

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-03 of the North Dakota Century Code, relating
2 to the North Dakota beef commission and assessment; to repeal chapter 4-34 of the North
3 Dakota Century Code, relating to the North Dakota beef commission and assessment; to
4 provide a penalty; and to provide a continuing appropriation.

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

6 **SECTION 1.** Chapter 4.1-03 of the North Dakota Century Code is created and enacted
7 as follows:

8 **4.1-03-01. Definitions.** As used in this chapter:

- 9 1. "Beef producer" means any person that has an ownership interest in cattle.
- 10 2. "Cattle" means live domesticated bovine animals.
- 11 3. "Cattle feeder" means a person in the business of feeding cattle for the purpose of
12 adding weight to the cattle prior to slaughter.
- 13 4. "Commission" means the North Dakota beef commission.
- 14 5. "Dairy producer" means any person in the business of producing and selling milk
15 from cows.
- 16 6. "Livestock auction market" means a public market or private buying station in
17 which livestock is offered for sale or sold.
- 18 7. "Livestock dealer" means a person that purchases cattle and is required to be
19 licensed under chapter 36-04.
- 20 8. "Participating producer" means a producer that has not obtained a refund of any
21 assessment paid on the sale of cattle under this chapter for the preceding three
22 years.

SOURCE: Section 4-34-02.

4.1-03-02. North Dakota beef commission - Membership - Qualifications.

1. The North Dakota beef commission consists of:
 - a. Three beef producers;
 - b. One cattle feeder;
 - c. One dairy producer;
 - d. One representative of a public livestock market; and
 - e. Three at-large representatives.
2. The governor shall appoint:
 - a. Each beef producer from a list of at least two names submitted by the North Dakota stockmen's association;
 - b. The cattle feeder from a list of at least two names submitted by the North Dakota cattle feeders council;
 - c. The dairy producer from a list of at least two names submitted by the North Dakota milk producers association;
 - d. The representative of a public livestock market from a list of at least two names submitted by the North Dakota livestock marketing association; and
 - e. The three at-large representatives.
3. a. Each member of the commission must:
 - (1) Be a United States citizen and a resident of this state;
 - (2) Be actively engaged in that phase of the cattle industry the member represents; and
 - (3) Have been actively engaged in that phase of the cattle industry for a period of five years.
 - b. Each member of the commission, except the representative of a public livestock market, must be a participating producer.
 - c. For purposes of this subsection, "actively engaged" means that the individual:
 - (1) Has an ownership interest in an operation that is of sufficient scope and significance as to constitute a distinct activity; and
 - (2) Has and regularly exercises direct control of the operation.

NOTE: Current law requires members to be "actually engaged" in the phase of the cattle industry that the member represents. The committee indicated that the use of the phrase "actually engaged" was unclear and should be defined. The rewrite uses the

more common phrase "actively engaged" and suggests a definition for committee consideration.

Current law also requires that each member of the commission have, during the five-year period, "derived a substantial portion of the member's income" from the phase of the cattle industry that the member represents. The committee indicated that this concept was likewise unclear. The rewrite attempts to achieve the intended purpose of this concept through the definition of "actively engaged."

SOURCE: Sections 4-34-03 and 4-34-04.

1 **4.1-03-03. Term of office.**

- 2 1. The term of office for each member is three years and begins on July first. The
3 terms must be staggered so that no more than three terms expire each year.
4 2. A member of the commission may not serve more than two consecutive terms. If
5 an individual is appointed to complete a vacancy, that service is not counted as a
6 term, for purposes of this section, unless the duration of that service exceeds one
7 year.

NOTE: The preceding sentence is new. It attempts to clarify the length of service in the event an individual is appointed to complete a vacancy.

SOURCE: Section 4-34-03.

8 **4.1-03-04. Vacancy.** If a member's office is vacant, the position must be filled, for the
9 remainder of the term, in the same manner as the original appointment. A member's office is
10 vacant if:

- 11 1. At any time during a member's term the member ceases to possess any of the
12 qualifications provided for in this chapter;
13 2. Any event enumerated in section 44-02-01 occurs; or
14 3. The commission determines that a member has failed to attend three consecutive
15 meetings of the commission without justification.

SOURCE: Section 4-34-03.

16 **4.1-03-05. Nonvoting members - Appointment.** The commission may appoint up to
17 two nonvoting members. The term of office for a member appointed under this section is one
18 year. The number of terms that may be served by a member under this section is not limited.
19 The commission shall adopt policies governing the appointments and qualifications of nonvoting
20 members.

SOURCE: Section 4-34-05(13).

1 **4.1-03-06. Quorum.** A majority of the commission's voting members constitutes a
2 quorum for the transaction of business.

SOURCE: Section 4-34-06.

3 **4.1-03-07. Chairman - Meetings.**

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

5 2. The chairman shall call all meetings of the commission and shall call a special
6 meeting within seven days when petitioned to do so by three voting members of
7 the commission.

8 3. The commission shall hold at least three regular meetings each year.

SOURCE: Sections 4-34-05 and 4-34-06.

9 **4.1-03-08. Commission members - Compensation.** Each member of the
10 commission is entitled to receive compensation in the amount established by the commission,
11 but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by
12 law for state officers if the member is attending meetings or performing duties as directed by the
13 commission.

SOURCE: Section 4-34-07.

14 **4.1-03-09. Commission - Powers.** The commission may:

15 1. Expend moneys collected pursuant to this chapter for its administration; Section
16 4-34-05(8) and (12)

17 2. Employ, bond, and compensate necessary personnel; Section 4-34-05(3) and (6)

18 3. Accept gifts, grants, and donations of money, property, and services to carry out
19 this chapter; Section 4-34-05(14)

20 4. Contract with any person for any purpose related to this chapter; Section 4-34-05(8), (12),
21 and (15)

22 5. Borrow money, provided the total of all the commission's debt may not exceed its
23 estimate of the current year's revenues; Section 4-34-05(9)

24 6. Sue and be sued; and Section 4-34-05(1) and (11)

25 7. Do all things necessary and proper to enforce and administer this chapter. Section
26 4-34-05(1)

SOURCE: Section 4-34-05.

27 **4.1-03-10. Commission - Duties.** The commission shall:

1. Establish and maintain an office centrally located within this state; Section 4-34-05(5)
2. Keep accurate records of all assessments and other financial transactions under this chapter; and Section 4-34-05(10)
3. Determine the uses to which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of state, regional, and national beef promotion organizations. Sections 4-34-01 and 4-34-05(12)

SOURCE: Sections 4-34-01 and 4-34-05.

4.1-03-11. Assessment - Penalty.

1. Any person who sells cattle in this state or from this state must pay an assessment equal to the greater of:
 - a. Fifty cents for each animal sold; or
 - b. The amount stated in the federal Beef Promotion and Research Act of 1985 [7 U.S.C. 2901 et seq.] and applicable regulations.
2. The assessment provided for in subsection 1 does not apply to cattle owned by a person who certifies to the commission, on forms provided by the commission, that:
 - a. The person's only share in the proceeds of a sale is a sales commission, handling fee, or other service fee; or
 - b.
 - (1) The person acquired ownership of the cattle to facilitate the transfer of ownership to a third party;
 - (2) The person resold the cattle within ten days from the date on which the person acquired ownership; and
 - (3) Any assessment that was levied upon the prior owner has been collected and remitted or will be remitted in a timely fashion.
3. Any person who willfully provides false or misleading information to the commission under this section is guilty of a class B misdemeanor.

SOURCE: Section 4-34-08.

4.1-03-12. Collection of assessment.

1. Each livestock auction market and livestock dealer shall:

1 a. Collect the assessments due under this chapter by deducting the
2 assessments from any credit given or payment made to the seller of the
3 cattle, at the time of the transaction; and

4 b. Forward the assessments to the commission in accordance with section
5 4.1-03-13.

6 2. a. If a person sells North Dakota cattle outside this state or if a person sells
7 North Dakota cattle to an out-of-state buyer, the person shall forward any
8 assessments due under this chapter to the commission in accordance with
9 section 4.1-03-13.

10 b. This subsection does not apply if the assessment has been paid to a brand
11 inspector in another state or to another qualified state beef council.

12 3. Any other person selling cattle in this state shall forward any assessments due
13 under this chapter to the commission in accordance with section 4.1-03-13.

SOURCE: Section 4-34-09.

14 **4.1-03-13. Submission of assessments - Penalty.**

15 1. Any person required to forward assessments to the commission in accordance with
16 section 4.1-03-12 shall do so no later than the fifteenth day of the month following
17 that in which the cattle were sold.

18 2. Any unpaid assessments due pursuant to this chapter must be increased by two
19 percent on the sixteenth day of each month.

20 3. Any person who fails to forward assessments as required by this chapter within
21 thirty days following the month in which the cattle were sold is guilty of a class B
22 misdemeanor.

23 4. For purposes of this section, an assessment is deemed to have been forwarded to
24 the commission:

25 a. On the date of its postmark if mailed;

26 b. On the date of its verified shipment if sent by courier; or

27 c. On the date of its receipt by the commission if delivered personally or
28 electronically.

SOURCE: Section 4-34-10.

29 **4.1-03-14. Transaction records - Inspection by commission.**

1. Any person required to collect or submit an assessment under this chapter shall keep a record of:
 - a. The number of cattle:
 - (1) Purchased;
 - (2) Initially transferred; and
 - (3) Otherwise subject to assessment under this chapter;
 - b. The date of any transaction involving cattle referenced in subdivision a;
 - c. The name of the person who sold the cattle;
 - d. The number of cattle imported or the equivalent of beef or beef products;
 - e. The amount of any assessment forwarded;
 - f. The reason for any discrepancy between the amount forwarded and the dollar amount obtained when multiplying the number of cattle referenced in subdivision a by the per head assessment; and
 - g. The date on which any assessment was paid.
2. All records required by this section and any records required to verify other information provided to the commission in accordance with this chapter must be:
 - a. Maintained for a period of at least three years; and
 - b. Made available for inspection by the commission upon request.

SOURCE: Section 4-34-14.

4.1-03-15. Authorization to request records - Penalty.

1. The commission may require the purchaser of cattle subject to assessment under this chapter to furnish the commission with a list of persons from whom cattle were purchased.
2. Any person who knowingly refuses to furnish the commission with required information is guilty of a class B misdemeanor.

SOURCE: Section 4-34-13.

4.1-03-16. Continuing appropriation. The commission shall forward all moneys received under this chapter to the state treasurer for deposit in the North Dakota beef commission fund. All moneys in the North Dakota beef commission fund are appropriated on a continuing basis to the commission to be used exclusively to carry out this chapter.

NOTE: This section clarifies that the money in the North Dakota Beef Commission fund is appropriated to the commission on a "continuing" basis.

SOURCE: Section 4-34-10.

4.1-03-17. Refund of assessment - Required certification by attorney general.

When the attorney general certifies to the commission that refunds of assessments paid in accordance with this chapter are no longer precluded by the Beef Promotion and Research Act of 1985 [7 U.S.C. 2901 et seq.], or by any other applicable law, the commission may provide refunds to producers.

1. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the commission a written request for a refund application within sixty days after the date of the assessment or final settlement.
2. The producer must complete the refund application and return the application to the commission, together with a record of the assessment paid, within ninety days after the date of the assessment or final settlement. The commission shall then refund the net amount of the assessment that had been collected.
3. If a request for a refund is not submitted to the commission within the prescribed time period, the producer is presumed to have agreed to the assessment.

NOTE: As directed by the interim committee, this section maintains language allowing a refund, but specifies that the refund is contingent upon the Attorney General certifying that changes in federal law have taken place and that refunds are now permitted. The time period within which refunds must be requested parallel those that the interim committee established for the other commodity groups.

SOURCE: Section 4-34-11.

4.1-03-18. Open records exceptions.

1. The following are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota:
 - a. Records furnished to the commission pursuant to section 4.1-03-14;
 - b. Records furnished to the commission pursuant to section 4.1-03-15; and
 - c. The identity of a person that applied for a refund under section 4.1-03-17 and the amount of the refund requested.
2. This section does not preclude the commission from:
 - a. Issuing general statements based upon the reports of persons subject to this chapter; or

- 1 b. Publishing the name of any person found guilty of violating this chapter and
2 describing the offense committed.

SOURCE: Section 4-34-13.

- 3 **SECTION 2. REPEAL.** Chapter 4-34 of the North Dakota Century Code is repealed.