

AGRICULTURE

CHAPTER 63

SENATE BILL NO. 2271

(Senators Unruh, Armstrong, O'Connell)
(Representatives D. Anderson, Kempenich, Schatz)

AN ACT to create and enact section 4-01-31 of the North Dakota Century Code, relating to a pipeline restoration and reclamation oversight program; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 4-01-31 of the North Dakota Century Code is created and enacted as follows:

4-01-31. Pipeline restoration and reclamation oversight pilot program - Generally.

1. The agriculture commissioner shall establish a pilot program that shall provide technical assistance and support to surface owners and surface tenants on pipeline restoration and followup support to surface owners and surface tenants on pipeline reclamation.
2. The agriculture commissioner may contract for ombudsmen for the purposes of being a resource for technical assistance and followup on pipeline issues. The ombudsmen may not investigate or assist with any pipeline installed before January 1, 2006, or regulated by the public service commission under title 49, and may not assist in easement negotiations.
3. The pilot program may provide technical education, support, and outreach on pipeline-related matters in coordination with other entities.
4. The agriculture commissioner may contract with local individuals, deemed trustworthy by the surface owners and surface tenants, to be ombudsmen. The agriculture commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the abandoned oil and gas well plugging site reclamation fund in the state treasury, not otherwise appropriated, the sum of \$400,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of establishing and administering a pipeline restoration and reclamation oversight pilot program, without additional full-time employees, under section 1 of this Act, for the period beginning with the effective date of this Act, and ending June 30, 2017.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 13, 2015
Filed April 13, 2015

CHAPTER 64

HOUSE BILL NO. 1432

(Representatives Brandenburg, Belter, Boe, Headland, D. Johnson, Kasper,
Kempnich, Thoreson)
(Senators Dotzenrod, Erbele, Schaible, Wanzek)

AN ACT to create and enact four new sections to chapter 4-01 of the North Dakota Century Code, relating to federal environmental legislation and regulations that detrimentally impact or have the potential to detrimentally impact the state's agricultural, energy, or oil production sectors; to provide for a transfer; to provide for a continuing appropriation; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

Federal environmental law impact review committee.

1. The federal environmental law impact review committee consists of:
 - a. The agriculture commissioner, who shall serve as the chairman;
 - b. The governor or the governor's designee;
 - c. The majority leader of the house of representatives, or the leader's designee;
 - d. The majority leader of the senate, or the leader's designee;
 - e. One member of the legislative assembly from the minority party, selected by the chairman of the legislative management;
 - f. One individual appointed by the lignite energy council;
 - g. One individual appointed by the North Dakota corn growers association;
 - h. One individual appointed by the North Dakota grain growers association;
 - i. One individual appointed by the North Dakota petroleum council;
 - j. One individual appointed by the North Dakota soybean growers association; and
 - k. One individual appointed by the North Dakota stockmen's association.
2. The committee shall review federal environmental legislation and regulations that detrimentally impact or have the potential to detrimentally impact the state's agricultural, energy, or oil production sectors and confer with the attorney general with respect to participation in administrative or judicial processes pertaining to such legislation or regulations.

3.
 - a. Any member of the legislative assembly serving on the committee is entitled to compensation at the rate provided for attendance at interim committee meetings and reimbursement for expenses, as provided by law for state officers, if the member is attending meetings of the committee or performing duties directed by the committee.
 - b. The compensation and reimbursement of expenses, as provided for in this subsection, are payable by the legislative council.

SECTION 2. A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

Environmental impact - Cost of participation.

1. Any expenses incurred by the agriculture commissioner or by the federal environmental law impact review committee in meeting the requirements of section 1 of this Act must be paid by the agriculture commissioner from the federal environmental law impact fund.
2. If the attorney general elects to participate in an administrative or judicial process, pertaining to federal environmental legislation or regulations, which detrimentally impact or have the potential to detrimentally impact the state's agricultural, energy, or oil production sectors, any expenses incurred by the attorney general in the participation must be paid by the agriculture commissioner from the federal environmental law impact review fund.
3. For purposes of this section, "expenses" include administrative costs, consulting fees, research costs, expert witness fees, attorney fees, and travel costs.

SECTION 3. A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

Gifts - Grants - Donations.

The agriculture commissioner may accept gifts, grants, and donations for the purposes set forth in section 2 of this Act, provided the commissioner posts the amount and source of any gifts, grants, and donations on the department of agriculture's website. Any moneys received in accordance with this section must be deposited in the federal environmental law impact review fund.

SECTION 4. A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

Federal environmental law impact review fund - Continuing appropriation.

1. The federal environmental law impact review fund consists of:
 - a. Any moneys appropriated or transferred for the purposes set forth in section 2 of this Act; and
 - b. Any gifts, grants, and donations forwarded to the agriculture commissioner for the purposes set forth in section 2 of this Act.
2. All moneys in the federal environmental law impact review fund are appropriated to the commissioner on a continuing basis for the purposes set forth in section 2 of this Act.

SECTION 5. APPROPRIATION - TRANSFER - FEDERAL ENVIRONMENTAL LAW IMPACT REVIEW FUND. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,500,000, or so much of the sum as may be necessary, which the office of management and budget shall transfer to the federal environmental law impact review fund, for the purpose of funding the state's participation in administrative or judicial processes based on federal environmental legislation or regulations that detrimentally impact or have the potential to detrimentally impact the state's agricultural, energy, or oil production sectors, for the biennium beginning July 1, 2015, and ending June 30, 2017. The office of management and budget shall transfer sums under this section at the time and in the amount directed by the agriculture commissioner.

Approved April 16, 2015
Filed April 16, 2015

CHAPTER 65

SENATE BILL NO. 2183

(Senators Campbell, Dotzenrod, Laffen, Wanzek)
(Representatives Belter, Brandenburg)

AN ACT to amend and reenact section 4-14.2-02 of the North Dakota Century Code, relating to the membership of the northern crops council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.2-02 of the North Dakota Century Code is amended and reenacted as follows:

4-14.2-02. Northern crops council - ~~Establishment~~Duties - Chairman - Meetings -~~Compensation.~~

4. The northern crops council ~~is established.~~ The council shall establish policies for the operation of the northern crops institute.

1. The council consists of:

- a. The agriculture commissioner or the commissioner's designee;
- b. The president of North Dakota state university of agriculture and applied science or the president's designee;
- ~~b. A representative selected by the North Dakota wheat commission.~~
- ~~c. A representative selected by the North Dakota oilseed council.~~
- ~~d. A representative selected by the North Dakota barley council.~~
- ~~e. A representative selected by the North Dakota soybean council.~~
- ~~f. The agriculture commissioner or the commissioner's designee.~~
- ~~g. Five to seven producers of~~
- c. The president and general manager of the North Dakota mill and elevator association;
- d. An individual selected by the North Dakota barley council;
- e. An individual selected by the North Dakota oilseed council;
- f. An individual selected by the North Dakota soybean council;
- g. An individual selected by the North Dakota wheat commission;

- ~~h.~~ No fewer than five nor more than seven individuals who produce northern crops, selected by the members designated referenced in subdivisions a through f-g; and
- ~~h.i.~~ Up to~~No more than~~ four representatives of industries that process northern crops, selected by the members designated in subdivisions a through fg.
2. a. ~~The term of office for each member of the council, except the president of North Dakota state university of agriculture and applied science and the agriculture commissioner, referenced in subdivisions d through i of subsection 1 is three years, and those members are limited to two 3-year terms.~~
- ~~b.~~ Each term of office begins with the first reorganizational meeting after the date of the member's appointment.
- ~~b.~~ ~~Notwithstanding subdivision a, during the 2011-13 biennium, the council shall:~~
- ~~(1) Stagger by lot the terms of the producers of northern crops so that no more than one of the producers' terms expires in June 2013; and~~
- ~~(2) Stagger by lot the terms of the representatives of industries that process northern crops so that no more than one of the representatives' terms expires in June 2013.~~
3. ~~The chairman of the council must be a member of the council elected annually by a majority vote of the council. Provided, the members designated Annually, the council members shall select one of the individuals referenced in subdivisions a and fd through i of subsection 1 are not eligible to serve as the chairman.~~
4. The council shall meet at least three times annually at such times and places as ~~must be~~ determined by the council and may meet in special meeting upon such call and notice as may be prescribed by rules adopted by the council.
- ~~5.~~ A council if a member is unable to attend a meeting of the council, the member may be represented by a person an individual who has a written proxy from the member.

Approved March 20, 2015

Filed March 20, 2015

CHAPTER 66

SENATE BILL NO. 2061

(Agriculture Committee)
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact subsection 21 of section 4-30-01 and sections 4-30-02, 4-30-36.2, 4-30-36.3, and 4-30-36.4 of the North Dakota Century Code, relating to the definition of Pasteurized Milk Ordinance, to license fees, and to the Pasteurized Milk Ordinance revision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 21 of section 4-30-01 of the North Dakota Century Code is amended and reenacted as follows:

21. "Pasteurized Milk Ordinance" means the ~~2011~~2013 revision of the Grade "A" Pasteurized Ordinance issued by the United States food and drug administration and by the United States department of agriculture's public health service.

SECTION 2. AMENDMENT. Section 4-30-02 of 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, 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 from a dairy producer. ~~A reinspection fee of seventy-five dollars per inspection must be paid by each dairy farm facility for which the commissioner has conducted a reinspection resulting from suspension of a farm permit, degrade of a farm facility from grade A to manufacturing grade, or unsanitary conditions that must be corrected within a specified period of time.~~

SECTION 3. AMENDMENT. Section 4-30-36.2 of 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 Shippers - ~~2011~~2013 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines in the Standard Methods.

SECTION 4. AMENDMENT. Section 4-30-36.3 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines.

The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the Standard Methods and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~2011~~2013 Edition".

SECTION 5. AMENDMENT. Section 4-30-36.4 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.4. Grade A pasteurized milk ordinance.

Dairy producers, processors, and manufacturers shall comply with the Pasteurized Milk Ordinance and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ~~2011~~2013 Revision".

Approved March 25, 2015
Filed March 25, 2015

CHAPTER 67

HOUSE BILL NO. 1436

(Representatives Monson, Fehr)
(Senator Campbell)

AN ACT to amend and reenact sections 4-41-02 and 4-41-03 and subdivision b of subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to industrial hemp.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-41-02 of the North Dakota Century Code is amended and reenacted as follows:

4-41-02. Industrial hemp - Licensure - Reporting requirements - Continuing appropriation.

1. Any person desiring to grow or process industrial hemp for commercial purposes or research shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner.
 - a. The application for a license must include the name and address of the applicant and the legal description of the land area to be used to produce or process industrial hemp.
 - b. Except for employees of the state seed department, the agricultural experiment station, or the North Dakota state university extension service involved in research and extension-related activities, the commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with the ~~background~~criminal history record check are the responsibility of the applicant.
 - c. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure.
 - d. Any person with a prior criminal conviction ~~is not eligible for~~may be denied licensure.
 - e. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year.
 - f. Any person licensed under this section is presumed to be growing or processing industrial hemp for commercial purposes or research.
 - g. A license required by this section is not conditioned on or subject to review or approval by the United States drug enforcement agency.

- h. This subsection does not apply to any person licensed by the United States drug enforcement agency to conduct research.
 - i. An application for a license under this subsection may be filed with the commissioner at any time.
2. a. Each licensee must file with the commissioner documentation indicating that the seeds planted were of a type and variety certified to have no more than three-tenths of one percent tetrahydrocannabinol and a copy of any contract to grow industrial hemp.
 - b. Each licensee shall notify the commissioner of the sale or distribution of any industrial hemp grown by the licensee, and the names of the persons to whom the hemp was sold or distributed.
3. The commissioner shall adopt rules to allow the industrial hemp to be tested during growth for tetrahydrocannabinol levels and to allow for supervision of the industrial hemp during its growing, harvesting, and processing.
 4. To provide sufficient funds to pay costs associated with monitoring and testing industrial hemp in the state, the commissioner shall assess each applicant a fee of five dollars per acre. The minimum fee assessed must be one hundred fifty dollars per applicant. Collections from this fee must be deposited in the commissioner's operating fund and are appropriated to the commissioner to be used to enforce this chapter.

SECTION 2. AMENDMENT. Section 4-41-03 of the North Dakota Century Code is amended and reenacted as follows:

4-41-03. Industrial hemp seed - ~~Authority to import and sell~~Authorized activity - Research.

The agriculture commissioner, North Dakota state university, and any other person licensed under this chapter may import and resell, and plant industrial hemp seed that has been certified as having no more than three-tenths of one percent tetrahydrocannabinol, cultivate the growing plant, and harvest any resulting crop, for any legally permissible purpose, including an authorized pilot program or other agricultural research involving the planting, cultivating, or marketing of industrial hemp.

²⁸ **SECTION 3. AMENDMENT.** Subdivision b of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- b. The agriculture commissioner for each applicant for a license to grow or process industrial hemp under section 4-41-02 and any individual engaged in an activity authorized under section 4-41-03.

Approved March 26, 2015
Filed March 26, 2015

²⁸ Section 12-60-24 was also amended by section 1 of House Bill No. 1105, chapter 97, and section 1 of House Bill No. 1125, chapter 98, and section 1 of Senate Bill No. 2077, chapter 99, and section 1 of Senate Bill No. 2085, chapter 302, section 1 of Senate Bill No. 2236, chapter 309, section 1 of House Bill No. 1153, chapter 297, section 1 of Senate Bill No. 2145, chapter 100, and section 6 of Senate Bill No. 2215, chapter 96.

CHAPTER 68

HOUSE BILL NO. 1238

(Representatives D. Johnson, B. Anderson, D. Anderson, Boe, Kempenich, Pollert)
(Senators Bowman, Dotzenrod, Erbele, Flakoll, Heckaman, Wanzek)

AN ACT to amend and reenact sections 4.1-03-11 and 4.1-03-17 of the North Dakota Century Code, relating to an increase in the assessment on cattle; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

4.1-03-11. Assessment - Penalty.

1. a. Any person who sells cattle in this state or from this state must pay an assessment equal to the ~~greater of:~~
 - a. Fifty cents for each animal sold; or
 - b. The amount set forth in federal law.
b. In addition to the assessment required in subdivision a, any person who sells cattle in this state or from this state must pay an assessment equal to one dollar for each animal sold.
2. The assessment provided for in subsection 1 does not apply to cattle owned by a person who certifies to the commission, on forms provided by the commission, that:
 - a. The person's only share in the proceeds of a sale is a sales commission, handling fee, or other service fee; or
 - b. (1) The person acquired ownership of the cattle to facilitate the transfer of ownership to a third party;
(2) The person resold the cattle within ten days from the date on which the person acquired ownership; and
(3) Any assessment that was levied upon the prior owner has been collected and remitted or will be remitted in a timely fashion.
3. Any person willfully providing false or misleading information to the commission under this section is guilty of a class B misdemeanor.

SECTION 2. AMENDMENT. Section 4.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

4.1-03-17. Refund Permitted refunds of assessment - Required Refunds requiring certification by attorney general.

1.
 - a. ~~When the attorney general certifies to the commission that refunds of assessments paid in accordance with this chapter under subdivision a of subsection 1 of section 4.1-03-11 are no longer precluded by federal law, the commission may provide refunds to producers~~ refunds of assessments paid under subdivision a of subsection 1 of section 4.1-03-11.
 - b. Refunds of assessments paid under subdivision b of subsection 1 of section 4.1-03-11 are available, subject to the requirements of this section.
2.
 - a. To receive a permitted refund of any assessment paid in accordance with this chapter, a producer shall ~~submit to the commission a written request for a refund application from the commission~~ within sixty days after the date of the sale. The request may be made orally, in writing, or in electronic form.
 - b. The producer must complete the refund application and return the application to the commission, together with a record of the assessment paid, within ninety days after the date of the sale. The application may be returned to the commission in person, by mail, or in electronic form. The commission shall then refund the net amount of the assessment that had been collected.
 - c. If a request for a refund is not submitted to the commission within the prescribed time period, the producer is presumed to have agreed to the assessment.

SECTION 3. EXPIRATION DATE. Subdivision b of subsection 1 of section 4.1-03-11 is effective until the attorney general certifies to the commission that the amount of the assessment due in accordance with federal law, as set forth in subdivision a of subsection 1 of section 4.1-03-11, has increased beyond the amount in effect on July 31, 2015, and is thereafter ineffective.

Approved April 8, 2015
Filed April 8, 2015

CHAPTER 69

SENATE BILL NO. 2186

(Senator Larsen)

AN ACT to amend and reenact sections 4.1-08-02, 4.1-08-06, and 4.1-08-07 of the North Dakota Century Code, relating to honey assessments; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

4.1-08-02. ~~(Effective through June 30, 2015) Assessment.~~

An annual assessment in the amount of ten cents is imposed on each colony of honeybees licensed by the beekeeper. The minimum annual assessment is one dollar.

~~(Effective after June 30, 2015) Assessment. An annual assessment in the amount of five cents is imposed on each colony of honeybees licensed by the beekeeper. The minimum annual assessment is one dollar.~~

SECTION 2. AMENDMENT. Section 4.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

4.1-08-06. ~~(Effective through June 30, 2015) Assessment - Authorized expenditures.~~

The assessment required by this chapter may be used to fund research, including efforts that focus on honeybee colony health; education programs; and market development efforts, as well as promotional efforts such as the North Dakota honey queen program.

~~(Effective after June 30, 2015) Assessment - Authorized expenditures. The assessment required by this chapter may be used to fund research, education programs, and market development efforts, as well as promotional efforts such as the North Dakota honey queen program.~~

SECTION 3. AMENDMENT. Section 4.1-08-07 of the North Dakota Century Code is amended and reenacted as follows:

4.1-08-07. ~~(Effective through June 30, 2015) Commissioner - Powers.~~

The commissioner may:

1. Expend moneys appropriated under this chapter for the purposes set forth in section 4.1-08-06, provided the commissioner first consults with the board of directors of the North Dakota beekeepers' association; and
2. Do all things necessary and proper to enforce and administer this chapter.

~~(Effective after June 30, 2015) Commissioner - Powers. The commissioner may:~~

- ~~1. Expend moneys appropriated under this chapter for the purposes set forth in section 4-1-08-06, provided the commissioner first consults with a committee appointed by the North Dakota beekeepers' association; and~~
- ~~2. Do all things necessary and proper to enforce and administer this chapter.~~

SECTION 4. EFFECTIVE DATE. This Act becomes effective on July 1, 2015.

Approved March 30, 2015
Filed March 31, 2015

CHAPTER 70

SENATE BILL NO. 2025

(Legislative Management)
(Agriculture Committee)

AN ACT to create and enact chapter 4.1-16 of the North Dakota Century Code, relating to beekeeping; to amend and reenact section 4.1-08-03 of the North Dakota Century Code, relating to the submission of assessments by beekeepers; to repeal chapter 4-12.2 of the North Dakota Century Code, relating to beekeeping; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-08-03 of the North Dakota Century Code is amended and reenacted as follows:

4.1-08-03. Submission of assessments - Civil penalty.

1. Each beekeeper shall submit the assessment required by section 4.1-08-02 to the commissioner at the same time the beekeeper submits the license application required by section ~~4-12.2-044.1-16-02~~.
2. If a beekeeper fails to submit the assessment as required by this section, the commissioner may impose a penalty equal to five percent of the amount due, plus interest at the rate of six percent per annum from the due date.

SECTION 2. Chapter 4.1-16 of the North Dakota Century Code is created and enacted as follows:

4.1-16-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Apiary" means the site at which one or more colonies of bees are kept.
2. "Bee" means a honey-producing insect of the genus Apis, including all stages of its life.
3. "Beekeeper" means a person who by virtue of ownership or a lease is responsible for the maintenance of bees located in or placed in this state.
4. "Colony" means a familial group of adult bees consisting of drones, workers, and a queen.
5. "Hive" means a manmade structure that houses a colony.

4.1-16-02. Beekeeper's license - Application - Declaration.

1. Before a person may act as a beekeeper in this state, the person must be licensed by the agriculture commissioner.

2. To obtain a beekeeper's license, a person must complete an application and submit it to the commissioner.
3. The application must include:
 - a. The applicant's name, address, and telephone number;
 - b. The maximum number of colonies to be located in or placed in this state; and
 - c. The name, address, and telephone number of a resident agent who is authorized to accept service of process.
4. As a condition of licensure, the applicant shall declare that:
 - a. An apiary will not be placed at a location without first obtaining the consent of the property owner; and
 - b. An apiary will be relocated at the request of the agriculture commissioner if:
 - (1) The commissioner, after examining documentary evidence, has determined that the health or welfare of an individual is endangered as a result of the apiary's location;
 - (2) The individual referenced in paragraph 1 resides on land contiguous to that on which the apiary has been placed;
 - (3) The commissioner has identified another acceptable location for placement of the apiary; and
 - (4) There are no other contractual or other legal impediments to the relocation.

4.1-16-03. Beekeeper's license - Application of minor - Liability.

An individual who is less than eighteen years of age may be licensed as a beekeeper, if that individual's application for license is signed by the individual's parent. Any civil or administrative liability for a violation of this chapter by a beekeeper who is less than eighteen years of age is imputed to the parent who signed the application. The parent is jointly and severally liable with the beekeeper.

4.1-16-04. Beekeeper's license - Transferability - Expiration.

1. A beekeeper's license issued under this chapter is not transferable.
2. A beekeeper's license issued under this chapter expires on December thirty-first.

4.1-16-05. License - Grounds for denial.

The agriculture commissioner may refuse to grant a license to any person who:

1. Has repeatedly violated this chapter;

2. Failed to pay an adjudicated civil penalty for violating this chapter, within thirty days after a final determination that the civil penalty is owed; or
3. Provided false or misleading information in connection with any application or notification required by this chapter.

4.1-16-06. License fee.

The fee for a beekeeper's license is five dollars.

4.1-16-07. Colony assessment.

In addition to the license fee required by section 4.1-16-06, an applicant for a license must submit a colony assessment in an amount equal to fifteen cents multiplied by the maximum number of colonies listed in the application.

4.1-16-08. Apiary location - Notification.

1. Before placing or locating hives in this state, a beekeeper shall notify the agriculture commissioner of:
 - a. (1) The location of each apiary to the nearest section, quarter section, township, and range, and, if within the corporate limits of a city, the number or name of the lot, block, and addition in the city; or
(2) The location of each apiary using satellite navigation system coordinates; and
 - b. The name of the person who owns or leases the property on which the apiary is located.
2. The notification required by this section may be provided to the commissioner in written or in electronic format.

4.1-16-09. Identification of apiary.

1. A beekeeper shall identify each apiary for which the beekeeper is responsible by:
 - a. Affixing a three-digit identification number, assigned by the agriculture commissioner, to the uppermost box of a hive that is visible upon approach to the apiary's main entrance, provided each digit is at least three inches [7.62 centimeters] high, one-half inch [1.27 centimeters] wide, and weather-resistant; and
 - b. Displaying the beekeeper's name and phone number in a location that is visible upon approach to the apiary's main entrance, provided the numbers and letters used are at least one and one-half inches [3.81 centimeters] high and weather-resistant.
2. Any apiary that is not identified, as required by this section, may be subject to seizure by the commissioner.

4.1-16-10. Unidentified apiary - Notice - Seizure.

1. If the agriculture commissioner determines that an apiary is not identified, as required by section 4.1-16-09, and if after making a reasonable effort the

commissioner fails to identify the beekeeper responsible for the apiary, the commissioner shall publish in the official newspaper of the county in which the apiary is located, a notice indicating that at a time certain, all of the colonies, the hives, including their content, and all beekeeping equipment present at the apiary, will be seized and sold at auction or destroyed, unless the beekeeper or other responsible person appears to claim the property and pay for any costs incurred by the commissioner under this section.

2. A seizure under this section may not occur until at least the sixth day after the date of the published notice.

4.1-16-11. Confiscation and disposal.

Except as provided for in section 4.1-16-10, the agriculture commissioner or a law enforcement officer may confiscate bees, hives, or beekeeping equipment, being transported or maintained in violation of this chapter. Any bees, hives, or beekeeping equipment, confiscated under this section, must be disposed of pursuant to a court order or an administrative order issued by the commissioner.

4.1-16-12. Agriculture commissioner - Powers.

The agriculture commissioner may:

1. Assist farmers in identifying beekeepers who provide pollination services; and
2. Enter upon private land during daylight hours, for the purpose of enforcing this chapter. Except when conducting an inspection in accordance with section 4.1-16-13, the commissioner shall first make a good faith effort to notify the owner of the land or a lessee regarding the entry.

4.1-16-13. Agriculture commissioner - Inspection of apiary - Issuance of certificate.

At the request of a beekeeper, the agriculture commissioner shall inspect an apiary for the purpose of issuing a certificate of inspection or other official document or validation. The commissioner may charge a fee to cover the costs of inspecting an apiary under this section.

4.1-16-14. Agriculture commissioner - Inspection of apiary - Noncertification purposes.

The agriculture commissioner may:

1. At the request of a beekeeper, inspect apiaries for any purpose other than the issuance of a certificate of inspection or other official document or validation; and
2. Charge a fee to cover the costs of inspecting an apiary under subsection 1.

4.1-16-15. Quarantine - Declaration - Hearing - Penalty.

1. a. If the agriculture commissioner determines that a quarantine of this state or any portion thereof may be necessary to eradicate or control the spread of disease, insects, or pests, within the apicultural industry, the commissioner shall schedule a public hearing on the matter and provide notice of the hearing by publishing its time, place, and date in the official

newspaper of each county having land within the proposed quarantine area.

- b. If after the hearing the commissioner orders the imposition of a quarantine, the order must include the date by which or the circumstances under which the commissioner shall lift the quarantine order.
2. If the commissioner determines that the imposition of an emergency quarantine is necessary to eradicate or control the spread of disease, insects, or pests, within the apicultural industry, the commissioner may impose such an order for a period not exceeding fourteen days. Within the fourteen-day period, the commissioner shall hold a public hearing as provided for in subsection 1 and determine whether a quarantine order under subsection 1 should be imposed.
3. Following the establishment of a quarantine, the movement of any colonies, hives, or other beekeeping equipment, described in the quarantine order, is subject to the order.
4. For purposes of this section, "insects" include Africanized honeybees.

4.1-16-16. Service of process.

If neither the beekeeper nor the beekeeper's registered agent can be located for the purpose of serving process, in connection with a violation of this chapter or rules adopted to implement this chapter, the agriculture commissioner becomes the statutory agent for service of process and any service upon the commissioner is deemed to be complete.

4.1-16-17. Penalties.

1. A person violating this chapter is guilty of a class A misdemeanor.
2. In addition to criminal sanctions that may be imposed pursuant to subsection 1, a person found to have violated this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars per violation. The civil penalty may be adjudicated by a court or by the agriculture commissioner through an administrative hearing pursuant to chapter 28-32.
3. The commissioner may maintain a civil action in the name of the state against any person violating this chapter.
4. The violation of any condition of licensure, as set forth in section 4.1-16-02, is deemed to be a violation of this chapter.

4.1-16-18. Beekeeping - Agricultural practice.

Beekeeping is deemed to be an agricultural practice.

SECTION 3. REPEAL. Chapter 4-12.2 of the North Dakota Century Code is repealed.

Approved March 30, 2015
Filed March 31, 2015

CHAPTER 71

HOUSE BILL NO. 1026

(Legislative Management)
(Agriculture Committee)

AN ACT to create and enact chapter 4.1-17 of the North Dakota Century Code, relating to ginseng; and to repeal chapter 4-39 of the North Dakota Century Code, relating to ginseng.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 4.1-17 of the North Dakota Century Code is created and enacted as follows:

4.1-17-01. Ginseng - Rules - Certificates.

1. The agriculture commissioner may implement rules relating to the management and harvesting of ginseng, including the registration of persons buying or selling ginseng, the creation and maintenance of records, inspection requirements, and the issuance of any certificates or other documents required in accordance with state or federal law.
2. For purposes of this section, "ginseng" means *Panax quinquefolius* L. and includes ginseng seeds, tissue culture, live root, and dried root.

SECTION 2. REPEAL. Chapter 4-39 of the North Dakota Century Code is repealed.

Approved March 12, 2015
Filed March 12, 2015

CHAPTER 72

HOUSE BILL NO. 1027

(Legislative Management)
(Agriculture Committee)

AN ACT to create and enact chapter 4.1-26 of the North Dakota Century Code, relating to the milk marketing board; to amend and reenact section 54-07-01.2 of the North Dakota Century Code, relating to boards and commissions; and to repeal chapter 4-18.1 of the North Dakota Century Code, relating to the milk marketing board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 4.1-26 of the North Dakota Century Code is created and enacted as follows:

4.1-26-01. Definitions.

Unless the context otherwise requires, the definitions in this section apply to this chapter.

1. "Bulk milk" means milk that is purchased by a processor from a person other than a dairy farmer and which is purchased in a container other than the one in which the milk will be resold to a retailer or to a consumer.
2. "Dairy farmer" means any person who produces grade A raw milk for sale to a processor.
3. "Dairy farmer-processor" means a person who is both a dairy farmer and a processor and who does not purchase raw milk from other dairy farmers, provided:
 - a. A dairy farmer-processor is a dairy farmer with respect to the sale of raw milk produced by that person to a processor; and
 - b. A dairy farmer-processor is a processor with respect to any processing, manufacturing, or sale of milk products or frozen dairy products or with respect to the receipt of bulk milk from a source other than that person's own production.
4. "Dealer" means any processor or distributor.
5. "Distributor" means a person, other than a processor, that sells to consumers on one or more home delivery routes, that sells to retailers, or that sells to both.
6. "Distributor price" means the price at which any milk product or frozen dairy product, not intended for resale at a fixed location owned by a distributor, is purchased by a distributor.

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7. "Frozen dairy product" means:
- a. Ice cream;
 - b. Ice milk;
 - c. Frozen custard;
 - d. Fruit sherbet;
 - e. The mix from which any such product listed in subdivisions a through d is made; and
 - f. Any frozen product that contains milk solids not fat, or butterfat, and which is commonly referred to in the dairy industry as a novelty.
8. "Marketing area" means a geographical portion of this state, within which minimum or maximum prices established by the board must be uniform.
9. "Milk" means the lacteal secretion of a cow, including when the secretion is raw, cooled, pasteurized, standardized, homogenized, recombined, or concentrated, provided the secretion meets applicable grade A requirements.
10. "Milk product" means:
- a. (1) Buttermilk, including plain and creamed;
(2) Concentrated milk;
(3) Creamline milk;
(4) Flavored milk;
(5) Flavored skim milk;
(6) Fortified milk;
(7) Homogenized milk;
(8) Low fat milk;
(9) Raw milk;
(10) Regular milk;
(11) Skim milk;
(12) Special milk;
(13) Standardized milk; and
(14) Whole pasteurized milk;
 - b. (1) Cottage cheese; and
(2) Creamed cottage cheese;

- c. Eggnog:
 - d. (1) Fluid cream;
(2) Half and half;
(3) Sour cream;
(4) Whipped cream; and
(5) Whipping cream; and
 - e. Yogurt.
11. a. "Processor" means a person who:
- (1) Processes or manufactures milk products or frozen dairy products;
 - (2) Purchases raw milk from a grade A dairy farmer for resale to a person who processes or manufactures milk products or frozen dairy products;
or
 - (3) Purchases bulk milk from anyone for resale to a person who processes or manufactures milk products or frozen dairy products.
- b. The term "processor" does not include a person who purchases ice cream mix, ice milk mix, or other frozen dairy products, provided:
- (1) The person's processing activities are limited to converting the mix into a frozen dairy product; and
 - (2) More than half the sales of which are then made by the person to consumers at retail on the premises where the processing activities take place.
12. "Retail price" means the price at which any milk product or frozen dairy product is purchased by any person who makes such purchase for purposes other than resale.
13. "Retailer" means any person who is engaged in transferring title to milk products or frozen dairy products to consumers at one or more retail establishments located in this state.
14. "Stabilization plan" means a plan that contains minimum prices, maximum prices, or both, and enforcement mechanisms.
15. "Wholesale price" means the price at which any milk product or frozen dairy product is purchased by a retailer.

4.1-26-02. Milk marketing board - Membership.

- 1. The milk marketing board consists of:
 - a. A dairy farmer appointed by the governor from a list of two names submitted by the milk producers association of North Dakota;

- b. A processor appointed by the governor from a list of two names submitted by the North Dakota dairy industries association;
 - c. A retailer appointed by the governor from a list of two names submitted by the North Dakota grocers association; and
 - d. Two consumer representatives appointed by the governor, provided that neither consumer representative may have a financial interest in a dairy farm nor in an entity that processes, distributes, or sells milk products.
2. An individual is not qualified to serve on the board if the individual held any other public office, in an elected or an appointed capacity, during the two-year period preceding appointment to the board.
 3. A member of the board may not hold any other public office, in an elected or an appointed capacity, during the member's term of office.
 4. In considering individuals for appointment to the board, the governor shall ensure that a geographic balance is maintained.

4.1-26-03. Terms of office.

1. The term of office for each member is five years and begins on July first.
2. Terms of office must be staggered so that no more than one term expires each year.
3. If at any time during a member's term the member ceases to possess any of the qualifications required by this chapter, the member's office is deemed vacant and the governor shall appoint another individual for the remainder of the term.

4.1-26-04. Compensation.

Each member of the board is entitled to receive compensation in the amount established by the board, but not exceeding one hundred thirty-five dollars per day, plus reimbursement for expenses as provided by law for state officers, if the member is attending meetings or performing duties directed by the board.

4.1-26-05. Chairman - Meetings.

1. Annually, the board shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the board and shall call a special meeting of the board within seven days when petitioned to do so by three board members.

4.1-26-06. Board powers.

The board may:

1. Do all things necessary and proper to enforce and administer this chapter;
2. Employ and compensate necessary personnel;
3. Employ an attorney licensed in this state;

4. Serve as a mediator or an arbitrator in any dispute among or between dairy farmers, processors, distributors, retailers, or consumers, provided:
 - a. All parties to the dispute request the board to provide such services; and
 - b. The dispute pertains to the production, transportation, processing, storage, distribution, or sale of milk products or frozen dairy products; and
5. Contract with any person for any purpose related to this chapter.

4.1-26-07. Director.

The board shall employ and compensate a director and annually review the appointment of the director. The director serves at the pleasure of the board.

4.1-26-08. Authority of governmental entities.

1. This chapter does not limit, decrease, or amend the authority of the agriculture commissioner, any public board of health, or any public health official, with respect to matters of health and sanitation.
2. This chapter does not authorize the milk marketing board to regulate the sale of raw milk that is not grade A.

4.1-26-09. Milk marketing areas - Boundaries.

1. The milk marketing board shall divide the state into milk marketing areas.
2. All real property in the state must belong to a milk marketing area.
3. The board may increase the number of marketing areas in the state, decrease the number of marketing areas in the state, or alter the boundaries of marketing areas, provided the board holds a hearing in accordance with chapter 28-32 and considers:
 - a. Testimony and documentary evidence regarding the production, distribution, and sale of milk products and frozen dairy products in the areas;
 - b. The regulation of prices paid by processors for raw milk in accordance with federal milk marketing orders; and
 - c. Any other factors affecting implementation of this chapter.

4.1-26-10. Milk stabilization plans - Required provisions.

The milk marketing board shall establish a milk stabilization plan for each milk marketing area.

1. a. Each milk stabilization plan must include the minimum price that processors located within the particular milk marketing area must pay to dairy farmers for raw milk.
- b. In establishing the minimum price, as required by this subsection, the board shall consider various factors pertinent to the milk marketing area, including:

- (1) Supplies of raw milk;
 - (2) Reserve supplies of raw milk;
 - (3) Production and retail sales data;
 - (4) Feed prices; and
 - (5) Wage rates.
2. a. Each milk stabilization plan must include the minimum price that a processor must charge a retailer for milk products, provided the minimum price for each item is applicable, regardless of the location at which the retailer accepts delivery.
 - b. Each milk stabilization plan must include the minimum price that a distributor must charge a retailer for milk products, provided the minimum price for each item is applicable, regardless of the location at which the retailer accepts delivery.
 - c. Each milk stabilization plan must include the minimum price that any person must charge a consumer for milk products.
 - d. In establishing the minimum price, as required by this subsection, the board shall consider various factors pertinent to the milk marketing area, including:
 - (1) Raw milk prices;
 - (2) Processing and distribution costs;
 - (3) Returns upon investment; and
 - (4) Retail sales volumes.

4.1-26-11. Milk stabilization plans - Optional provisions.

1. a. A milk stabilization plan established in accordance with section 4.1-26-10 may include the minimum price that must be charged for milk products and frozen dairy products by any person other than those referenced in subsection 2 of section 4.1-26-10.
 - b. (1) Nothing in this subsection requires the establishment of minimum prices for all items in a category.
 - (2) Nothing in this subsection requires the establishment of both minimum wholesale and retail prices for a particular item.
2. A milk stabilization plan established in accordance with section 4.1-26-10 may provide for a classified pricing system predicated upon utilization and may provide for a marketwide pooling arrangement or a handler pooling arrangement, as defined in the Agricultural Marketing Agreement Act of 1937 [7 U.S.C. 601 et seq.], as amended.
 3. If some portion of a milk marketing area falls under the jurisdiction of a federal milk marketing order, a milk stabilization plan established in accordance with

section 4.1-26-10 for the marketing area may require that licensed processors subject to both the milk stabilization plan and the federal milk marketing order:

- a. Pay minimum raw milk class prices that exceed the minimum raw milk class prices established by the federal milk marketing order; and
 - b. Pay the difference between the federal and state minimums directly to dairy farmers, on a handler pool basis.
4. A milk stabilization plan established in accordance with section 4.1-26-10 may contain a formula that automatically changes the minimum price payable to dairy farmers, provided the formula is based on changes in the factors set forth in subdivision b of subsection 1 of section 4.1-26-10.
 5. A milk stabilization plan established in accordance with section 4.1-26-10 may:
 - a. Establish the prices payable by a processor for raw milk purchased from sources other than dairy farmers; and
 - b. Contain provisions necessary to ensure that the prices paid for butterfat and milk solids not fat, whether in the form of raw milk or otherwise, are uniform for all processors whose raw milk purchases are regulated under the plan.
 6. If a milk stabilization plan established in accordance with section 4.1-26-10 contains a marketwide pooling arrangement, the plan may require that raw milk produced by dairy farmer-processors be included in the pooling arrangement.
 7. A milk stabilization plan established in accordance with section 4.1-26-10 may provide for price adjustments based upon:
 - a. The butterfat content of the raw milk;
 - b. The location at which the raw milk is received;
 - c. The location of a plant receiving raw milk that the processor purchased and thereafter transferred or diverted from the plant at which such raw milk is normally utilized; and
 - d. Any other factors for which price adjustments are permitted in the Agricultural Marketing Agreement Act of 1937, [7 U.S.C. 601 et seq.], as amended.

4.1-26-12. Milk stabilization plans - Optional provisions - Maximum prices.

1. A milk stabilization plan established in accordance with section 4.1-26-10 may include maximum prices for sales of milk products by a:
 - a. Processor;
 - b. Distributor; or
 - c. Retailer.

2. In establishing the maximum prices as permitted by this section, the board must consider various factors pertinent to the milk marketing area, including:
 - a. Supplies of raw milk;
 - b. Reserve supplies of raw milk;
 - c. Production and retail sales data;
 - d. Feed prices; and
 - e. Wage rates.

4.1-26-13. Milk stabilization plans - Optional provisions - Quantity discounts to retailers.

A milk stabilization plan established in accordance with section 4.1-26-10 may permit processors and distributors to provide quantity discounts to retailers, in connection with the sales of milk products and frozen dairy products.

1. If quantity discounts are permitted, the milk stabilization plan must include for each retailer:
 - a. A quantity discount rate for purchases of milk products that is based upon the retailer's total purchases of milk products from all suppliers, during an established base period of one, three, six, or twelve months; and
 - b. A quantity discount rate for purchases of frozen dairy products that is based upon the retailer's total purchases of frozen dairy products from all suppliers, during an established base period of one, three, six, or twelve months.
2. Any processor or distributor delivering milk products or frozen dairy products to an eligible retailer may provide the quantity discounts regardless of the product quantities actually purchased by the eligible retailer from a processor or distributor.
3. If a retailer operates two or more separate places of business, the quantity discount rate must be applied to each place of business and based upon the quantity of milk products or frozen dairy products that the retailer purchased for resale at each place of business.

4.1-26-14. Milk stabilization plans - Optional provisions - Frozen dairy products - Wholesale price - Filing.

1. A milk stabilization plan established in accordance with this chapter may require that processors and distributors file with the board the uniform wholesale price at which a frozen dairy product will be sold within the marketing area.
2. If price filings are required, as permitted by this section, the board:
 - a. (1) Shall prescribe the time at which and the manner in which the initial price filings must be submitted; and

- (2) Shall permit a processor or distributor desiring to meet the lower prices of a competitor to do so in such portions of the marketing area as specified in the amended price filing;
- b. May not prohibit a processor or distributor from meeting lawful competition without delay in connection with the sale of a frozen dairy product; and
- c. May establish other requirements as necessary to implement this section.

4.1-26-15. Cost variances - Recognition.

1. Minimum and maximum prices established in accordance with this chapter for products other than raw milk may reflect packaging cost differences.
2. Minimum and maximum prices established in accordance with this chapter for home-delivered products may vary from the prices established for products sold to consumers by retailers.

4.1-26-16. Minimum prices payable to dairy farmers - Effect of change.

Whenever a milk stabilization plan is changed with respect to the minimum price that processors located within a particular milk marketing area must pay to dairy farmers for raw milk, the milk marketing board shall ensure that simultaneous changes occur in all other minimum and maximum prices established in accordance with this chapter.

4.1-26-17. Licenses.

1. a. A person must be licensed by the milk marketing board as a dairy farmer if the person sells grade A raw milk that the person has produced to a processor that:
 - (1) Must be licensed in accordance with this chapter; and
 - (2) Processes the milk at a plant located in this state.
- b. This subsection is applicable regardless of whether the person's dairy farm is located within or outside of this state.
2. A person must be licensed as a processor by the milk marketing board if the person:
 - a. Operates a processing plant located in this state;
 - b. Sells milk products or frozen dairy products to a retailer for resale at a retail establishment in this state, regardless of whether:
 - (1) The processor's plant is located in this state or outside of this state; or
 - (2) The retailer takes title to or possession of the products in this state or outside of this state; or
 - c. Sells milk products or frozen dairy products to a distributor for resale to:
 - (1) North Dakota consumers on home delivery; or

- (2) A retailer.
3. A person must be licensed as a distributor by the milk marketing board if the person sells milk products or frozen dairy products to:
- a. North Dakota consumers on one or more home delivery routes; or
 - b. A retailer.
4. a. A person must be licensed as a retailer by the milk marketing board if the person:
- (1) Purchases milk products or frozen dairy products for purposes of resale to consumers; or
 - (2) Sells milk products or frozen dairy products to consumers.
- b. (1) A person licensed as a dairy farmer, a processor, or a distributor shall also be licensed as a retailer, if the person sells milk products or frozen dairy products to consumers at a fixed place of business located in this state.
- (2) Each fixed place of business referenced in this subdivision requires separate licensure.
5. In order to effectuate the purchase of milk products and frozen dairy products at wholesale prices, the following entities may be licensed as retailers:
- a. School districts;
 - b. Nonpublic schools;
 - c. Hospitals;
 - d. State institutions; and
 - e. Not-for-profit entities.
6. This section requires separate licensure for each place of business.

4.1-26-18. Vending machine suppliers - Authorization to license.

The milk marketing board, by rule, may provide for the licensing of persons engaged in supplying milk products or frozen dairy products to consumers through the use of vending machines.

4.1-26-19. License - Application.

To obtain a license required by this chapter, a person must complete an application form and submit it to the milk marketing board.

4.1-26-20. Licenses - Additional requirements.

1. Before a processor may be licensed by the milk marketing board, as required by this chapter, the processor shall obtain a license from the agriculture commissioner, in accordance with chapter 4-30.

2. Before a distributor may be licensed by the board, as required by this chapter, the distributor shall obtain a license from the agriculture commissioner, in accordance with chapter 4-30.
3. Before a dairy farmer may be licensed by the board, as required by this chapter, the dairy farmer shall provide proof of inspection by the agriculture commissioner or the state department of health, as provided for in accordance with section 23-01-16.
4. A person who is a dairy farmer-processor shall obtain both a dairy farmer's license and a processor's license.

4.1-26-21. License application - Hearing.

1. Within thirty days after receiving an application for a license under this chapter, the milk marketing board shall:
 - a. Issue the license; or
 - b. Notify the applicant of the date on which a hearing will be held to receive evidence relative to the application.
2. A hearing under this section may not be held less than twenty days after the date on which notice is given, unless the board and the applicant agree to an earlier date.
3. Within thirty days after the hearing is closed, or as soon thereafter as practicable, the board shall notify the applicant of its decision in the matter.

4.1-26-22. Refusal to license.

The milk marketing board may refuse to license any person, except a dairy farmer.

4.1-26-23. Processor's license - Distributor's license - Grounds for denial.

The milk marketing board may deny an application for a processor's license or a distributor's license if the board determines that:

1. Persons currently licensed by the board in that capacity are supplying an adequate variety and quantity of high-quality milk products and frozen dairy products to retailers and consumers in this state;
2. Deliveries are being made with sufficient regularity and frequency; and
3. The issuance of additional licenses of the type sought will:
 - a. Result in an excess of processing plant capacity;
 - b. Tend to increase to unsatisfactory levels the average unit processing or average unit distribution costs for persons already licensed by the board;
or
 - c. Otherwise tend to prevent achievement of the objectives of this chapter.

4.1-26-24. License application - Required declaration.

1. As a condition of licensure, an applicant for a processor's license shall declare in the application that the applicant:
 - a. Will not sell milk products or frozen dairy products to any person who is not properly licensed in accordance with this chapter;
 - b. Will sell such milk products or frozen dairy products as are customarily handled by a processor to any retailer who:
 - (1) Desires to purchase such products from the processor; and
 - (2) Has a place of business in any community in which the processor processes, distributes, or sells milk products or frozen dairy products; and
 - c. Will offer to any retailer the same frequency of delivery and the same in-store services as are customary in the community.
2. As a condition of licensure, an applicant for a distributor's license shall declare in the application that the applicant:
 - a. Will not sell milk products or frozen dairy products to any person who is not licensed in accordance with this chapter;
 - b. Will not purchase milk products or frozen dairy products from any person who is not licensed in accordance with this chapter;
 - c. Will sell such milk products or frozen dairy products as are customarily handled by a distributor to any retailer who:
 - (1) Desires to purchase such products from the distributor; and
 - (2) Has a place of business in any community in which the distributor distributes or sells milk products or frozen dairy products; and
 - d. Will offer to any retailer the same frequency of delivery and the same in-store services as are customary in the community.
3. As a condition of licensure, an applicant for a retailer's license shall declare in the application that the applicant will not purchase milk products or frozen dairy products from any person who is not licensed in accordance with this chapter.
4. For purposes of this section, "community" means a city, together with any commonly recognized residential or business area adjacent to the city.

4.1-26-25. License - Expiration.

A license issued under this chapter is effective until:

1. There is a change of ownership or of location;
2. The license is suspended or revoked; or

3. The business that is licensed is discontinued or is inactive for more than thirty days.

4.1-26-26. License - Fees prohibited.

The milk marketing board may not charge a fee for the issuance or maintenance of any license required by this chapter.

4.1-26-27. Assessments - Continuing appropriation.

1.
 - a. Each licensed processor shall pay to the milk marketing board an amount determined by the board but not exceeding eighteen cents per hundredweight [45.36 kilograms], on all milk and milk equivalents used by the processor in manufacturing milk products and frozen dairy products.
 - b. The assessment required in accordance with this section is not imposed on milk products or frozen dairy products sold outside this state.
2. The assessment required by this section must be calculated quarterly and paid within fourteen days after the end of each calendar quarter.
3. The board shall forward all moneys received under this chapter to the state treasurer for deposit in the milk marketing fund. All moneys in the milk marketing fund are appropriated on a continuing basis to the board to carry out this chapter.

4.1-26-28. Records - Retention.

1. The milk marketing board shall specify by rule all records that each licensee must maintain.
2. Each licensee shall retain the records required in accordance with this section for a period of three years.

4.1-26-29. Records - Confidential - Penalty.

1. Any information created, collected, or maintained by the milk marketing board under this chapter is confidential and not subject to the open records requirements of section 44-04-18, except that the board may:
 - a. Utilize the information in the administration of this chapter;
 - b. Provide testimony regarding the information in a judicial proceeding or an administrative proceeding conducted in accordance with chapter 28-32;
 - c. Provide the information to the agriculture commissioner for the purpose of determining a licensee's financial condition, as required by chapter 4-30; and
 - d. Utilize the information in compiling and disseminating general statistical data.
2. Any person divulging confidential information in violation of this section is guilty of a class A misdemeanor.

4.1-26-30. Prohibitions.

1. A licensee may not buy or sell any milk product or any frozen dairy product at a price that is less than the minimum price nor more than the maximum price set forth in the applicable milk stabilization plan.
2. If price filings are required, as permitted by section 4.1-26-14:
 - a. A dealer may not sell a frozen dairy product at a price that varies from the filed price in effect on the date of the sale; and
 - b. A retailer may not purchase a frozen dairy product at a price that varies from the filed price in effect on the date of the sale.
3. A licensee may not engage in any act or omission that is contrary to a declaration made in the person's application for a license, as submitted to the milk marketing board.
4. a. A licensee may not use or attempt to use any method, device, or transaction that:
 - (1) Is intended to accomplish or has the effect of accomplishing, the sale or attempted sale of milk products or frozen dairy products at less than the minimum prices set forth in the applicable milk stabilization plan;
 - (2) Is intended to accomplish or has the effect of accomplishing the purchase or attempted purchase of milk products or frozen dairy products at less than the minimum prices set forth in the applicable milk stabilization plan;
 - (3) Is designed to circumvent any price requirements provided for in this chapter; or
 - (4) Has the effect of substantially undermining the effectiveness of any price requirements provided for in this chapter.
- b. The provisions of subdivision a are applicable regardless of whether the method, device, or transaction:
 - (1) Is applied directly to the milk product or frozen dairy product sold or purchased; or
 - (2) Is used in connection with the sale or handling of any other product, commodity, article, or service.
5. a. A distributor may not purchase milk products or frozen dairy products at prices that are less than minimum wholesale prices if the products are resold to consumers at a fixed place of business owned by the distributor.
- b. This subdivision does not prohibit a distributor from purchasing at wholesale prices those milk products or frozen dairy products that are to be resold at a fixed place of business owned by the distributor, provided the distributor purchases at distributor prices all other milk products and frozen dairy products that are to be resold by the distributor.

6. A retailer may not sell or offer to sell milk products or frozen dairy products of a particular brand at a price that is different from that charged by the retailer for the same quantity, type, quality, or grade of a different brand, unless the price differential equals the difference in the price paid by the retailer for the referenced products.

4.1-26-31. Disruptive trade practices.

1. A person may not provide discounts, rebates, or allowances in connection with the sale of milk products or frozen dairy products, unless the discounts, rebates, or allowances are permitted in accordance with section 4.1-26-13.
2. A dealer may not provide free equipment or services to a retailer. This subsection does not prohibit a dealer from:
 - a. Stocking the dairy case or frozen products cabinet of a retailer; or
 - b. Stamping on each milk product or frozen dairy product the retail price at which the retailer desires to sell the product.
3. A person may not provide advertising or display allowances.
4.
 - a. A person may not give a free milk product or a free frozen dairy product to a customer.
 - b. This subsection does not prohibit a person from:
 - (1) Providing tasting samples to an individual; or
 - (2) Donating products for charitable purposes.
5. A dealer may not make loans to a retailer, renew loans to a retailer, or provide financial assistance in any other form to a retailer.
6. A dealer may not furnish signs to a retailer.
7. A person may not sell, offer to sell, or advertise any milk product or frozen dairy product in combination with any other product or service.
8. A person may not sell, offer to sell, or advertise any product or service at a price that is available only to purchasers of a milk product or a frozen dairy product.
9. A dealer may not provide a gift to a retailer.
10.
 - a. A dealer may not lease, lend, or rent equipment to a retailer.
 - b. If a dealer sells equipment to a retailer, the board shall prescribe the minimum markup, based upon the seller's invoice cost or the depreciated value in the case of used equipment.
11.
 - a. (1) Except as otherwise provided in this subdivision, a person may not require a deposit if milk products or frozen dairy products are purchased in returnable containers.

- (2) A person may require a deposit on a milk case, provided the deposit does not exceed the replacement value of the milk case.
- b. A person may not provide an allowance or a credit in connection with the return of a container.
12. a. Except as otherwise provided, a dealer may not provide payment to a franchisor, a wholesale grocer, or any other person closely connected with a retailer for central billing, customer solicitation, or other services, if the purpose or effect of the payment is to induce the recipient to influence or attempt to influence a retailer's decision regarding:
- (1) The brand of milk products or frozen dairy products to be purchased and resold by the retailer; or
- (2) The amount of space to be allocated to any brand of milk products or frozen dairy products.
- b. If a wholesale grocer establishes a central billing service to guarantee the collection of dealer accounts:
- (1) All dealers that supply member or corporate stores must be afforded the same service; and
- (2) The central billing service fee may not exceed two percent of the invoice cost.

4.1-26-32. Inspections and investigations.

1. A representative of the milk marketing board may enter upon real property and access any structure and personal property, at any time, for the purpose of:
- a. Inspecting or pursuing an investigation pertaining to the production, storage, processing, manufacturing, or sale of raw milk, milk products, or frozen dairy products; or
- b. Inspecting records to determine statutory and regulatory compliance.
2. The milk marketing board may subpoena records, copy records, and audit records of any person doing business with an individual licensed under this chapter.

4.1-26-33. License - Suspension and revocation.

1. The board may suspend or revoke a license granted to any person under this chapter if the person violates:
- a. This chapter;
- b. A milk stabilization plan issued in accordance with this chapter; or
- c. Any rule that implements this chapter.
2. The provisions of this subsection do not apply to a dairy farmer.

4.1-26-34. Violation of chapter - Civil penalty.

A person violating this chapter, a milk stabilization plan issued in accordance with this chapter, or any rule that implements this chapter, is subject to a civil penalty in an amount not exceeding five hundred dollars per day for each violation. The civil penalty may be adjudicated by a court or by the milk marketing board through an administrative hearing.

4.1-26-35. Administrative and regulatory functions.

All administrative and regulatory functions of the board must be exercised in accordance with chapter 28-32.

4.1-26-36. Legal actions.

All legal actions may be brought by or against the board in the name of the North Dakota milk marketing board.

SECTION 2. AMENDMENT. Section 54-07-01.2 of the North Dakota Century Code is amended and reenacted as follows:

54-07-01.2. Governor to have power to appoint majority of members of certain boards and commissions - Limitations.

1. Notwithstanding sections 2-05-01, ~~4-18-1-04~~, 4.1-05-02, ~~4.1-26-02~~, 6-01-03, 6-09-02.1, 12-55.1-02, 12-59-01, 15-39.1-05.1, 15.1-01-01, 15.1-13-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
 - a. The aeronautics commission.
 - b. The milk marketing board.
 - c. The dairy promotion commission.
 - d. The state banking board.
 - e. The state credit union board.
 - f. The advisory board of directors to the Bank of North Dakota.
 - g. The pardon advisory board.
 - h. The state parole board.
 - i. The state board of public school education.
 - j. The education standards and practices board.
 - k. The board of trustees of the teachers' fund for retirement.

- l. The state game and fish advisory board.
 - m. The health council.
 - n. The air pollution control advisory council.
 - o. The board of animal health.
 - p. The administrative committee on veterans' affairs.
 - q. The committee on aging.
 - r. The committee on employment of people with disabilities.
 - s. The commission on the status of women.
 - t. The North Dakota council on the arts.
 - u. The state historical board.
 - v. The Yellowstone-Missouri Rivers confluence commission.
 - w. The state water commission.
 - x. The state water pollution control board.
2. The governor shall have the option of reappointing any member to any board or commission to complete the term to which the member was appointed, or the governor may appoint a simple majority of any board or commission to complete the terms of those resigned members who do not receive reappointments. In order to assure continuity, the governor shall reappoint for the completion of their original terms no fewer than one less than a simple majority of the former members of each board or commission.
3. If the governor has not acknowledged in writing the resignation of any members of any board or commission prior to July first of the first year of the governor's term, the board or commission member must be considered to have been reappointed to complete the term to which the member was originally appointed. All members of boards and commissions shall continue to serve until the time they are notified of the acceptance of their resignation by the governor, and in all cases the members of boards and commissions shall continue to serve until their successors have been named and qualified.
4. In those instances where nominations for the filling of vacancies on boards and commissions are submitted to the governor pursuant to state law, the governor shall notify such persons and organizations of acceptance of the resignation of any board or commission member. Such persons and organizations shall furnish the governor with the number of required nominations to fill the vacancies within sixty days after the notice or the governor may nominate and appoint such members as are otherwise qualified.
5. The provisions of this section do not apply to those constitutional officers who serve on boards and commissions, except insofar as a governor may count

such constitutional officers among those the governor reappoints in order to conform to the continuity requirements of this section.

6. All vacancies created by resignation after July first of the first year of each term of a governor must be filled as provided by law. If any person refuses an appointment, the governor shall fill such position as otherwise provided by law.

SECTION 3. REPEAL. Chapter 4-18.1 of the North Dakota Century Code is repealed.

Approved March 16, 2015

Filed March 16, 2015

CHAPTER 73

SENATE BILL NO. 2261

(Senators Wanzek, Larsen, Miller)
(Representatives Brandenburg, D. Johnson, Pollert)

AN ACT to amend and reenact sections 4.1-53-12, 4.1-53-16, 4.1-53-17, 4.1-53-48, 4.1-53-57, 4.1-53-59, 4.1-53-61, 4.1-55-17, 4.1-56-13, and 4.1-57-22 of the North Dakota Century Code, relating to agricultural seed; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-53-12 of the North Dakota Century Code is amended and reenacted as follows:

4.1-53-12. Agricultural seed - Label requirements.

1. a. Agricultural seed offered for sale or sold in this state, for planting purposes, must be labeled.
 - b. The requirements of subdivision a extend to agricultural seed used for cover crops.
2.
 - a. If the agricultural seed is offered for sale or sold in a container, the label must be plainly printed in English and conspicuously placed on or attached to the container.
 - b. If the agricultural seed is offered for sale or sold in bulk, the label must be plainly printed in English and provided to the purchaser at or before the time of delivery.

SECTION 2. AMENDMENT. Section 4.1-53-16 of the North Dakota Century Code is amended and reenacted as follows:

4.1-53-16. Agricultural seed - Additional label requirements - Limited applicability.

1. In addition to any other label requirements set forth in this chapter, the label on each container of barley, canola, dry beans, durum, field peas, flax, oats, ~~rye~~, soybeans, and wheat seed offered for sale or sold in this state for planting purposes must include:
 - a. The kind of each agricultural seed;
 - b. The variety of each agricultural seed component constituting more than five percent of the whole; and
 - c. The percentage by weight of each agricultural seed component constituting more than five percent of the whole.
2. In addition to any other requirements set forth in this chapter, the label on each container of agricultural seed other than barley, canola, dry beans,

durum, field peas, flax, oats, ~~rye~~, soybeans, and wheat seed offered for sale in this state for planting purposes:

- a. Must include the kind of each agricultural seed;
- b. May include the variety of each agricultural seed component constituting more than five percent of the whole; and
- c. Must include the percentage by weight of each agricultural seed component constituting more than five percent of the whole.

SECTION 3. AMENDMENT. Section 4.1-53-17 of the North Dakota Century Code is amended and reenacted as follows:

4.1-53-17. Agricultural seed - Selling by brand - Label requirement.

The seed of barley, canola, dry beans, durum, field peas, flax, oats, ~~rye~~, soybeans, and wheat may be sold by brand, provided the true variety name or number is clearly stated on the label.

SECTION 4. AMENDMENT. Section 4.1-53-48 of the North Dakota Century Code is amended and reenacted as follows:

4.1-53-48. Plant Variety Protection Act - Requirements for certification.

1. If a certificate of plant variety protection issued under the Plant Variety Protection Act [7 U.S.C. 2121 et seq.], as amended through July 31, ~~2011~~2015, specifies that the variety may be sold only as a class of certified seed, that seed must be certified by an official seed-certifying agency before it can be advertised for sale, offered for sale, or sold.
2. Seed from a certified lot may be used in a blend or mixture by or with the approval of the owner of the variety.

SECTION 5. AMENDMENT. Section 4.1-53-57 of the North Dakota Century Code is amended and reenacted as follows:

4.1-53-57. Penalty - Criminal - Civil - Exemption.

1. Any person willfully violating this chapter or the rules implementing this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must be deemed to be the act, omission, or failure of such person as well as that of the person employed.
3. Any person found guilty of violating this chapter or the rules implementing this chapter is subject to a civil penalty in an amount not to exceed ~~five~~ten thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the seed commissioner.
4. A person is not subject to the penalties of this chapter for having offered for sale or sold any seed that was incorrectly represented as to kind, variety, or origin and which could not be identified through examination, unless the person failed to:

- a. Obtain an invoice or grower's declaration stating the required information; or
- b. Take other actions necessary to ensure that the seed was properly identified.

SECTION 6. AMENDMENT. Section 4.1-53-59 of the North Dakota Century Code is amended and reenacted as follows:

4.1-53-59. Liability of seed commission, seed department, seed commissioner, and certified or noncertified agricultural seed producers.

A warranty of any kind, either expressed or implied, including a warranty of merchantability, fitness for a particular purpose, varietal identity, or absence of disease, is not made by the seed commission, the seed department, the seed commissioner, or certified or noncertified seed producers as to the quantity or quality of the crop produced from the seeds or as to other produce, which is inspected and certified, except as provided in this section. The sole warranty made is that the seeds were inspected under the rules of the seed department or the United States department of agriculture. The seed commissioner functions and serves only in an official regulatory manner.

SECTION 7. AMENDMENT. Section 4.1-53-61 of the North Dakota Century Code is amended and reenacted as follows:

4.1-53-61. Applicability of chapter.

This chapter does not apply to:

1. Seed that is not intended for planting purposes; and
2. Seed grown by a producer and sold by that producer without advertising and without using a third party as an agent or broker to effect the sale, provided this exemption is not applicable if the seed is a variety protected by the Plant Variety Protection Act [7 U.S.C. 2321 et seq.], as amended through July 31, 2011~~2015~~.

SECTION 8. AMENDMENT. Section 4.1-55-17 of the North Dakota Century Code is amended and reenacted as follows:

4.1-55-17. Penalties.

1. Any person willfully violating this chapter is guilty of a class A misdemeanor.
2. Any person willfully violating this chapter is subject to a civil penalty in an amount not exceeding ~~five~~ten thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the seed commissioner.

SECTION 9. AMENDMENT. Section 4.1-56-13 of the North Dakota Century Code is amended and reenacted as follows:

4.1-56-13. Penalty.

1. Any person willfully violating this chapter is guilty of a class ~~BA~~ misdemeanor.

2. Any person willfully violating this chapter is subject to a civil penalty in an amount not exceeding ten thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the seed commissioner.

SECTION 10. AMENDMENT. Section 4.1-57-22 of the North Dakota Century Code is amended and reenacted as follows:

4.1-57-22. Violations of chapter - Penalty.

A person is guilty of a class A misdemeanor and subject to a civil penalty in an amount up to ~~five hundred~~ one thousand dollars per violation, which may be imposed by a court or by the seed commissioner in an administrative hearing, if the person:

1. Makes any false statement or report as to the grade, condition, markings, quality, or quantity of potatoes received or delivered, or acts in a manner designed to deceive the consignor or purchaser of the potatoes;
2. Breaches any contract for the purchase or sale of potatoes to which the person was a party unless the breach is based on a state inspection certificate, secured with reasonable promptness after receipt of the shipment and showing that the kind or quality of potatoes is not that which was purchased or ordered;
3. Fails to account for potatoes or to pay for potatoes within the time required by this chapter;
4. Purchases for the person's own account any potatoes received on consignment, either directly or indirectly, without the consent of the consignor;
5. Issues false or misleading market quotations;
6. Cancels any quotations during the period advertised by the person;
7. Makes any false or misleading statement on an application for licensure as a wholesale potato dealer;
8. Increases the sales charges on shipped potatoes by means of fictitious sales;
9. Receives potatoes from foreign states or countries for sale or resale, within or outside this state, and gives the purchaser the impression through any method of advertising or description that the potatoes are from a source other than their true origin; or
10. Violates this chapter or any rule implementing this chapter.

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