

March 2008

Introduced by

1 A BILL for an Act to amend and reenact sections 4-27-02, 4-27-03, 4-27-04, 4-27-05, 4-27-06,  
2 4-27-07, 4-27-08, and 4-27-12 of the North Dakota Century Code, relating to the North Dakota  
3 dairy promotion commission; to repeal sections 4-27-01, 4-27-09, and 4-27-11 of the North  
4 Dakota Century Code, relating to the titling of the chapter, the payment of expenses, and the  
5 submission of a biennial report; to provide a penalty; and to provide an appropriation.

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

7 **SECTION 1. AMENDMENT.** Section 4-27-02 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **4-27-02. Purposes.** The purposes of this chapter are:

- 10 1. To promote the sale and disposal of North Dakota dairy products through  
11 coordinated research, education, public relations, advertising, and other means.
- 12 2. To help assure the future operation of processing plants located in our cities and  
13 towns employing thousands of people.
- 14 3. To maintain dairy markets, particularly for the family-type farms, thus enabling  
15 more families to live on our farms.
- 16 4. To provide for a referendum vote among dairy farmers to determine whether they  
17 favor the assessment provided for in section 4-27-06.
- 18 5. To provide for the keeping of records, inspection ~~thereof~~ of records, and penalties  
19 for violation of this chapter.

**NOTE:** Sections articulating the purpose of a chapter amount to testimony and have an appropriate place in the legislative record. They do not need to be a part of the statute. In this case, most of what is set forth as a "purpose" is provided for in other sections of the chapter. However, this is not the case with respect to subsection 4. The committee is asked to determine whether a referendum vote is to be an option, in light of federal legislation, and whether its parameters and consequences should be statutorily articulated.

1           **SECTION 2. AMENDMENT.** Section 4-27-03 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **4-27-03. Definitions.** As used in this chapter:

- 4           1. "Commission" means the North Dakota dairy promotion commission.  
5           2. ~~The term "dealer"~~ "Dealer" means and includes any person who handles, ships,  
6           buys, or sells dairy products, or who acts as sales or purchasing agent, broker, or  
7           factor of dairy products.

**NOTE:** The use of the word "means" in a definition indicates exclusivity. The use of  
the word "includes" in a definition indicates no exclusivity. Which word is to be used in  
this subsection?

- 8           3. ~~The term "gross receipts"~~ "Gross receipts" means ~~that the~~ amount paid to a  
9           producer for milk or some product therefrom sold by such producer.

**NOTE:** Is this definition necessary?

- 10          4. ~~The terms "handle" or "handler" mean or indicate any person who purchases milk~~  
11          ~~or cream for processing, manufacturing, sale, or distribution, whether as owner,~~  
12          ~~agent, employee, or otherwise.~~

**NOTE:** Neither the term "handle" nor the term "handler" are used in this chapter and  
therefore do not need to be defined.

- 13          5. ~~The term "person" includes individuals, corporations, limited liability companies,~~  
14          ~~partnerships, trusts, associations, cooperatives, and any and all other business~~  
15          ~~units, devices, and arrangements.~~

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

- 16          6. ~~The terms "processor" or "processing plant" include every~~ "Processor" means a  
17          ~~person and every place to whom or to which milk or cream is delivered, for the~~  
18          ~~purpose of canning, drying, manufacturing, preparing, or packaging for market, or~~  
19          ~~for use in producing or manufacturing a product of~~ who takes delivery of milk or  
20          cream and then:  
21          a. Cans, dries, prepares, or packages the milk or cream; or  
22          b. Produces another product from the milk or cream.

1       7. ~~5.~~ ~~The term "producer" includes every~~ "Producer" means a person who produces  
2           obtains milk from cows and thereafter sells the milk or some sells a product  
3           therefrom produced from the milk.

4       8. ~~"Shipment" and "shipped" must be deemed to have taken place when milk or~~  
5           ~~cream has been delivered or consigned to any person dealing in, processing,~~  
6           ~~distributing, or manufacturing dairy products for sale.~~

**NOTE:** Neither the term "shipment" nor the term "shipped" are used in this chapter and therefore do not need to be defined.

7       **SECTION 3. AMENDMENT.** Section 4-27-04 of the North Dakota Century Code is  
8       amended and reenacted as follows:

9           **4-27-04. North Dakota dairy promotion commission.** ~~There is hereby created a~~  
10       ~~North Dakota dairy promotion commission consisting of nine members. The governor shall~~  
11       ~~appoint two members who must be producers and one member who must be a processor. The~~  
12       ~~governor shall appoint the producer members from a list of nominees supplied by the American~~  
13       ~~dairy association of North Dakota and the processor member from a list of nominees supplied~~  
14       ~~by the North Dakota dairy industries association. Each list of nominees must contain at least~~  
15       ~~twice as many names as the number of appointments to be made therefrom.~~

16       1. a. The commission consists of the following voting members:

17           (1) Two producers appointed by the governor from a list of nominees  
18           submitted by the North Dakota milk producers' association;

19           (2) The chairman of the North Dakota division of the midwest dairy  
20           association; and

21           (3) Two individuals who are members of and elected by the North Dakota  
22           division of the midwest dairy association.

23       b. The commission may appoint up to three nonvoting members from the  
24       following list:

25           (1) The chairman of the North Dakota state university animal and range  
26           sciences department;

27           (2) The agriculture commissioner; and

28           (3) A processor located in North Dakota.

29       2. a. (1) The term of office of each appointive member of the commission for  
30       each of the producers appointed by the governor is two years, except

1 ~~that the initial appointment of one producer is for only one year, so that~~  
2 ~~thereafter and must be staggered so that the term of only one producer~~  
3 ~~will expire expires each year. Terms of office commence~~

4 (2) The term of office for the individuals who are members of and elected  
5 by the North Dakota division of the midwest dairy association is two  
6 years and must be staggered so that the term of only one individual  
7 expires each year.

8 b. Each term of office begins on the first day of July. ~~In addition to the three~~  
9 ~~appointive members there must be two ex officio, nonvoting members of the~~  
10 ~~commission who must be the agriculture commissioner or the commissioner's~~  
11 ~~designee and the head of the animal science department or the department's~~  
12 ~~designee at North Dakota state university. In addition to the appointive and~~  
13 ~~ex officio members there must be four elected members of the commission~~  
14 ~~who must be the president of the American dairy association of North Dakota,~~  
15 ~~the president of the dairy council of North Dakota, and two members of the~~  
16 ~~milk producers association of North Dakota to be elected by that association.~~  
17 ~~The elected members shall meet with the commission and shall have the~~  
18 ~~same rights and duties as the appointive members, including the right to vote.~~  
19 ~~The milk producers shall serve terms of two years, commencing on July first,~~  
20 ~~except that initially one producer shall serve a term of one year as designated~~  
21 ~~by the milk producers association of North Dakota.~~

22 3. Whenever an association is required by subdivision a of subsection 1 to submit  
23 nominees to the governor, that association shall submit at least two nominees for  
24 each position to be filled.

**NOTE:** Because several of the associations listed in the current law no longer exist, representatives of the Midwest Dairy Association proposed the commission makeup that is reflected in this draft.

25 **SECTION 4. AMENDMENT.** Section 4-27-05 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **4-27-05. Powers and duties of commission.**

**NOTE:** The content of this section needs to be placed in several separate sections and the remaining sections need to be reordered.

1           1.    The commission shall do all things necessary and proper to enforce and administer  
2                    ~~and enforce the provisions of this chapter and has and may exercise any and all of~~  
3                    ~~the powers conferred upon it herein.~~

4           2.    A majority of the voting members of the commission constitutes a quorum for the  
5                    ~~transaction of business and the carrying out of the duties of the commission.~~

**NOTE:** NDCC Section 1-01-10 provides that a "majority of any board or commission" constitutes a quorum. However, if nonvoting members are on the board or commission, it is necessary to clarify that they are not part of the quorum requirement.

6           ~~2.~~ 3.    The commission annually shall elect its officers, including a chairman, vice  
7                    ~~chairman, and a secretary-treasurer, and such other officers as may be deemed~~  
8                    ~~advisable and adopt such rules, regulations, recommendations, and orders for the~~  
9                    ~~exercise of its powers and performance of its duties as is deemed advisable.~~

**NOTE:** Is the chairman to have any particular authority? Is the chairman to call meetings of the commission? Is there any need to provide for special meetings? In the absence of any other directive, the rewrite provides that the chairman must be elected annually.

10          ~~3.~~ 4.    ~~The commission shall determine the amount of compensation payable to each~~  
11                    ~~member of the commission. The amount payable may not exceed~~ Each member  
12                    ~~of the council is entitled to receive compensation, in the amount established by the~~  
13                    ~~council, but not exceeding~~ seventy-five dollars per day plus reimbursement of ~~for~~  
14                    ~~expenses as provided by law for state officers, while~~ if the member is attending  
15                    meetings or performing duties directed by the commission. The compensation  
16                    ~~provided for in this section may not be paid to any member of the council who~~  
17                    ~~receives a salary or other compensation as an employee or official of this state.~~

**NOTE:** The rewrite clarifies that members who are state employees or officials may not receive payment by the commission in addition to their regular salaries.

18          ~~4.~~ 5.    The commission ~~shall select a state manager, whose compensation must be fixed~~  
19                    ~~by the commission. The commission is also authorized to employ such additional~~  
20                    ~~personnel as are necessary, including an attorney, to fix their compensation and~~  
21                    ~~terms of employment, and to incur such expenses as the~~ may employ and  
22                    ~~compensate necessary personnel.~~

23          6.    The commission may ~~deem necessary and proper to carry out its duties, to be paid~~  
24                    ~~from~~ expend moneys collected ~~as herein provided~~ under this chapter for its  
25                    ~~administration.~~

- 1       ~~5- 7.~~    The commission shall plan and carry out dairy products may contract for any  
2                    purpose related to this chapter, including research, education, public relations,  
3                    advertising, sales promotion, and any other programs for the purpose of promoting  
4                    designed to increase the sale and consumption of dairy products on both a state  
5                    and national basis and may contract for any service in connection therewith.
- 6       ~~6- 8.~~    The commission may accept ~~and disburse voluntary contributions for the use and~~  
7                    purposes of the commission gifts, grants, and donations of money, property, and  
8                    services to carry out this chapter.
- 9                ~~7.~~    ~~To effectuate the declared purposes of this chapter, the commission shall collect~~  
10                ~~the assessment on all milk produced in this state and to make disbursements from~~  
11                ~~such funds as provided herein.~~

12                **SECTION 5. AMENDMENT.** Section 4-27-06 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14                **4-27-06. Assessment - Appropriation.**

- 15                1.    ~~There is hereby levied on each~~ Each producer shall pay an assessment of ten  
16                    cents per hundredweight [45.36 kilograms] on all milk or some sold by the  
17                    producer and on any product therefrom produced from milk and sold by that the  
18                    producer.
- 19                2.    All assessments ~~levied under~~ required by this chapter section must be ~~collected:~~
- 20                    a.   Collected by the first dealer or processor through deduction of the same, by  
21                    deducting the amount of the assessment from the producer's gross receipts,  
22                    with the exception that; or
- 23                    b.   Submitted by the producer when the producer sells the milk directly to the  
24                    consumer, the assessment must be collected from the producer. All moneys  
25                    received by the dealers, processors, and producers from the assessment  
26                    must be remitted or uses the milk to make other dairy products.
- 27                3.    Any person in possession of assessments required by this section shall submit the  
28                    assessments to the commission on or before the final day of the month following  
29                    that in which the milk or milk products were marketed. The commission shall  
30                    forward all moneys received under this chapter to the state treasurer and  
31                    deposited by the state treasurer for deposit in the North Dakota dairy promotion

1           commission fund ~~and are hereby~~. All money in the North Dakota dairy promotion  
2           commission fund is appropriated on a continuing basis to the commission ~~and~~  
3           ~~must be disbursed by the commission in accordance with the provisions, to be~~  
4           used exclusively to carry out the intent and purposes of this chapter. ~~The~~  
5           ~~remittance of such assessments must be made monthly not later than the last day~~  
6           ~~of the month following the month in which the milk was marketed. Assessments~~  
7           4. Any assessment imposed by this chapter and unpaid on by the date on which they  
8           are it is due and payable may be increased by is delinquent and the commission  
9           may assess a one-time penalty equal to one and one-half percent of the amount of  
10          the assessment.

**NOTE:** Representatives of the Midwest Dairy Association indicated that this is a one-time penalty.

11        ~~3.~~ 5. Any producer desiring a refund of such assessment shall personally make written  
12           application to the secretary-treasurer of the commission therefor. Such application  
13           must be made to the secretary-treasurer upon forms provided by the commission  
14           no later than thirty days from the time of any payment made to a producer. Upon  
15           request, refunds must be made by the secretary-treasurer on a monthly basis.

**NOTE:** Given the provisions in federal law, should there be any reference to a refund?

**NOTE:** This section contains multiple topics which should be placed in separate sections.

16        **SECTION 6. AMENDMENT.** Section 4-27-07 of the North Dakota Century Code is  
17        amended and reenacted as follows:

18        **4-27-07. Dealers', processors', and producers' records.** ~~All dealers, processors,~~  
19        ~~and producers~~ Any person responsible for the collection and ~~remittance of the assessment~~  
20        ~~imposed by~~ submission of assessments under this chapter shall keep a ~~complete and accurate~~  
21        record of all milk gross receipts subject to the assessment by this chapter. These records must  
22        ~~contain such information as the commission prescribes, must be preserved be retained~~ for a  
23        period of two years from the date of the transaction, and are subject to inspection by ~~authorized~~  
24        ~~agents or employees~~ of the commission.

**NOTE:** If the records must be retained for two years, the statute should indicate the date on which the calendar begins to run.

1           **SECTION 7. AMENDMENT.** Section 4-27-08 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **4-27-08. Reports - Retention - Inspection.** ~~All persons~~

4           1. Any person required by ~~this chapter~~ section 4-27-07 to keep records, ~~shall file with~~  
5 ~~the commission, as the commission may require by rule, a return on or before the~~  
6 ~~fifteenth day of each month, on forms to be prescribed and furnished by the~~  
7 ~~commission, stating the~~ a record shall:

8           a. Submit to the commission a form indicating:

9                   (1) The amount of milk that was subject to the assessment during ~~the~~  
10 ~~preceding~~ each month; ~~and such~~

11                   (2) Any other information ~~as the commission may reasonably require. A~~  
12 ~~copy of the return must be retained by all dealers and processors for~~  
13 ~~inspection by the producers selling to them.~~ requests; and

14           b. Retain a copy of the form for a period of two years from the date of  
15 submission.

16           2. Any dealer or processor required to submit a form under this section shall make  
17 the form available upon request to any producer who sold milk to the dealer or  
18 processor.

**NOTE:** Although not delineated in current law, a representative of the Midwest Dairy Association indicated that the record or form required by this section should be retained for a period of two years.

19           **SECTION 8. AMENDMENT.** Section 4-27-12 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21           **4-27-12. Penalty.** Any person who violates ~~any of the provisions of~~ this chapter is  
22 guilty of a class B misdemeanor.

23           **SECTION 9. REPEAL.** Sections 4-27-01, 4-27-09, and 4-27-11 of the North Dakota  
24 Century Code are repealed.

**NOTE:**

- NDCC Section 4-27-01 entitles the chapter the "North Dakota Dairy Promotion Commission Act."
- NDCC Section 4-27-09 provides that the commission may not pay its expenses from any source other than the North Dakota Dairy Promotion Commission fund and that the expenses incurred by the commission may not exceed the amount available in the fund. See Section 54-44.1-09.

Sixty-first  
Legislative Assembly

Article X, Section 12, of the Constitution of North Dakota. All public moneys . . . shall be paid out and disbursed only pursuant to appropriation first made by the legislature . . . .

- NDCC Section 4-27-11 authorizes the commission to "submit a biennial report to the governor . . . in accordance with section 54-06-04." Section 54-06-04 does not require the dairy commission to submit a separate report. This section therefore appears to authorize a voluntary act and from that perspective is not necessary. The section also requires that the State Auditor perform a biennial audit. This requirement is already set forth in Section 54-10-01 (powers and duties of State Auditor) and does not need to be repeated in this chapter.