

# AGRICULTURE

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## CHAPTER 83

H. B. No. 54

(Davis, Giffey, Opedahl, Wagner)

(Recommended by Legislative Audit and  
Fiscal Review Committee)

### STATE FAIR OPERATING FUND

#### AN ACT

To amend and reenact section 4-02.1-15 of the North Dakota Century Code, relating to the state fair operating fund.

**Be It Enacted by the Legislative Assembly of the State of North Dakota:**

**Section 1. Amendment.)** Section 4-02.1-15 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-02.1-15. State Fair Operating Fund—Maintained In State Treasury—Expenditures.)** A special fund for the North Dakota state fair association to be known as the state fair operating fund shall be maintained in the state treasury, and all income, fees, rents, interest, moneys which may be appropriated by the legislative assembly from time to time, and any other moneys, from whatever source derived by the state fair association, shall be placed in such fund for the use of the North Dakota state fair association; provided, however, that moneys which may be appropriated by the legislative assembly shall only be transferred from the general fund appropriation, and placed in the state fair operating fund by the state treasurer, upon order of the director of the department of accounts and purchases whenever the balance in such fund falls so low as to require supplementation. Any moneys or income in the state fair operating fund shall not revert or be canceled according to the provisions of section 54-44.1-11. All expenditures of the state fair association from the state fair operating fund shall be made upon vouchers signed by the secretary, or other person authorized by the board of directors,

and approved by the state auditing board, upon warrant-checks prepared by the department of accounts and purchases. The directors of the North Dakota state fair association may, not more than fifteen days in advance of the opening of any state fair, submit to the state auditing board a proposed budget of expenditures for operating the state fair, together with a signed voucher or vouchers for the withdrawal from the state fair operating fund of the total amount of the proposed expenditures. Upon approval of such proposed budget of expenditures by the state auditing board, the director of accounts and purchases shall prepare and issue a warrant-check or checks in such approved amount payable to the state fair association. Such warrant-checks shall be deposited to the account of the North Dakota state fair association in the Bank of North Dakota or a Minot area bank selected by a majority vote of the state fair board of directors and qualifying in accordance with law as a public depository, and shall be subject to being withdrawn by check for the payment of prizes and costs of operation of the state fair. Not later than sixty days after the closing day of the state fair, the association shall file with the state auditing board a detailed and itemized statement of expenditures together with copies of all checks issued, and shall immediately close such account at the Bank of North Dakota or Minot area bank and transfer any remaining balance to the state treasurer for deposit in the state fair operating fund. The treasurer, or other officer delegated such authority by the board, shall remit monthly all income, fees, rents, interest, or other moneys received by the state fair association, to the state treasurer who shall credit the same to the state fair operating fund and such moneys credited to the fund are hereby appropriated as a standing appropriation for the purposes provided in this chapter.

Approved February 3, 1969.

## CHAPTER 84

S. B. No. 462  
(Morgan, Wenstrom)

## REGULATION OF BEEKEEPERS

## AN ACT

To amend and reenact sections 4-12-03, 4-12-03.1, 4-12-04, 4-12-20, and 4-12-22 of the North Dakota Century Code, relating to beekeepers' licenses and fees, penalties for unlawful transportation of bees, and permits for shipping bees into the state, and declaring an emergency.

**Be It Enacted by the Legislative Assembly of the State of North Dakota:**

**Section 1. Amendment.)** Section 4-12-03 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-12-03. Beekeeper's License Required.)** Every beekeeper, on or before the first day of May in each year or within twenty days thereafter, shall make application to the commissioner of agriculture on a form to be furnished by him, for a license certificate, and such certificate shall be granted to every beekeeper who makes a satisfactory application in the form prescribed by the commissioner and pays the license fee required in this chapter. Any person procuring or coming into possession of bees within ten days thereafter shall make an application to the commissioner of agriculture for a license. Each applicant shall include on his application a legal description, to the nearest quarter section, of each apiary maintained by him. The application shall also set out the number of hives or colonies of bees maintained at each apiary described in the application. The license certificate required by this section shall be non-transferable. He shall have obtained a permit to enter if bringing in bees and equipment from out-of-state.

**Section 2. Amendment.)** Section 4-12-03.1 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-12-03.1. Establishment of Locations—Exception—Location Rights.)** No new commercial location may be established with-

in two miles of another commercial location. The noncommercial beekeeper with one to twenty-four colonies will have territorial rights on one location. Provided, however, if any seed grower requests the commissioner of agriculture to allow additional locations for the purpose of pollinating his crop, the restriction prohibiting the maintaining of locations within two miles of one another shall not apply. The name and address of each apiary shall be displayed at each location. The property owner will be exempt from this section.

**Section 3. Amendment.)** Section 4-12-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-12-04. Beekeeper's License—Fees.)** Any beekeeper, upon making application for a license certificate, shall pay a license fee in accordance with the following schedule of fees for the total number of colonies owned or possessed by the applicant in North Dakota:

1 to 10 colonies of bees . . . . .	\$1.00
11 to 25 colonies of bees . . . . .	2.00
26 to 50 colonies of bees . . . . .	3.00
51 to 100 colonies of bees . . . . .	5.00
101 colonies and upward . . . . .	.05 per colony

Nonresident beekeepers shall, in addition to the above fees, pay an additional fee of ten cents per colony.

**Section 4. Amendment.)** Section 4-12-20 of the 1967 Supplement to the North Dakota Century Code shall be amended and reenacted to read as follows:

**4-12-20. Penalty—Confiscation for Unlawful Transportation or Maintenance.)** Any person who violates any of the provisions of this chapter, or any regulation or order made pursuant thereto, shall be guilty of a misdemeanor and any bees, brood, combs for breeding, or used beekeeping appliances and equipment unlawfully transported or maintained may be confiscated by the state bee inspector. Any items which are confiscated pursuant to this section shall be disposed of through a sheriff's

sale or destroyed if they constitute a disease hazard.

**Section 5. Amendment.)** Section 4-12-22 of the 1967 Supplement to the North Dakota Century Code shall be amended and reenacted to read as follows:

**4-12-22. Shipments Into State—Permit—Fees.)** Before any person transports into this state any bees on comb, used hives, or used apiary equipment he shall obtain from the state bee inspector a permit for such transportation. A copy of the certificate of health issued by the official bee inspector of the state or country of origin, a complete description of the shipment, and such other information as may be required by regulations established by the commissioner of agriculture shall be provided the state bee inspector who shall upon receipt of this information issue the required permit. Immediately upon the arrival of any bees into this state the owner thereof shall comply with the provisions of this chapter relating to the registration of bees. Upon the issuance of the permit authorized in this section, a nonresident applicant shall pay to the commissioner of agriculture an entrance fee of one dollar and fifty cents for each hive or colony of bees, transported into the state of North Dakota. Provided, however, no applicant for a permit shall be charged more than one entrance fee for any hive or colony of bees, regardless of the number of times the colony or hive of bees is transported into or out of the state. The permit fee authorized in this section shall apply only if the state from which the hives or colonies of bees were imported requires entrants to pay an inspection or entrance fee for hives or colonies of bees brought into that state.

**Section 6. Emergency.)** This Act is hereby declared to be an emergency measure, and shall be in full force and effect from and after its passage and approval.

Approved March 28, 1969.

## CHAPTER 85

## H. B. No. 292

(Glaspey, Lillehaugen, Simonson, Diehl, Matheny)  
(Link, Haugland, Anderson, G. Larson, I. Solberg)  
(Leibhan, O. Solberg, Ganser, Lundene, Backes, Bier)  
(Sandness, Knudson, E. Johnson, Weber, Gackle, Rivinius)

## MILK STABILIZATION BOARD

To create and enact sections 4-18.1-22 and 4-18.1-23 of the North Dakota Century Code, and to amend and reenact subsections 4, 6, 8, 9, 10, 11, 12, and 13 of section 4-18.1-01, sections 4-18.1-02, 4-18.1-03, 4-18.1-04, 4-18.1-05, 4-18.1-06, 4-18.1-07, 4-18.1-08, 4-18.1-09, 4-18.1-10, 4-18.1-11, 4-18.1-12, 4-18.1-13, 4-18.1-14, 4-18.1-15, 4-18.1-16, 4-18.1-17, 4-18.1-18, 4-18.1-19, 4-18.1-20, and 4-18.1-21 of the North Dakota Century Code, relating to regulation of prices and trade practices within the milk industry by the milk stabilization board which regulation is declared to be within the police power and providing for administrative and civil procedures for enforcement thereof.

**Be It Enacted by the Legislative Assembly of the State of North Dakota:**

**Section 1. Amendment.)** Subsections 4, 6, 8, 9, 10, 11, 12 and 13 of section 4-18.1-01 of the 1967 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. That unfair, unjust, destructive, and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk, milk products and frozen dairy products, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk.
6. That it is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of milk and cream, to eliminate speculation and waste, and to make the distribution thereof between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of such commodities.
8. That milk is a perishable commodity, which is easily

- contaminated with harmful bacteria, which cannot be stored for any great length of time, which must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day, but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis.
9. That the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that dairy farmers, processors and distributors shall produce and carry on hand a surplus of milk in order to guarantee and ensure to the consuming public an adequate supply at all times, which surplus must of necessity be converted into byproducts of milk at great expense and at times at a loss to the dairy farmer, processor and distributor.
  10. That this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and destroy the milk industry, which causes producers to relax their diligence in complying with the provisions of the health authorities and oftentimes to produce milk of an inferior and unsanitary quality.
  11. That investigation and experience have further shown that, due to the nature of milk and the conditions surrounding its production and marketing, unless dairy farmers, processors, distributors, and others engaged in the marketing of milk are guaranteed and ensured a reasonable profit on milk, both the supply and quality of milk is affected to the detriment of, and against the best interest of the citizens of this state whose health and well-being is hereby vitally affected.
  12. That, where no supervision and regulation is provided for the orderly and profitable marketing of milk, past experience has shown that the credit status of dairy farmers, processors and distributors of milk is adversely affected to a serious degree, thereby entailing loss and hardship upon all within the community with whom these dairy farmers, processors and distributors carry on business relations.
  13. That, due to the nature of milk and the conditions surrounding its production and distribution, the natural law

of supply and demand has been found inadequate to protect the industry in this and other states, and in the public interest it is necessary to provide state supervision and regulation of the milk industry in this state.

**Section 2. Amendment.)** Section 4-18.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-02. Purpose.)** The purpose of this chapter is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state.

**Section 3. Amendment.)** Section 4-18.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-03. Definitions.)** As used in this chapter, unless the context otherwise requires:

1. "Board" means the state agency created by this chapter, to be known as the North Dakota milk stabilization board.
2. "Person" means any individual, partnership, corporation, cooperative corporation or association, governmental agency, or other business entity.
3. "Dairy farmer" means any person who produces grade A raw milk for sale to a processor.
4. "Processor" means a person who processes or manufactures milk products or frozen dairy products, or a person who 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 a person who purchases bulk milk from anyone for resale to a person who processes or manufactures milk products or frozen dairy products. The term "processor" does not include a person who purchases ice cream mix, ice milk mix, or other frozen dairy products mix and whose processing activities are limited to converting such mix into a frozen dairy product, more than half the sales of which are then made by such person to

consumers at retail on the premises where such processing activities take place.

5. "Distributor" means a person, other than a processor, who sells to consumers on one or more retail (home delivery) routes or to retailers, or to both, If such person also operates one or more retail establishments at which milk products or frozen dairy products are sold to consumers, such person does not, thereby, lose his classification as a distributor.
6. "Dairy farmer-processor" means a person who is both a dairy farmer and a processor and who purchases no raw milk from other dairy farmers. For the purposes of this chapter, a dairy farmer-processor is a dairy farmer in any sale of raw milk produced by him to a processor, and is a processor in any processing, manufacturing or sale of milk products or frozen dairy products or in any receipt of bulk milk from a source other than his own production.
7. "Retailer" means any person who is engaged in transferring title to milk products or frozen dairy products to consumers at one or more fixed places of business (retail establishments) located in this state.
8. "Dealer" means any processor or distributor.
9. "Licensee" means any person who holds license from the board which has neither been suspended nor revoked.
10. "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.
11. "Wholesale price" means the price at which any milk product or frozen dairy product is purchased by a retailer.
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. "Marketing area" means that geographical portion of the state of North Dakota within which minimum or maximum prices established by the board shall be uniform.
14. "Milk" means the lacteal secretion of a cow or cows (including such secretions when raw, cooled, pasteurized, standardized, homogenized, recombined, or concentrated) which meets applicable grade A requirements.
15. "Bulk milk" means milk which 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.
16. "Milk product" means any of the following:
  - a. Raw milk, regular or creamline milk, standardized milk, whole pasteurized milk, special milk, homogenized milk, fortified milk, plain or creamed buttermilk, cottage cheese, creamed cottage cheese, flavored milk, flavored skim milk, sour cream, half and half, whipping cream, whipped cream, skim milk, low fat milk, fluid cream, concentrated milk, yogurt, and eggnog;
  - b. Any product which contains milk solids not fat, butterfat, or a milk derivative, and which is manufactured in the semblance of one of the products listed in subdivision a of this subsection, and which is found by the board to require regulation in order to effectuate the purposes of this chapter.
  - c. The term "milk products" shall not include the following: butter, cheese (other than cottage cheese or cream cottage cheese), non-fat dry milk, skim condensed milk, whole condensed milk, whole dry milk, dried cream, evaporated milk, sweetened condensed milk, or baked goods.
17. "Frozen dairy product" means any of the following:
  - a. Ice cream, fruit ice cream, nut ice cream, frozen malt ice cream (frosted malt ice cream), frozen

custard, French ice cream, ice milk, mellorine, olarine, sherine, fruit sherbets, fruit sherbines, the mix from which any such product is made, and those frozen products which contain milk solids not fat, or butterfat, and which are commonly referred to in the dairy industry as "novelties";

- b. Any frozen product (except baked goods) containing either milk solids not fat, butterfat, or a milk derivative and which is found by the board to require regulation in order to effectuate the purposes of this chapter.
18. "Decision" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) by the board in any matter other than a rule-making matter. The term "decision" includes the final disposition of any matter involving the issuance, denial, suspension or revocation of a license. The term also includes any ruling by the board concerning the applicability of one or more provisions of a stabilization plan to a particular person, but does not include a ruling concerning the validity of any such provision.
  19. "Adjudicatory matter" means any proceeding which results in a "decision".
  20. "Rule-making matter" means any proceeding which results in the adoption, amendment or repeal of rules of practice, regulations or of any stabilization plan.
  21. "Rule of practice" means any statement by the board of general applicability and future effect prescribing matters relating to procedure and practice.
  22. "Regulation" means any statement by the board of general applicability and future effect that implements, interprets, carries into effect, or makes more specific, the provisions of this chapter. However, the term does not include any such statement which is properly a part of a stabilization plan, nor does it include any such statement that deals with matters of practice or procedure.

23. "Stabilization plan" means any plan of general applicability and future effect which contains the minimum and/or maximum prices that the board is authorized to establish and such ancillary requirements as are necessary and appropriate in order to make such minimums and/or maximums effective and meaningful. A stabilization plan may be of general applicability although effective within only one marketing area and although some provision of such plan is of immediate concern to only one person, provided the form of the stabilization plan (and of each of its provisions) is general so that others who may qualify in the future will fall within the provisions of such stabilization plan.

**Section 4. Amendment.** Section 4-18.1-04 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-04. Milk Stabilization Board.)** There is hereby created a milk stabilization board to consist of five members, who shall be appointed by the governor. The board shall consist of one person who is a dairy farmer selling to a processor, who shall be selected by the governor from two names submitted to him by the North Dakota milk producers association; one person who is a processor, who shall be selected by the governor from two names submitted to him by the North Dakota dairy industries association; one person who is a retailer, who shall be selected by the governor from two names submitted to him by the North Dakota association of food retailers; and two persons shall be selected by the governor who are consumers, and who are not otherwise engaged in the milk business. No appointee shall have held elective or appointive public office during the period of two years immediately preceding his appointment and no appointee shall hold any other public office, either elective or appointive, during his term of office as a member of the milk stabilization board; and not more than three members of the said milk stabilization board shall, at the time of the appointment or thereafter during their respective terms of office, be members of the same congressional district.

The members of said milk stabilization board shall be appointed within thirty days after passage and approval of this chapter. The term of office of one member shall expire on July 1, 1968; the term of office of one member shall expire on July 1, 1969; the term of office of one member shall expire on July 1, 1970; the term of office of one member shall expire

on July 1, 1971; the term of office of one member shall expire on July 1, 1972; and each succeeding member shall hold his office for a term of five years and until his successor shall have been appointed and qualified. Any vacancy shall be filled by appointment by the governor as heretofore stated.

Three members of the board shall constitute a quorum for the regular transaction of business. The board shall choose one of its members as the chairman, who shall hold office as a chairman for one year; provided, elections as chairman shall not interfere with the member's right to vote on all matters before the board.

Each member of the board shall receive twenty-five dollars per diem for each day actually spent in the performance of his official duties, plus mileage and expenses as are allowed to other state officers, but in no event shall a member's per diem payments exceed fifteen hundred dollars in any one year.

Each member of the board shall give bond conditioned for the faithful performance of his duties in the manner required by law in the sum of five thousand dollars.

The board shall employ an executive secretary who shall serve under the direction and at the pleasure of the board and whose qualifications, and duties, and compensation shall be determined by the board. The executive secretary shall serve as financial officer of the board and shall be authorized to accept money paid to the board in accordance with this chapter. Before entering upon the discharge of his duties, he shall execute and file a bond in an amount as may be fixed by the board or as may be provided by law for public officers.

The board shall employ, in addition to the executive secretary, such assistants and employees, permanent and temporary, as may be necessary to carry out the duties and responsibilities of the board under the provisions of this chapter. The board shall determine the qualifications, duties and compensation of such employees. The board may employ a licensed attorney of the state of North Dakota as its legal counsel, who shall serve on a full-time or a part-time basis, and the board may obtain the services of such additional attorneys as it deems necessary. The board may also contract for auditing, economic research, and other technical services, whenever it determines that such services are needed.

All expenditures under this chapter shall be paid from the receipts hereunder. Meetings of the board shall be had at least every sixty days at the call of the chairman or a majority of the board.

**Section 5. Amendment.)** Section 4-18.1-05 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-05. General Powers of the Board.)**

1. The board is hereby declared to be the instrumentality of the state of North Dakota for the purpose of administering the provisions of this chapter and of executing the legislative intent herein expressed. The board is hereby delegated the power to supervise, investigate, and regulate every segment of the state's dairy industry. However, nothing contained in this chapter shall be construed to limit, decrease, or amend in any respect the authority of the North Dakota department of agriculture, county boards of health, or municipal health officials, with respect to matters of health and sanitation; and nothing contained in this chapter shall be construed as giving the board any authority to regulate the sale of raw milk that is not Grade A.
2. The board may act as mediator or arbitrator in connection with any controversy or issue among or between dairy farmers, processors, distributors, retailers, or consumers if such controversy or issue pertains to the production, transportation, processing, storage, distribution, or sale of milk products or frozen dairy products.
3. The operation and effect of any provision of this chapter, conferring a general power upon the board, shall not impair or limit any specific power or powers granted to the board by this chapter or by some other constitutional or statutory provision.

**Section 6. Amendment.)** Section 4-18.1-06 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-06. Marketing Areas.)** The board shall designate such marketing areas which, together, shall embrace all the

geographical territory of the state. The board may, from time to time, increase or decrease the number of marketing areas, divide or combine one or more marketing areas, or alter the boundaries of such areas.

In establishing, as well as in changing the boundaries of such marketing areas, the board shall take into consideration the various conditions affecting the production, distribution and sale of milk products and frozen dairy products in such areas, the need for establishing area boundaries in a manner which will facilitate cooperation between the board and federal authorities engaged in regulating prices paid by processors for raw milk, and all other factors necessary to effectuate the purposes and policies of this chapter. Minimum or maximum prices established by the board pursuant to this chapter may vary from one marketing area to another.

**Section 7. Amendment.)** Section 4-18.1-07 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-07. Stabilization Plans.)**

1. The board shall establish for each marketing area the uniform minimum prices to be paid by processors to dairy farmers for raw milk.

Each stabilization plan issued by the board shall provide the means for determining which such plan is applicable to the raw milk purchases of a processor engaged in selling milk products in two or more marketing areas; and the applicability of any such plan to raw milk purchased by a processor from a particular dairy farmer shall in no way be dependent upon the location of the seller's dairy farm nor upon the location at which title passes.

In establishing or changing minimum prices to be paid by processors to dairy farmers for raw milk in each marketing area, the board shall take into consideration the following factors applicable to such area: the available supply of raw milk, the adequacy of the reserve supply of raw milk available to processors, the balance between production and consumption, the cost of dairy feed, farm wage rates, and such other

factors as will effectuate the purposes and policies of this chapter. All such minimum prices shall be those which will be beneficial to the public interest, protect the dairy farmers, and ensure an adequate supply of pure and wholesome milk to the inhabitants of the state.

Any stabilization plan issued by the board may provide for a classified pricing system predicated upon utilization, and may provide for a marketwide pooling arrangement, or a handler pooling arrangement, all as defined in the Agricultural Marketing Agreement Act of 1937 (as amended).

Any stabilization plan issued by the board for a marketing area, some portion of which is included within the marketing area of a federal milk marketing order, may require licensed processors subject to both the state stabilization plan and to the federal milk marketing order to pay minimum raw milk class prices which exceed the minimum raw milk class prices established by such federal order and may require such processors to pay all of the difference between the federal and state minimums direct to dairy farmers on a handler pool basis.

Any stabilization plan issued by the board may contain a formula to be used in computing minimum prices payable to dairy farmers. Such formula may be utilized by the board to bring about such automatic changes in minimum dairy farmer prices as are justified on the basis of changes in production costs, supply conditions, and in the other factors to be considered by the board in establishing such minimum prices.

Any stabilization plan may also contain provisions establishing the prices payable by a processor for raw milk purchased from sources other than dairy farmers and may contain such other provisions as are necessary and appropriate in order to ensure that prices paid for butterfat and milk solids not fat (whether in the form of raw milk or otherwise) shall be uniform for all processors whose raw milk purchases are regulated by the same stabilization plan.

If the board issues a stabilization plan containing

a marketwide pooling arrangement, it may require that raw milk produced by dairy farmer-processors be included in such pooling arrangement.

Any stabilization plan may provide for price adjustments based upon the butterfat content of the raw milk, location where received, location of plant to which a portion of the raw milk purchased is transferred or diverted by the processor from the plant where such raw milk is normally utilized, and other such factors for which price adjustments are provided in the Agricultural Marketing Agreement Act of 1937, as amended.

Notwithstanding the other provisions of this subsection, the board shall have no authority to regulate the price at which milk is purchased by a processor which is used in the manufacture of some product other than a milk product or a frozen dairy product.

2. For each marketing area, the board shall establish minimum prices for each of the following classifications of sales:
  - a. Sales of milk products by processors or distributors to retailers. Such minimum price for each item shall be applicable regardless of the location at which the retailer accepts delivery.
  - b. Sales of milk products by any person to consumers.
3. For any marketing area, the board may establish the minimum prices for each of the following classifications of sales:
  - a. Sales of milk products by processors to distributors.
  - b. Sales of frozen dairy products by a processor, distributor, or retailer to any person.
  - c. Sales of milk products by a processor to another processor or by a distributor to another distributor.
  - d. Sales of milk products or frozen dairy products not otherwise provided for in subsections 2 and 3 of this section.

4. For any marketing area, the board may establish the maximum prices for which milk products are sold by a processor, a distributor or a retailer to any person. However, in doing so the board shall take into account all of the economic factors which apply to the establishment of minimum prices for stabilization plans which factors are set out in subdivisions a, b, c, and d of subsection 6 of section 7 of this Act.
5. The stabilization plan for any marketing area may include a provision authorizing processors and distributors to give quantity discounts to retailers in connection with sales of milk products and frozen dairy products. In order to ensure the availability of a sufficient variety of brands to consumers purchasing from retailers having sufficient display space, and in order to avoid injury to small independent processors and distributors, the board shall, if quantity discounts are authorized, establish for each eligible retailer a quantity discount rate for purchases of milk products and a quantity discount rate for purchases of frozen dairy products, which discount rates shall be based upon such retailer's total purchases of milk products from all suppliers and upon his total purchases of frozen dairy products from all suppliers. All processors and distributors delivering milk products and frozen dairy products to such retailer shall be authorized to give quantity discounts in accordance with such rates regardless of the quantities of such products actually purchased by such retailer from each individual processor or distributor. The schedules of quantity discount rates established by the board shall be based upon a graduated scale of discounts proportionate to purchases made by retailers during a base period (one month, one quarter, six months, or one year) to be designated by the board.

When a retailer operates two or more separate places of business, the board shall base the quantity discount rate for each place of business upon the quantity of milk products or frozen dairy products purchased for resale at that place of business alone.

6. The minimum and maximum prices (other than dairy farmer prices) established by the board, as well as the other provisions included in a stabilization plan, shall

be those which will tend to maintain in the business of processing and distributing milk products and frozen dairy products such reasonably efficient processors, distributors, and retailers as are necessary to insure to consumers an adequate and continuous supply of high quality milk products and frozen dairy products at fair and reasonable prices; will tend to foster and encourage stability in the dairy industry and orderly and efficient marketing of milk products and frozen dairy products; will tend to prevent unfair trade practices, unfair methods of competition, conditions of monopoly or combinations in restraint of trade; and will enable the dairy industry to maintain the highest quality.

In establishing minimum prices (other than dairy farmer prices) for a marketing area, the board shall take into consideration all of the following economic factors that are operative in such marketing area:

- a. The prevailing raw milk prices in the marketing area regardless of whether such prices are state established, federally established or negotiated;
  - b. All reasonably necessary costs of processing and distribution incurred by representative processors, distributors, and retailers, including a reasonable return upon necessary investment;
  - c. Quantities of milk products and frozen dairy products consumed in such area; and
  - d. All other economic factors which substantially and directly affect market supply and demand for milk products and frozen dairy products in such area.
7. In exercising the authority contained in subsection 3 of this section, the board may establish minimum prices for some items in a category without the necessity for establishing minimum prices for the other items in such category and may establish one type of minimum price without establishing the other types of minimum prices applicable to a product. For example, the board may establish minimum prices for minimum standard ice cream, but may refrain from establishing minimum prices for ice cream which exceeds minimum standards;

the board may establish minimum prices for half-gallons and gallons of ice cream, but may refrain from establishing minimum prices for ice cream packaged in containers of other sizes; and the board may establish minimum wholesale prices for frozen dairy products without establishing minimum retail prices for such products.

8. In lieu of establishing minimum wholesale prices for one or more frozen dairy products items, the board may require dealers to file with the board the uniform wholesale price at which each such item will be sold by each such dealer within each marketing area.

If the board elects to require such price filings, the board:

- a. Shall prescribe the manner in which and the date on which initial price filings shall be made.
- b. Shall prescribe the procedure to be followed by dealers in amending and supplementing their initial price filings. The board's authority in this connection includes the power to prescribe how much time shall elapse between the filing of any supplemental price or any amended price and the date on which such filing becomes effective, provided that the board may not prohibit dealers from meeting lawful competition without delay in connection with the sale of any such frozen dairy product, but may require the dealer to file an amended price for the purpose of meeting competition before actually meeting such competition.
- c. Shall permit a dealer desiring to meet the lower prices of a competitor to do so in such portions of the marketing area as are specified in such dealer's amended price filing.
- d. May require that the wholesale prices filed for a processor for a marketing area shall automatically be applicable to sales by distributors of that processor's products within such area.
- e. May prescribe such other requirements relative to price filing as will tend to effectuate the purposes of

this chapter.

9. The minimum and maximum prices established by the board for products other than raw milk may reflect packaging cost differences; and minimum and maximum prices for home-delivered products may vary from minimum and maximum prices applicable to products sold to consumers by retailers.
10. The board shall take appropriate steps to insure that changes in minimum dairy farmer prices are accompanied by simultaneous changes in the other minimum and maximum prices as established by the board.

**Section 8. Amendment.)** Section 4-18.1-08 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-08. Licenses.)**

1. It shall be unlawful for a dairy farmer to sell milk without being licensed as a "dairy farmer" by the board if such milk is purchased by a processor who is required by this chapter to be licensed and who processes such milk at a plant located in the state of North Dakota. This provision shall be equally applicable to dairy farmers whose dairy farms are located outside the state of North Dakota as to dairy farmers whose dairy farms are located in the state.
2. It shall be unlawful for a processor to buy milk or to sell milk products or frozen dairy products without being licensed as a "processor" by the board if such processor:
  - a. Operates a processing plant located within the state of North Dakota; or
  - b. Sells milk products or frozen dairy products to a retailer for resale at a retail establishment that is located in North Dakota regardless of whether such processor's plant is located inside or outside the state of North Dakota and regardless of whether such retailer takes title to or possession of such products inside or outside the state of North Dakota; or

- c. Sells milk products or frozen dairy products to a distributor for resale to North Dakota consumers on home delivery or for resale to a retail establishment that is required by this chapter to have a "retailer" license.
3. It shall be unlawful for a distributor to sell milk products or frozen dairy products without being licensed as a "distributor" by the board if such distributor sells milk products or frozen dairy products to North Dakota consumers on one or more retail (home delivery) routes or to a retailer for resale at a retail establishment that is required by this chapter to have a "retailer" license.
4. It shall be unlawful for a retailer to purchase or transfer title to milk products or frozen dairy products without being licensed as a "retailer" by the board. It shall be unlawful for a dairy farmer, a processor, or a distributor to transfer title to milk products or frozen dairy products to consumers at a fixed place of business located within this state without obtaining for each such place of business a "retailer" license issued by the board.
5. The licensing of persons engaged in supplying milk products or frozen dairy products to consumers through the use of vending machines shall be in accordance with requirements prescribed by the board.
6. No charge shall be made by the board for any license. All licenses hereafter issued by the board shall remain in effect unless and until:
  - a. There is a change of ownership or of location; or
  - b. The license is suspended or revoked; or
  - c. The business is discontinued or is inactive for a period of more than thirty days.
7. A license shall be required for each separate place of business.
8. No processor or distributor shall be licensed by the board without first having obtained a license from the North Dakota department of agriculture. No dairy farmer

shall be licensed without furnishing proof of proper inspection by the department of agriculture or the health department as provided by law.

9. A dairy farmer-processor shall obtain a dairy farmer license and a processor license from the board.
10. All licenses issued by the board prior to April 1, 1969, shall expire automatically on April 1, 1969.
11. The board may decline to issue a "processor" license or a "distributor" license to an applicant for any such license if the board finds that persons licensed by the board prior to receipt of the application in question are supplying an adequate variety and quantity of high quality milk products and frozen dairy products to the state's retailers and consumers, that deliveries are being made with sufficient regularity and frequency, and that the issuance of additional licenses of the type sought:
  - a. Will result in an excess of processing plant capacity; or
  - b. Will tend to increase to unsatisfactory levels the average unit processing or average unit distribution costs for persons already licensed by the board; or
  - c. Will otherwise tend to prevent achievement of the objectives of this chapter.
12. Schools, hospitals, state institutions, and charitable institutions may obtain "retailer" licenses from the board regardless of whether they fall within the definition of "retailer" set forth hereinabove.

**Section 9. Amendment.)** Section 4-18.1-09 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-09. License Applications.)** Applications for licenses shall be made on forms prepared and furnished by the board. The board shall require the license applicant to set out in the application such facts concerning the applicant and the nature of the business that the applicant proposes to conduct as the board deems necessary for the administration of this chapter. The

board shall also require applicants for processor and distributor licenses to state in the application that such applicant will make no sales of milk products or frozen dairy products to persons required by this chapter to be licensed unless such persons have obtained the license required by this chapter.

Similarly, the board shall require applicants for distributor and retailer licenses to state in the application that the applicant will make no purchases of milk products or frozen dairy products from persons not licensed by the board.

The board shall require applicants for processor or distributor licenses to state in the application that each such applicant will sell such milk products or frozen dairy products as are customarily handled by such person to any retailer who desires to purchase any of such products from such dealer and who has his place of business in any community in which such dealer processes, distributes, or sells milk products or frozen dairy products; and each such applicant shall also be required to state in the application that he will offer to any such retailer the same frequency of delivery and the same in-store services as are customary in such community, and that he will provide home-delivery services to any consumer residing in such community upon request.

**Section 10. Amendment.)** Section 4-18.1-10 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-10. Prohibited Acts.)**

1. No licensee shall buy or sell any milk product or any frozen dairy product at less than the applicable minimum price established by the board nor more than the applicable maximum price established by the board.
2. If price filing is required by the board, no dealer shall sell, and no retailer shall purchase, a frozen dairy product at a price which varies from the filed price which is in effect on the date of such sale.
3. No licensee shall take any action which is contrary to commitments made by such licensee in the license application filed with the board.

4. It shall be unlawful for any licensee to use or attempt to use any method, device, or transaction intended to accomplish, or having the effect of accomplishing, the sale or attempted sale or the purchase or attempted purchase of milk products or frozen dairy products at less than the minimum prices established by the board pursuant to this chapter, or which is designed to circumvent the price requirements of the board, or which has the effect of substantially undermining the effectiveness of such pricing requirements, whether such method, device, or transaction applies directly to the milk product or frozen dairy product sold or purchased, or is used in connection with the sale or handling of any other product, commodity, article, or service.
5. The following arrangement, now in effect among a limited number of licensees in this state, is found to be discriminatory, unfair, and disruptive and is hereby prohibited: The purchasing by a distributor of milk products or frozen dairy products at prices which are less than minimum wholesale prices when such products are resold to consumers at a fixed place of business owned by such distributor. This subsection shall not be interpreted as prohibiting an arrangement in which a distributor purchases at wholesale prices those milk products or frozen dairy products that are to be resold at a fixed place of business owned by such distributor and purchases at distributor prices all of the other milk products and frozen dairy products that are to be resold by such distributor.
6. No retailer shall sell or offer to sell any milk products or frozen dairy products of one brand at a price which is different from the price charged by such retailer for an equal quantity of a product which is of the same type, quality, or grade, but of a different brand, unless such price differential is equal to the difference in the prices paid by the retailer for the products in question.

**Section 11. Amendment.)** Section 4-18.1-11 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-11. Authority of the Board to Regulate Disruptive Trade Practices.)** In order to implement subsection 4 of section

4-18.1-10, the board shall by regulation prohibit or regulate each of the following practices, which said practices are listed herein solely for the purpose of illustrating the board scope of the board's authority under the said subsection. Such listing is not intended to be an exclusive enumeration of those practices, methods, devices, schemes, arrangements and activities which the board is authorized to prohibit or regulate:

1. The giving of discounts, rebates or allowances in connection with the sale of milk products or frozen dairy products unless such discounts, rebates, or allowances are authorized by the board in accordance with subsection 5 of section 4-18.1-07.
2. The furnishing by a dealer of free equipment or services to a retailer. This provision shall not be interpreted as authorizing the board to prohibit the stocking by a dealer of the dairy case or frozen products cabinet of a retailer nor the stamping on each milk product or frozen dairy product by the dealer of the retail price at which the retailer desires to sell any such product.
3. The giving of advertising or display allowances.
4. The giving of a free milk product or a free frozen dairy product to a customer.
5. The making or renewal of loans, or the giving of financial assistance in any other form, by a dealer to a retailer.
6. The furnishing of signs by a dealer to a retailer.
7. Selling, offering to sell, or advertising any milk product or frozen dairy product in combination with any other product or service.
8. Selling, offering to sell, or advertising any product or service at a price which is available only to purchasers of a milk product or a frozen dairy product.
9. The giving of gifts by dealers to retailers.
10. The selling, leasing, renting, or lending of equipment by a dealer to a retailer. In connection with the sale of equipment by a dealer to a retailer, the board may pre-

scribe the minimum markup based upon the seller's invoice cost or depreciated value in the case of used equipment. This subsection shall not be interpreted as authorizing the board to prohibit the sale of equipment by dealers to retailers, but the board may prescribe a minimum markup based upon the seller's invoice cost (or depreciated value in the case of used equipment).

11. The requiring of deposits where milk products or frozen dairy products are purchased in returnable containers and the giving of allowances or credits in connection with the return of such containers.
12. Payments by dealers to franchisers, wholesale grocers, or any other person closely connected with a retailer for central billing, customer solicitation, or other services where the purpose or effect of such payment is to induce the recipient of any such payment to influence or attempt to influence the decision of one or more retailers relative to the brands of milk products or frozen dairy products to be purchased and resold by such retailer or relative to the amount of space to be allocated to any brand of milk products or frozen dairy products.

**Section 12. Amendment.)** Section 4-18.1-12 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-12. Assessments by the Board.)** In order to obtain funds for the administration and enforcement of the provisions of this chapter, the board shall levy an assessment upon all licensed processors of five cents per hundredweight on milk or milk equivalents used for the manufacture of milk products and frozen dairy products processed by such processors. However, this assessment shall not be applicable to milk products or frozen dairy products sold in other states.

This assessment shall be paid quarterly on or before the fifteenth of July, October, January, and April of each year. Each such payment shall be equal to the assessment due in connection with milk products and frozen dairy products processed during the calendar quarter which ends on the last day of the preceding month.

All such assessments shall be deposited by the board in the

state treasury in a special fund to be known as the "milk stabilization fund". All expenses incurred in connection with the enforcement and administration of this chapter, including the salaries of employees and assistants shall be paid out of the said "milk stabilization fund" within the limits of legislative appropriations.

**Section 13. Amendment.)** Section 4-18.1-13 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-13. Construction.)** Nothing contained in this chapter shall be construed to prohibit the issuing of trading stamps by retailers in connection with the sale of milk products or frozen dairy products except in those instances where a retailer offers trading stamp bonuses to purchasers of milk products or frozen dairy products.

If any portion of this chapter is held invalid or unconstitutional, such holding shall not affect the validity of the chapter as a whole, or of any part thereof which can be given effect without the part so held to be unconstitutional or invalid.

The authority of the board to regulate milk products or frozen dairy products moving in interstate commerce shall be construed to be as great as, but not to exceed, the limits imposed by the United States Constitution.

**Section 14. Amendment.)** Section 4-18.1-14 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-14. Entry, Inspection, and Investigation.)** Authorized representatives of the board shall have access to, and may enter at all reasonable hours, all places of business operated by licensees where raw milk, milk products or frozen dairy products are produced, stored, processed, manufactured, or sold, or where the licensee maintains books, papers, accounts, records, or other documents related to such activities. The board may subpoena, and any of its authorized representatives may inspect and make copies of, any of such books, papers, records, accounts, or documents and audit the same, all for the purpose of determining whether or not the provisions of this chapter and of any regulations and stabilization plans issued by the board are being complied with.

The board may subpoena, and any of its authorized representatives may inspect, audit, and make copies of, relevant books, papers, records, accounts, or other documents of persons doing business with licensees.

Any information gained by the board or its representatives through such entry, inspection, or investigation shall be treated as confidential by the board and its representatives and shall be used only for the administration of this chapter; provided, that such persons may divulge such information when called upon to testify in any duly noticed proceeding before the board or in any court proceeding wherein the board is a party, and provided further, that nothing contained in this chapter shall prevent the use of any information procured by the board or its representatives in the compiling and dissemination of general statistical data, containing information procured from a number of licensees, and compiled in such manner as not to reveal individual information for any licensee. Any person who divulges confidential information in violation of the provisions of this section to any person, other than members and employees of the board, shall be guilty of a misdemeanor.

The board may also subpoena and take the testimony under oath of persons believed by the board to have information needed by it in administering and enforcing the provisions of this chapter.

**Section 15. Amendment.)** Section 4-18.1-15 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-15. Records and Reports.)**

1. The board shall require licensees to maintain such records as the board deems necessary to effectuate the provisions of this chapter. The board may, by regulation, specify what records shall be maintained by each type of licensee. The board shall require licensees to maintain, among other records, the following:
  - a. A record of all raw milk received or purchased by the licensee, showing the names and addresses of the dairy farmers and others from whom such raw milk was purchased, the quantity, price paid, butter-fat test, and any deductions made.

- b. A record of all milk products and frozen dairy products sold or used, classified as to grade, use, location, market outlet, size and type of container, the composition of said product in terms of butterfat and solids, the quantity sold, and the prices received therefor. Such records shall also show the quantity of each milk product or frozen dairy product manufactured by a licensee, together with the composition of such product, the quantity sold, and the prices received therefor.
  2. The board may require licensees to maintain, among other records, the following:
    - a. A record of the shrinkage, wastage, or loss of raw milk and butterfat, and of skim milk and butterfat destroyed or used for special purposes such as livestock feed.
    - b. A record of the inventory of raw milk, other milk products, and frozen dairy products on hand at the end of a designated accounting period.
    - c. A record of all items of expense incurred by the licensee in procuring raw milk and other ingredients, and in processing, manufacturing, storing, distributing, and selling milk products and frozen dairy products, including overhead and general and administrative costs, and all other items of cost incurred by each licensee in the conduct of its business. No licensee shall be required to reveal his profit or loss. Such records shall be of a nature to permit the board to make statistical studies as it may deem necessary for the proper exercise of its authority under this chapter.
  3. Records required to be kept by licensees shall be preserved by the licensee for a period of not less than three years.

**Section 16. Amendment.)** Section 4-18.1-16 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-16. Cooperation With Other Governmental Agencies.)**

The board may, in compliance with section 4-18.1-18, cooperate with stabilization agencies in other states and with the secretary of agriculture of the United States in the manner provided in the Agricultural Marketing Agreement Act of 1937 (as amended), 7 USC 610 (i).

**Section 17. Amendment.)** Section 4-18.1-17 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-17. Remedies.)**

1. The board may refuse to license or may suspend or revoke the license of any person, except a dairy farmer, who violates any provision of this chapter, any provision of a stabilization plan issued by the board, or any regulation issued by the board. In lieu of a suspension or revocation the board may assess a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation, and may collect such civil penalty by a civil proceeding in any appropriate court. Any moneys received by the board as the result of an election by a licensee to pay a penalty in lieu of a license suspension shall be placed in the milk stabilization fund. Such penalties shall be construed as civil and not criminal in nature.
2. The board or its authorized agent may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this chapter or to enforce compliance with any stabilization plan or regulation of the board or to obtain a judicial interpretation of any of the foregoing; and, in addition to any other remedy, the board, upon approval by a majority of its members, may apply to the district court for relief by injunction, mandamus or any other appropriate remedy in equity. In such actions the board shall not be required to give or post bond in any action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board in the name of the North Dakota milk stabilization board, a state agency.

**Section 18. Amendment.)** Section 4-18.1-18 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-18. Adjudicatory Functions of the Board.)**

1. Within thirty days after receipt by the board of an application for license, the board shall either issue the license or notify the applicant of the date on which a hearing will be held for the purpose of receiving evidence relative to the eligibility of the applicant for the license sought. Such hearings should be held on a date which is not less than twenty days after the date on which such notice is given, unless the hearing is fixed for an earlier date by mutual agreement of the board and the applicant. Within a reasonable time after the close of such a hearing, the board shall notify the applicant of its decision in the matter. The board may deny the issuance of a license if it finds that the applicant has violated this chapter or a regulation or stabilization plan promulgated by the board.
2. Whenever the executive secretary has reason to believe that a licensee has violated this chapter or any regulation or stabilization plan issued by the board, he may file a complaint against such licensee with the board and shall serve a copy of the complaint on the licensee in which he shall set forth the nature of the alleged violation. The board after a hearing and after finding that the licensee has violated any provisions of this chapter, a provision of a stabilization plan or a regulation issued by the board may suspend or revoke his license.
3. The proceedings authorized or required by subsections 1 and 2 of this section shall be in strict conformity with sections 28-32-04 through 28-32-14 and rules of practice that are issued by the board and that are not inconsistent with said statutes.

**Section 19. Amendment.)** Section 4-18.1-19 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-19. Judicial Review of Adjudicatory Action by the Board.)** Judicial review of any decision rendered by the board in any proceedings authorized or required by section 4-18.1-18 of this chapter shall be in accordance with sections 28-32-15 through 28-32-21.

**Section 20. Amendment.)** Section 4-18.1-20 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-18.1-20. Rule-Making Functions of the Board.)**

1. The rules of practice, regulations and stabilization plans issued by the board are declared to be "rules and regulations" as that phrase is defined in chapter 28-32 of the North Dakota Century Code. The requirements of section 28-32-02 through 28-32-04 of the said chapter are applicable to any board proceeding which results in the adoption, amendment, or repeal of any rule of practice, regulation or stabilization plan.
2. The board may, at any time, on its own motion, initiate a proceeding in connection with the adoption, amendment, or repeal of rules of practice, regulations or stabilization plans. In addition, any person desiring to initiate such a proceeding shall file with the board a written petition which shall state clearly and concisely the substance or nature of the action requested and the reasons which prompted the request. Upon receipt of such petition, the board shall, within thirty days thereafter, deny the petition in writing or schedule the matter for public hearing pursuant to the requirements of this section.
3. Prior to the adoption, amendment or repeal of any rule of practice, regulation or stabilization plan, the board shall:
  - a. Give at least ten days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved and the time when, the place where, and the manner in which interested persons may make presentations in connection therewith. The notice shall be mailed to all persons who have made timely requests for advance notice of any such proceeding, and notice shall also be given by publication in accordance with the requirements set forth in the board's rules of practice.
  - b. Afford all interested persons reasonable opportunity

to submit data, views, or arguments, orally or in writing. In any proceeding involving regulations or stabilization plans, opportunity for oral presentation (a public hearing) must be granted. The board shall consider fully all such written and oral submissions.

4. The board may designate a hearing officer to conduct any public hearing required by this section.
5. The record of each rule-making proceeding, including the transcript of any public hearing held as a part thereof, shall be filed in the principal office of the board. Such record shall be available at all times for inspection by any interested person.
6. Any rule of practice, regulation, or stabilization plan adopted by the board, or the amendment or repeal thereof, shall be effective on the date on which notice of such action is given by the board, or such later date as may be specified in the notice. Notice of any such action shall be given by the board to all persons who have made timely requests for such a notice, and all persons who entered an appearance at the public hearing.

**Section 21. Amendment.)** Section 4-18.1-21 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**41-18.1-21. Judicial Review of Rule-Making Action by the Board.)**

1. The validity or applicability of any action taken by the board in its rule-making capacity may be determined in a suit for declaratory judgment in the district court for the county of Burleigh.
2. Any such suit must be filed within thirty (30) days after the date on which a copy of the notice of such action and the attorney general's opinion thereon are mailed by the board to the secretary of the state bar association pursuant to section 28-32-03.
3. The court shall declare the board action invalid if it finds that the action in question violates constitutional provi-

sions or exceeds the statutory authority of the board or was adopted without substantial compliance with rule-making procedures. The board shall be made a party to the suit.

4. No stay of a board stabilization plan or regulation properly adopted may be granted prior to final determination of any such matter by the court having jurisdiction thereof.

**Section 22.)** Section 4-18.1-22 of the North Dakota Century Code is hereby created and enacted to read as follows:

**4-18.1-22. Local Advisory Boards.)** Whenever a public hearing is scheduled by the milk stabilization board in any marketing area for the purpose of establishing prices, the board may, at least ten days prior to the date set for such hearing, appoint a local advisory board, the function of which shall be to assist and advise the milk stabilization board in matters pertaining to the production and marketing of milk in said marketing area. If a local advisory board is appointed, the local advisory board shall consist of two producers, two processors and two retailers who are actively engaged in milk production, processing and marketing in the area. Such local advisory board shall meet with the milk stabilization board at the call of the milk stabilization board before, during, or after such public hearing to establish prices. The members of such local advisory board shall receive twenty-five dollars per diem for each day actually spent in the performance of such duties, plus mileage and expenses in an amount equal to that received by state officers. In no event shall there be more than three meetings or conferences between the milk stabilization board and such local advisory board; and in all events such local advisory board shall cease to exist when the milk stabilization board promulgates its stabilization plan established prices following the public hearing heretofore mentioned.

**Section 23.)** Section 4-18.1-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

**4-18.1-23. Referendum on Continuance of Program—Petitions—Contents.)** Whenever a petition is presented to the commissioner of agriculture containing at least twenty-five percent of the total grade A dairy farmers in North Dakota covered by the provisions of this chapter, with the signature of at least one such dairy farmer in each of twenty-seven different

counties, the commissioner of agriculture shall conduct a referendum by secret ballot by mail, in accordance with rules established by the commissioner of agriculture, and shall report the results of the referendum to the next legislative assembly that meets thereafter.

Approved March 25, 1969.

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CHAPTER 86

H. B. No. 480  
(Giffey)

ASSESSMENT OF WHEAT TAX IN  
CASES OF LIEN, PLEDGE, OR MORTGAGE

AN ACT

To amend and reenact section 4-28-07 of the North Dakota Century Code, relating to the state wheat tax levy, and to provide that the tax shall be levied and assessed at the time of final settlement in the case of a lien, pledge, or mortgage, and creating subsection 7 to section 4-28-02, defining final settlement.

**Be It Enacted by the Legislative Assembly of the State of North Dakota:**

**Section 1. Amendment.)** Section 4-28-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-28-07. Wheat Tax Levy.)** There is hereby levied and imposed, effective July 1, 1959, a tax of two mills per bushel by weight upon all wheat grown in this state and sold through commercial channels by a producer to a first purchaser, such tax to be levied and assessed at the time of sale, or final settlement in the case of a lien, pledge, or mortgage if title to the wheat is transferred, and deducted by the purchaser from the price paid. At the time of sale or final settlement, the purchaser shall issue and deliver to the producer a record of the transaction in such manner as the commission may prescribe.

Any producer subject to the deduction provided in this chapter may, within sixty days following such deduction, make applica-

tion by personal letter to the wheat commission for a refund application blank. Upon the return of said blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer shall be refunded the net amount of the deduction collected. If no request for refund shall have been made within the period prescribed above, then the producer shall be presumed to have agreed to such deduction.

**Section 2.)** Subsection 7 to section 4-28-02 is hereby created and enacted to read as follows:

7. The term final settlement shall mean the date the wheat upon which a loan was obtained is sold to the elevator or to a private person or is assigned or transferred to an agency of the United States government; or the date upon which the payment for the wheat is made in instances when wheat is sold but payments are deferred.

Approved March 29, 1969.

H. B. No. 304  
(Reimers, Boyum, Jones, Anderson, Goodman)

## FLAX UTILIZATION RESEARCH TAX

### AN ACT

To levy a tax on the sale of flaxseed for the purpose of creating a fund to be used for flax utilization research, and appropriating money from the fund to the economic development commission to carry on such research.

**Be It Enacted by the Legislative Assembly of the State of North Dakota:**

**Section 1. Flax Tax Levy.)** There is hereby levied and imposed a tax of one-quarter cent per bushel by weight upon all flaxseed produced in this state and sold, for whatever purpose, through commercial channels to a first purchaser. The administration and manner in which the tax is collected and paid, as well as the procedure for making application for refunds and the requirements for the making of refunds shall be governed by the provisions of section 4-28-07 of the North Dakota Century Code, as amended, and shall apply as if same were fully recited herein.

### **Section 2. Definitions.)**

1. "Producer" means any landowner or tenant engaged in growing flax and receiving, in such capacity, any portion of the flaxseed crop produced.
2. "First purchaser" means any person, firm, corporation, association, or partnership buying or otherwise acquiring, after harvest, the property in or to flaxseed from the producer, and shall include a mortgagee, pledgee, lienor, or other claimant having a claim against the producer, where the loan or claim is secured by such flax, or where the flax is taken as part payment or in satisfaction of a mortgage, pledge, lien or claim.
3. "Commercial channels" means the sale of flaxseed, for any use, by the producer to any commercial buyer, dealer, processor, cooperative, or to any person, firm, corporation, association, or partnership which resells any

flaxseed or product produced therefrom.

4. Sale shall include any pledge or mortgage of flaxseed, after harvest, to any person, firm, corporation, association, or partnership.

**Section 3. Remittance of Tax—State Wheat Commission to Prescribe Forms—Flax Utilization Research Fund.)** Each first purchaser shall make quarterly reports and returns to the state wheat commission, on such forms as shall be prescribed by the commission, on or before the twentieth day of the month next succeeding each calendar quarterly period, commencing with the calendar quarter ending September 30, 1969, and with each report and return shall remit to the commission, in the form of a remittance payable to the state treasurer, the tax due. The commission shall transmit all such payments to the state treasurer to be deposited in the state treasury to the credit of a fund to be known as the "flax utilization research fund".

**Section 4. Economic Development Commission to Carry Out Flax Utilization Research—Appropriation.)** There is hereby appropriated out of the flax utilization research fund the sum of fifty thousand dollars, or such portion of that amount as may be available in the fund, to the economic development commission for the purpose of carrying on research into the utilization of and prospective markets for flax and flax products, for the period beginning July 1, 1969, and ending June 30, 1971.

Approved March 29, 1969.

S. B. No. 334  
(Redlin)

## BONDING OF DAIRY PROCESSORS

### AN ACT

To amend and reenact section 4-30-03 of the North Dakota Century Code, relating to the filing of a surety bond or certified bank draft by milk processing or manufacturing plants.

**Be It Enacted by the Legislative Assembly of the State of North Dakota:**

**Section 1. Amendment.)** Section 4-30-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**4-30-03. Bonding of Purchasers of Dairy Products.)** Each applicant for license under section 4-30-02, who purchases milk or cream from a dairy producer, shall file with his application for license a surety bond or certified bank draft held in favor of the dairy department. The amount of such surety bond or certified bank draft shall be determined on the basis of average purchases of such milk or cream from dairy producers during the previous year, and in no event shall be less than one thousand dollars. Where payment for such milk or cream purchased from dairy producers is made on a weekly basis, the amount of such surety bond or certified bank draft shall be in an amount equal to the average weekly purchases of such milk or cream. Where payment for such milk or cream purchased from dairy producers is made on a semimonthly basis, the amount of such surety bond or certified bank draft shall be in an amount equal to the average semimonthly purchases of such milk or cream. Where the period of payment for such milk or cream purchased from dairy producers is made on a basis involving periods of time greater than semimonthly, the amount of such surety bond or certified bank draft shall be in an amount equal to the average purchases of such milk or cream for such periods of time. The commissioner shall be named as obligee, but the bond or draft shall be held for the purpose of protecting, and for the benefit of, any dairy producer, and the full and complete payment to the seller for all milk or cream purchased by the licensee; provided, however,

that the aggregate liability of the bonding company or the dairy department to all such persons shall in no event exceed the amount of such a bond or draft. In lieu of the bond or draft required under the provisions of this section, the applicant shall file for approval with the dairy department and the state examiner a certified financial statement prepared by an independently certified public accountant in accordance with generally accepted accounting practices and principles and certified by him as fairly and accurately representing business operations and financial conditions of the plant business for which the statement is rendered, prepared as of the close of the plant's most recent fiscal year, showing the following minimum standards of financial liquidity;

1. A ratio of current assets to current liabilities of 1:20 to 1:00.
2. Total assets in excess of total liabilities.

Where any reasonable doubt exists as to whether a plant meets these standards on basis of financial information submitted, security shall be required in accordance with section 4-30-03. Interim statements may be required at any time during the year as deemed necessary by the department.

Approved March 8, 1969.

S. B. No. 84  
(Morgan)

## QUARANTINE TO PREVENT PLANT PESTS

### AN ACT

Vesting in the commissioner of agriculture authority to quarantine and to carry out other measures to prevent the spread of plant pests within, from, and into this state, and providing a penalty.

**Be It Enacted by the Legislative Assembly of the State of North Dakota:**

**Section 1. Definitions.)** The following terms as used in this Act, except where the context otherwise requires, shall include both the singular and the plural and shall be construed, respectively, to mean:

1. Commissioner means the commissioner of the department of agriculture of this state or any officer or employee of said department to whom authority to act in his stead has been or hereafter may be delegated.
2. Pest means any insect, disease, or other organism of any character whatsoever, causing or capable of causing injury or damage to any plants or parts thereof or any processed, manufactured, or other products of plants.
3. Host means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.
4. Infested means actually infested or infected with a pest or so exposed to infestation that it would be reasonable to believe that an infestation exists.
5. Person means any individual, corporation, company, society, or association, or other business entity.
6. Move means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or

allow to be moved.

7. Regulated article means any article of any character as described in the quarantine carrying or capable of carrying the plant pest against which the quarantine is directed.
8. Certificate means a document issued or authorized by the commissioner indicating that a regulated article is not contaminated with a pest.
9. Permit means a document issued or authorized by the commissioner to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.

**Section 2. Administration, Rules and Regulations.)** The commissioner shall have the responsibility for administration of the provisions of this Act. The commissioner after consultation and advice with the state entomologist is authorized to assign functions provided for in this Act to any unit of his department and to delegate any authority provided for in this Act to any officer or employee thereof, to be exercised under his general supervision. The commissioner shall promulgate such rules and regulations as are necessary for the efficient execution of the provisions of this Act.

**Section 3. Authority for Voluntary Measures.)** The commissioner, either independently or in cooperation with counties or political subdivisions thereof, cities, towns, farmers' associations or similar organizations, individuals, federal agencies, or agencies of other states, is authorized to carry out operations or measures to locate; to suppress, control, or eradicate; or to prevent or retard the spread of pests with the consent of the owners of the property involved.

**Section 4. Authority for Plant Quarantine.)** The commissioner is authorized to quarantine this state or any portion thereof when he shall determine that such action is necessary to prevent or retard the spread of a pest within or from this state and to quarantine any other state or portion thereof whenever he determines that a pest exists therein and that such action is necessary to prevent or retard its spread into this state. Before promulgating his

determination that a quarantine is necessary, the commissioner shall, after due notice to interested parties, hold a public hearing under such rules as he shall promulgate, at which hearing any interested party may appear and be heard either in person or by attorney, provided, the commissioner may impose a temporary quarantine for a period not to exceed ninety days during which time a public hearing, as provided herein, shall be held if it appears that a quarantine for more than the ninety-day period will be necessary to prevent or retard the spread of the pest. The commissioner shall give notice of the establishment of the quarantine in such newspapers in the quarantined area as he may select. The commissioner may limit the application of the quarantine to the infested portion of the quarantined area and appropriate environs, to be known as the regulated area, and may, without further hearing, extend the regulated area to include additional portions of the quarantined area upon publication of a notice to that effect in such newspapers in the quarantined area as he may select or by direct written notice to those concerned.

\*Following establishment of the quarantine, no person shall move any regulated article described in the quarantine or move the pest against which the quarantine is established, within, from, into, or through this state contrary to regulations promulgated by the commissioner. Notice of the regulations shall be published in such newspapers in the quarantined area as the commissioner may select.

The regulations may restrict the movement of the pest and any regulated articles from the quarantined or regulated area in this state into or through other parts of this state or other states and from the quarantined or regulated area in other states into or through this state and shall impose such inspection, disinfection, certification, or permit and other requirements as the commissioner deems necessary to effectuate the purposes of this Act.

\*Note: The enrolled copy of Senate Bill No. 84 had the following paragraph inserted in section 4 due to clerical error:

“Following establishment of the quarantine, no person shall move any regulated article described in the quarantine or move the pest against which the quarantine is established, within, from, into, or through this state contrary to regulations promulgated by the commissioner. Notice of the regulations shall be published in such newspapers in the quarantined area as he may select or by direct written notice to those concerned.”

The original copy of the introduced bill contained no such language, and the journals of the Forty-first Legislative Assembly show no such amendment, therefore the language has been left out of section 4. See section 46-03-11, relating to correction of clerical and ministerial errors.

**Section 5. Authority for Abatement and Emergency Measures.)** Whenever the commissioner finds any article that is infested or reasonably believed to be infested or a host or pest exists on any premise or is in transit in this state, he may, upon giving notice to the owner or his agent in possession thereof, seize, quarantine, treat, or otherwise dispose of such pest, host, or article in such manner as the commissioner deems necessary to suppress, control, eradicate, or to prevent or retard the spread of a pest, or the commissioner may order such owner or agent to so treat or otherwise dispose of the pest, host, or article. Where large areas or metropolitan areas, involving many people, are to be treated, notice may be by means of newspaper, radio, or other news media. Such notice shall prominently appear, at least ten days prior to treatment, in at least three issues of a daily paper having local coverage.

**Section 6. Authority for Inspections—Warrants.)** To effectuate the purposes of this Act, the commissioner may with a warrant or the consent of the owner make reasonable inspection of any premises in this state and any property therein or thereon and may without a warrant with the assistance of any law enforcement agency provided for in this Code stop and inspect, in a reasonable manner, any means of conveyance moving within this state upon probable cause to believe it contains or carries any pest, host, or other article subject to this Act, and may make any other reasonable inspection of any premises or means of conveyance for which, under the Constitution of the United States and the Constitution of this state, no warrant is required.

The appropriate county courts in this state shall have authority to issue warrants for such inspections upon a showing by the commissioner that there is probable cause to believe that there exists in or on the property to be inspected a pest, host, or other article subject to this Act.

**Section 7. Cooperation.)**

1. The commissioner is authorized to cooperate with any agency of the federal government in such operations and measures as he deems necessary to suppress, control, eradicate, or to prevent or retard the spread of any plant pest including the right to expend state funds on federal lands.
2. The commissioner is authorized to cooperate with agencies of adjacent states in such operations and measures as he deems necessary to locate; to suppress, control, or eradicate; or to prevent or retard the spread of any pest, provided, that the use of funds appropriated to carry out this Act, for operations in adjacent states, must be approved in advance by the governor or his designee.

**Section 8. Penalties.)** Any person who shall violate any of the provisions of this Act or who shall alter, forge, or counterfeit, or use without authority any certificate or permit or other document provided for in this Act or in the regulations of the commissioner provided for in this Act, shall be deemed guilty of a misdemeanor and shall upon conviction thereof, be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or both, in the discretion of the court. Any person who has knowingly moved any regulated article into this state from any quarantined area of any other state, which article has not been treated or handled under provisions of the quarantine and regulations, in effect at the point of origin, shall be guilty of a misdemeanor and shall be subject to the foregoing penalty provision of this Act.

Approved March 8, 1969.