           **SECTION 17. REPEAL.** Section 4-34-04 of the North Dakota Century Code is

21 repealed.

**NOTE:** NDCC Section 4-34-04 pertains to the nomination of beef commission members. Its content has been included in the rewrite of NDCC Section 4-34-03.