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Sixty-fifth
Legislative Assembly
of North Dakota

SECOND DRAFT:
Prepared by the Legislative Council staff for the
Agriculture and Natural Resources Committee
May 2016

Introduced by

A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14-01 of the North Dakota Century Code is amended and reenacted as follows:

~~4-14-01~~4.1-29-01. Definitions.

In this chapter~~, unless the context or subject matter otherwise requires~~:

1. "Bona fide competitor" ~~is deemed to be~~means a duly licensed dealer in any farm product maintaining a place of business in the same trade territory.
2. "Farm products" means butter, milk, cream, butterfat, cheese, and other dairy products, honey, eggs, poultry, and grain.
3. "Person" means an individual, firm, copartnership, corporation, limited liability company, or association.

NOTE: North Dakota Century Code Section 1-01-49 provides that for the entire Century Code "Person" means an individual, organization, government, political subdivision, or government agency or instrumentality. Consideration should be given to a broader definition in this section to cover business associations not listed. However, Section 1-01-49 appears not usable here because it includes government entities.

SECTION 2. AMENDMENT. Section 4-14-02 of the North Dakota Century Code is amended and reenacted as follows:

~~4-14-02~~4.1-29-02. Unfair discrimination - Exception.

1. ~~Any~~A person is guilty of unfair discrimination for purposes of this chapter if the person:
   a. Is engaged in the business of buying farm products for manufacture or sale ~~who discriminates~~; and
   b. Discriminates between different sections, localities, communities, or cities, of this state, by purchasing farm products at a higher price or rate in one locality than is

paid for such products of the same kind, quality, and grade by ~~such~~a person in another section, locality, community, or city, or than is paid to another person of the same community, after making due allowance for the difference, if any, in the actual cost of transportation paid from the locality of purchase to the locality of manufacture or sale~~, is guilty of unfair discrimination~~.

2. It is not unfair discrimination for any person to pay in any section, locality, community, or city, a price equal to that actually paid on the same day by any bona fide competitor in ~~such~~the section or locality for farm products of the same kind and grade if ~~such~~the price is paid in a bona fide and good-faith effort to meet competition~~, and in such case, the~~. The burden of proving such facts is upon the defendant.

SECTION 3. AMENDMENT. Section 4-14-03 of the North Dakota Century Code is amended and reenacted as follows:

~~4-14-03~~4.1-29-03. Different prices in purchase of agricultural products to be prima facie evidence.

Proof that any person has paid a higher price for any farm products in one section, locality, community, or city, than in another, or has paid another person a different price for the same kind and quality of product in the same community, after due allowance for the cost of transportation ~~has been made~~, is prima facie evidence of a violation of this chapter.

SECTION 4. AMENDMENT. Section 4-14-04 of the North Dakota Century Code is amended and reenacted as follows:

~~4-14-04~~4.1-29-04. Unfair discrimination in sale of farm products.

1. ~~Any~~A person ~~doing~~is guilty of unfair discrimination if that person:
   a. Is engaged in the business ~~in the state of North Dakota and engaged in~~of the manufacture, distribution, or sale of farm products ~~who discriminates~~ in this state; and
   b. Discriminates between or among different sections, communities, cities, or portions ~~thereof~~ in this state, by selling at a lower price or rate in one section, community, city, or portion ~~thereof~~ than is charged by ~~such~~a person for ~~such~~ farm products in another section, community, city, or portion ~~thereof~~, after making due allowance for the difference, if any, in the actual cost of transportation of ~~such~~the

products~~, is guilty of unfair discrimination~~. Proof of ~~such~~a differential in price is prima facie evidence of a violation of this section in a civil action.

2. It is not unfair discrimination for ~~any~~a person to sell in any section, locality, community, or city, at a price equal to that actually charged on the same day by any bona fide competitor in ~~such~~a section or locality for farm products of the same kind and grade if ~~such~~the price is charged in a bona fide and good-faith effort to meet competition~~, and in such case, the~~. The burden of proving such facts is upon the defendant ~~in a civil action~~.

SECTION 5. AMENDMENT. Section 4-14-05 of the North Dakota Century Code is amended and reenacted as follows:

~~4-14-05~~4.1-29-05. Complaint of unfair discrimination - Investigation - Prosecution - Duty of agriculture commissioner.

~~When a~~A complaint ~~is made to~~of unfair discrimination may be filed with the agriculture commissioner ~~or to the dairy commissioner that any person is guilty of unfair discrimination, either of them~~. The agriculture commissioner shall investigate ~~such~~the complaint~~, or either~~. The agriculture commissioner, ~~upon that individual's own initiative~~ without the filing of a complaint, may investigate and ascertain whether this chapter has been violated, and ~~in either event~~ may subpoena, supervise, and control witnesses, administer oaths, and take testimony~~, the same as the district court~~. If~~, in the agriculture commissioner's opinion,~~ sufficient ~~ground~~evidence of a violation exists ~~therefor~~, the agriculture commissioner ~~may~~shall report the facts to the attorney general who ~~thereupon~~ shall prosecute ~~an action~~the defendant in the name of this state in the proper court ~~to annul the charter of any corporation or limited liability company violating the provisions of this chapter~~. If any ~~corporation or limited liability company~~person is adjudged by the courts to be guilty of unfair discrimination, the court may vacate the charter or revoke the authority of ~~such corporation or limited liability company~~the person to do business in ~~the~~this state ~~of North Dakota~~, and may enjoin ~~it~~the person permanently from transacting business in this state.

SECTION 6. AMENDMENT. Section 4-14-06 of the North Dakota Century Code is amended and reenacted as follows:

~~4-14-06~~4.1-29-06. Enforcement of chapter.

The agriculture commissioner ~~and the state dairy commissioner and their deputies~~, the agriculture commissioner's designee, assistants, and agents and the state's attorneys, sheriffs, and peace officers of the respective counties shall enforce ~~the provisions of~~ this chapter. The authority ~~extended to~~of the agriculture commissioner ~~and to the state dairy commissioner~~ under this chapter ~~must be considered as~~is a duty ~~of such officers only~~, and does not preclude any other prosecuting officer or any interested party from instituting proceedings, civil or criminal, for the enforcement of any of the provisions of this chapter.

SECTION 7. AMENDMENT. Section 4-14-07 of the North Dakota Century Code is amended and reenacted as follows:

~~4-14-07~~4.1-29-07. Penalty.

Any person violating ~~the provisions~~a provision of this chapter is guilty of a class A misdemeanor.

SECTION 8. AMENDMENT. Section 4-14-08 of the North Dakota Century Code is amended and reenacted as follows:

~~4-14-08~~4.1-29-08. Remedies of chapter cumulative.

The remedies provided in this chapter are cumulative and not exclusive.

SECTION 9. AMENDMENT. Section 4-14-09 of the North Dakota Century Code is amended and reenacted as follows:

~~4-14-09~~4.1-29-09. Unfair trade practices in the dairy industry.

1. As used in this section, the term "dairy products" includes milk, cream, butter, cheese, cheese food, ice cream, frozen desserts, ice milk, sherbet, and any other edible product manufactured or processed which has any of ~~such~~the preceding products as ~~its~~a principal ingredients.
2. ~~Each of the practices described in this subsection is declared to be an unfair trade practice.~~ It is unlawful for any person to be engaged in ~~such~~unfair trade practices. ~~No~~It is an unfair trade practice for a person who is a dealer in or a vendor of dairy products, for sale to a retailer or who sells dairy products to any person for retail sales ~~may~~to:
   a. Give or extend discounts on dairy products sold to retail outlets, except for standard printed public discounts ~~which~~that fairly represent cost savings ~~which~~that may be passed on to the consumer~~.~~;

b. Make payments of money, credit, gifts, or loans to retail outlets as rental for the storage or display of dairy products on the premises where they are offered for sale~~.~~;

c. Maintain or make repairs of any equipment owned by a retail outlet, except ~~that~~those used exclusively for dairy products, charging comparative, competitive commercial fees and charges for the service and parts~~.~~; or

d. Give any gift of money, merchandise, services, or materials of any value to any retail outlet, except bona fide charities, ~~except such~~other than services ~~heretofore~~ specifically permitted.

3. ~~Nothing in this~~This section may not be interpreted to prohibit the operation of a retail outlet by a person who is also a dealer in or a vendor of retail products for sale to a retailer or for retail sales, or to prohibit the use by that person in ~~such~~a retail outlet of any equipment or advertising or miscellaneous matter owned by that person provided that ~~such~~the retail outlet is under direct control and management of the dealer.

4. ~~Nothing in this~~This section may not be interpreted to prohibit the ~~giving away~~distribution of merchandise, without charge, to be consumed on the premises.

5. For the purpose of this section, any subsidiary or affiliate corporation, cooperative, officer, director, manager, governor, or partner of a corporation, a limited liability company, a cooperative, or partnership which is a dealer in or a vendor of dairy products is deemed to be a dealer in or vendor of dairy products.

NOTE: The entities listed in subsection 5 do not cover all of the business associations that may operate under current law.

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

~~4-14-10~~4.1-29-10. Contracts void - Penalty.

All contracts and agreements made in violation of sections ~~4-14-09~~4.1-29-09 through ~~4-14-11~~4.1-29-11 are void. Any person who violates any of the provisions of sections ~~4-14-09~~4.1-29-09 through ~~4-14-11~~4.1-29-11 is guilty of a class B misdemeanor.

SECTION 11. AMENDMENT. Section 4-14-11 of the North Dakota Century Code is amended and reenacted as follows:

~~4-14-11~~4.1-29-11. Enforcement of fair trade practices.

The attorney general ~~is responsible for the enforcement of~~shall enforce sections ~~4-14-09~~4.1-29-09 through ~~4-14-11~~4.1-29-11. Prosecution of ~~violators of sections 4-14-09~~sections 4.1-29-09 through ~~4-14-11 is~~4.1-29-11 violations are under the supervision of the state's attorney of the county in which the violation occurred.