

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-25 of the North Dakota Century Code, relating
2 to revision of statutory provisions of dairy products laws; and to repeal chapter 4-30 of the North
3 Dakota Century Code, relating to dairy products laws.

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

5 **SECTION 1.** Chapter 4.1-25 of the North Dakota Century Code is created and enacted as
6 follows:

7 **4.1-25-01. Definitions.**

- 8 1. "Cheese factory" means a facility that makes cheese for commercial purposes.
9 2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
10 3. "Condensery" means a facility where condensed or evaporated milk is produced.
11 4. "Dairy animal" means any mammal maintained for the commercial production of milk
12 to be offered for sale for use in the processing or manufacturing of milk or dairy
13 products.
14 5. "Dairy farm" means a place where one or more dairy animals are kept.
15 6. "Dairy product" includes milk, cream, sour cream, butter cream, skimmed milk, ice
16 cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk,
17 cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix,
18 sherbet, condensed milk, evaporated milk, or concentrated milk.
19 7. "Department" means the department of agriculture.
20 8. "Distributor" means a person that provides storage, transportation, delivery, or
21 distribution of dairy products to any person who sells dairy products.
22 9. "Drying plant" means a facility that manufactures dry milk products by removing water
23 from milk or milk products.

- 1 10. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination of
2 them, whether or not condensed, evaporated, concentrated, frozen, powdered, dried,
3 or desiccated, or any food product made or manufactured from those products, to
4 which has been added, blended, or compounded with, any fat or oil, other than milkfat,
5 to imitate a dairy product. "Filled dairy products" may not be construed to mean or
6 include:
- 7 a. Any distinctive proprietary food compound not readily mistaken for a dairy
8 product, if the compound is customarily used on the order of a physician and is
9 prepared and designed for medicinal or special dietary use and prominently so
10 labeled;
- 11 b. Any dairy product flavored with chocolate or cocoa or the vitamin content of
12 which has been increased, or both, if the fats or oils other than milkfat contained
13 in the product do not exceed the amount of cacao fat naturally present in the
14 chocolate or cocoa used and the food oil, not in excess of one-hundredth per
15 centum of the weight of the finished product, used as a carrier of such vitamins;
16 or
- 17 c. Margarine.
- 18 11. "Grading" means the examination of milk or milk products by sight, odor, taste, or
19 laboratory analysis, the results of which determine a rating of the quality of the
20 product.
- 21 12. "Ice cream plant" means a facility that makes ice cream for commercial purposes.
- 22 13. "Ice milk plant" means a facility that makes ice milk for commercial purposes.
- 23 14. "Imitation milk" or "imitation milk product" means a food product or food compound
24 made to resemble milk or a milk product when any of the following occurs:
- 25 a. The food physically resembles milk or a milk product. "Physical resemblance"
26 means those characteristics relating to the composition of food, including fat and
27 moisture content, nonfat solids content, and functional ingredient or food additive
28 content such as emulsifiers, stabilizers, flavor, or color additives.
- 29 b. The packaging used resembles the packaging used for milk or for a milk product.
- 30 c. The food product or food compound is displayed in a retail establishment in the
31 same manner as milk or a milk product.

1 d. Verbal or pictorial expressions are used on the food products or food compounds,
2 labeling, or in advertisements or other similar devices used to promote the food
3 products or food compounds that state or imply that the food is milk or a milk
4 product.

5 e. The food product or food compound in any other way is manufactured, packaged,
6 or labeled so as to resemble the identity, intended use, or physical and sensory
7 properties of milk or a milk product. "Physical and sensory properties" means
8 those characteristics relating to flavor, texture, smell, and appearance of a food
9 product or food compound.

10 15. "Milk hauler" means a person who owns vehicles used to transport raw milk from a
11 dairy farm to a dairy facility.

12 16. "Milk plant or bottling plant" means a facility where milk or milk products are collected,
13 handled, processed, stored, and prepared for distribution.

14 17. "Milk solids or total solids" means the total amount of solids in milk.

15 18. "Pasteurization" as applied to milk or skim milk means either:

16 a. The process of heating every particle of milk to at least one hundred forty-five
17 degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products
18 to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and
19 holding it at that temperature continuously for at least thirty minutes; or

20 b. Heating every particle of milk to at least one hundred sixty-one degrees
21 Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least
22 one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it
23 at that temperature continuously for at least fifteen seconds in approved and
24 properly operated equipment.

25 When applied to cream for buttermaking, "pasteurization" means the cream must be
26 held at a temperature of not less than one hundred sixty-five degrees Fahrenheit
27 [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred
28 eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds.
29 Nothing contained in this subsection may be construed as barring any other process
30 that has been demonstrated to be equally efficient which assures proper

- 1 pasteurization and keeping quality, which is consistent with the most desirable quality,
2 and which is approved by the commissioner.
- 3 19. "Pasteurized Milk Ordinance" means the 2013 revision of the Grade "A" Pasteurized
4 Ordinance issued by the United States food and drug administration and by the United
5 States department of agriculture's public health service.
- 6 20. "Peddler" means a person who purchases milk or milk products and sells them directly
7 to consumers at any place other than from a store, stand, or other fixed place of
8 business.
- 9 21. "Person" means individuals, firms, partnerships, associations, trusts, estates,
10 corporations, and limited liability companies, and any and all other business units,
11 devices, or arrangements.
- 12 22. "Processing or manufacturing" means the treatment of milk or milk products by
13 pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging,
14 coagulating, or treating in any manner that changes the natural, physical, or chemical
15 properties of the original product.
- 16 23. "Producer dairy" means a dairy farm that sells milk or cream to a dairy plant for
17 processing or manufacturing.
- 18 24. "Producer-processor" or "producer-distributor" means a producer who is also a
19 processor or distributor.
- 20 25. "Raw milk or raw milk products" means products that have not been treated by the
21 process of pasteurization.
- 22 26. "Retail" means the sale of milk or milk products directly to the consumer.
- 23 27. "Sampler" means a person, other than a milk producer or dairy plant employee, who
24 transports samples for official use of raw milk or milk products from a dairy farm to a
25 dairy facility.
- 26 28. "Sampling" means a procedure taking a portion of milk or milk products for grading or
27 testing.
- 28 29. "Shared animal ownership agreement" means any contractual arrangement under
29 which an individual:
- 30 a. Acquires an ownership interest in a milk-producing animal;

- 1 b. Agrees to pay another for, reimburse another for, or otherwise accept financial
2 responsibility for the care and boarding of the milk-producing animal at the dairy
3 farm; and
4 c. Is entitled to receive a proportionate share of the animal's raw milk production as
5 a condition of the contractual arrangement.

6 30. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been
7 removed.

8 31. "Standard Methods" means the seventeenth edition of the Standard Methods for the
9 Examination of Dairy Products published by the American public health association.

10 32. "Testing" means an examination of milk or milk products by sight, odor, taste, or
11 laboratory analysis to determine the quality, wholesomeness, or composition of the
12 product.

13 33. "Wholesale" means the sale of milk or milk products to a retail dealer for resale.

14 **4.1-25-02. Licenses required - Fees - Term.**

15 1. The license required by this section must be obtained for each place of business in
16 this state owned or operated by:

17 a. A producer-processor, peddler, or distributor;

18 b. A person purchasing milk or milk products for processing or manufacturing;

19 c. A person owning, operating, or leasing a creamery, cheese factory, condensery,
20 drying plant, ice cream plant, ice milk plant, or milk plant;

21 d. A person owning, operating, or leasing any other business engaged in the
22 processing or manufacturing of milk or milk products; and

23 e. An organization acquiring milk or milk products on its own behalf or as an agent
24 of others.

25 2. Application for a license must be made to the commissioner upon forms prescribed by
26 the commissioner. An application for a license constitutes the implied consent of the
27 applicant for department inspections. If the commissioner finds that the applicant
28 conforms to the North Dakota laws and the rules of the commissioner, the
29 commissioner shall issue a license to conduct the operations listed on the license.

30 3. If a licensee wishes to conduct operations other than those listed on an existing
31 license, the licensee may make an application to the commissioner for a license to

1 conduct additional operations. If the commissioner finds that the additional operations
2 are in conformance with North Dakota laws and the rules of the commissioner, the
3 commissioner shall approve them.

4 4. The license must be posted conspicuously in each licensed business.

5 5. All licenses issued under this section expire on the thirtieth day of June of each year
6 and are not transferable.

7 6. The license fee is twenty-five dollars.

8 7. Every organization acquiring milk or milk products as an agent of others is deemed to
9 be a purchaser of milk from a dairy producer.

10 **4.1-25-03. Financial records release authorization with application for licensure.**

11 A purchaser of milk in North Dakota shall file with the license application a release
12 authorizing the commissioner to access the applicant's financial records held by financial
13 institutions, accountants, and others. The release must be in a form approved by the
14 commissioner. The commissioner may use the release in the course of licensing or relicensing
15 the applicant, conducting an investigation of a complaint against the applicant due to a
16 complaint, or when evidence is obtained establishing probable cause of a violation of this
17 chapter. Information gained through the use of a release is confidential. The commissioner may
18 furnish information obtained through the use of the records release to any state agency and to
19 any prosecutorial official requiring the information for use in performing official duties.

20 **4.1-25-04. Financial condition - Assurance of prompt payment.**

21 Each applicant for a license under section 4.1-25-02 who intends to purchase milk from
22 dairy producers shall satisfy the department that the financial condition of the applicant is
23 adequate to assure prompt payment to the dairy producers for purchased milk.

24 **4.1-25-05. Statement of business operations or financial condition - Filing - Review by**
25 **Bank of North Dakota - Confidential - Audited.**

26 Each applicant for a license under section 4.1-25-02 who purchases milk from a dairy
27 producer shall annually file with the department an audited financial statement prepared by an
28 independent certified public accountant or licensed public accountant in accordance with
29 generally accepted accounting practices and principles, verified by the accountant as accurately
30 representing business operations and financial conditions of the applicant for which the
31 statement is rendered, prepared as of the close of the most recent fiscal year of the applicant.

1 In lieu of filing an audited financial statement, an applicant may file other forms of security as
2 provided in section 4.1-25-06. All audited financial statements shall be reviewed by the Bank of
3 North Dakota. All statements under this section are confidential and not open for public
4 inspection. The department may require additional statements to be audited by a certified public
5 accountant or a licensed public accountant.

6 **4.1-25-06. Surety bond, trustee agreement, or other security or assurances.**

7 If it appears that the financial condition of any applicant or licensee who purchases milk
8 from a dairy producer is not adequate to reasonably assure payment to dairy producers when
9 due for the milk to be purchased, or in lieu of annually filing with the department an audited
10 financial statement as required in section 4.1-25-05, the department shall require from an
11 applicant or licensee security or other assurances in one of the following forms:

- 12 1. The filing of a surety bond acceptable to the department. The amount of the surety
13 bond must be determined on the basis of average purchases of milk from dairy
14 producers during the previous year. If payment for milk purchased from dairy
15 producers is made on a weekly basis, the amount of the surety bond must be at least
16 in an amount equal to the average weekly purchases of milk. If payment for milk
17 purchased from dairy producers is made on a semimonthly basis, the amount of the
18 surety bond must be at least in an amount equal to the average semimonthly
19 purchases of milk. If the period of payment for milk purchased from dairy producers is
20 made on a basis involving periods of time greater than semimonthly, the amount of the
21 surety bond must be at least in an amount equal to the average purchases of milk for
22 that greater period of time. The amount of the bond for each period of payment must
23 also include an amount equal to at least the average purchases for three days
24 following the close of the period of payment. The amount of the surety bond of any
25 licensee who pays assignments to creditors of a producer of milk at a lesser frequency
26 than the licensee pays the producer must also include an amount equal to the value of
27 assignments from the prior payment period. The commissioner must be named as
28 obligee, but the bond or draft must be held for the purpose of protecting, and for the
29 benefit of, any dairy producer, and the full and complete payment to that dairy
30 producer for all milk purchased by the licensee. The aggregate liability of the bonding

1 company or the department to all dairy producers may not exceed the amount of the
2 bond.

- 3 2. Providing an amount of protection for dairy producers equal to the amount of
4 protection provided in subsection 1. The security must be held by the department
5 solely for the protection of dairy producers, in one or more of the following forms:
6 a. Cash deposited with a bank or trust company and held under an escrow
7 agreement with the department;
8 b. Bonds of the United States deposited with the department;
9 c. Stocks, bonds, or other marketable securities at current market values, which
10 have regularly reported quotations, deposited with the department; or
11 d. A certified bank draft, certified check, irrevocable letter of credit, or certificate of
12 deposit held in favor of the department.

- 13 3. The filing of an agreement providing complete control over all manufactured or
14 processed milk and dairy products by a trustee to be selected at least annually by the
15 dairy producers. The trustee shall file a trustee's bond and contracts signed by the
16 owner or operator and the purchaser of the dairy products requiring that payment for
17 all dairy products sold be made to the trustee. The trustee shall maintain a separate
18 bank account for that purpose and shall at least annually render a true and correct
19 account of trustee dealings to the department and to the dairy producers.

20 **4.1-25-07. Financial basis for license - Statement to producer - Notification to**
21 **department.**

22 All milk purchasers licensed under section 4.1-25-02 shall inform producers of the financial
23 basis on which the license was issued, including the type and amount of security, if any, filed
24 under section 4.1-25-06, by an annual written statement to each producer. A person may not
25 receive milk that will increase the amount due and accrued beyond the amount represented as
26 a basis for the issuance of a license without first notifying the department.

27 **4.1-25-08. Additional security.**

28 When the department determines that the value of milk purchased or received from
29 producers has increased or that an increase may reasonably be anticipated, so that the total
30 amount of security does not comply with the amount required by subsection 1 or 2 of section
31 4.1-25-06, the department shall require additional security to afford producers the protection

1 intended by section 4.1-25-06. The department may suspend or revoke any license if the
2 licensee fails to provide the additional security required by the department under this section.

3 **4.1-25-09. Filing of security before license year.**

4 An applicant or licensee shall file bonds or other security for the license year with the
5 department by the first day of June immediately preceding the beginning of each license year. If
6 an applicant or licensee fails to file a surety bond or other security by July first of the license
7 year and has not been relieved from filing a surety bond or other security, the department shall
8 notify producers that the applicant or licensee has not filed any security or made other
9 provisions for assuring payments for milk purchases for the license year.

10 **4.1-25-10. Failure to file security - Notice to producers.**

11 If an applicant or licensee fails to file a surety bond or other security within the time fixed by
12 section 4.1-25-09 or fails to comply with a demand for additional security, the department shall
13 publish in newspapers having circulation in the areas where the producers whose milk is sold or
14 delivered to the applicant or licensee reside, a notice stating:

- 15 1. The department made a demand for additional security from the applicant or licensee;
- 16 2. That the applicant or licensee has failed to comply;
- 17 3. That the department does not have on file a surety bond or other security as
18 demand; and
- 19 4. That adequate security to protect producers may not be available to them.

20 In addition to a published notice to producers, the department shall send, by registered mail, a
21 copy of the notice to each producer delivering milk to the applicant or licensee as determined
22 from available records. The notice must be addressed to the producer's last-known address.

23 **4.1-25-11. Out-of-state dealers, processors, or producers not exempt.**

24 Sections 4.1-25-04 through 4.1-25-13 apply to all milk purchasers licensed under section
25 4.1-25-02 doing business in this state. The protection to producers afforded by sections
26 4.1-25-04 through 4.1-25-13 is available to the producers of any state selling milk to any
27 licensee licensed under section 4.1-25-02, but the surety bond or other security required by
28 sections 4.1-25-06 and 4.1-25-08 is payable only for the benefit of producers who are located
29 within this state.

1 **4.1-25-12. Entry, inspection, and investigation.**

2 Authorized representatives of the department may enter, at reasonable hours, places of
3 business where a licensee or license applicant maintains books, papers, accounts, records, or
4 other documents related to the production, storage, processing, manufacturing, or sale of dairy
5 products. The commissioner may subpoena, and the commissioner's authorized representative
6 may inspect, audit, and make copies of relevant books, papers, records, accounts, or other
7 documents of persons doing business with licensees. Any information gained by the department
8 or by the commissioner under this section is confidential and may be used only for the
9 administration of this chapter. The department or the commissioner may divulge the information
10 when testifying in any departmental administrative hearing, in a duly noticed proceeding before
11 the milk marketing board, or in any court proceeding in which the department or the
12 commissioner is a party. This chapter does not prevent the department or the commissioner
13 from using the information to compile or disseminate general statistical data so long as the data
14 does not reveal individual information for any licensee or license applicant.

15 The commissioner may subpoena and take the testimony under oath of persons believed
16 by the commissioner to have information needed in administering and enforcing this chapter.

17 **4.1-25-13. Records and reports.**

18 Licensees shall maintain the records the commissioner deems necessary to assure that the
19 financial condition of the licensee is adequate to assure prompt payment to producers.

20 **4.1-25-14. Department to become trustee upon default in required security.**

21 If a licensee defaults on any of the required security provisions, the licensee is deemed to
22 be insolvent for purposes of this chapter. The claim for relief for damages and the amount
23 recovered in any action for the conversion of milk or milk products, purchased by the licensee
24 while the license is in effect, and the assets of the licensee not subjected to any claim in federal
25 bankruptcy court by a secured or general creditor within four months of the appointment of the
26 department as trustee under this chapter, constitute a trust fund in the hands of the department
27 for all persons having a claim for relief against the licensee on the required security.

28 **4.1-25-15. Application by department for appointment of trustee - Hearing -**
29 **Appointment.**

30 Upon the insolvency of a licensee as defined in section 4.1-25-14, the department shall
31 apply to the district court of the county in which the licensee maintains its principal place of

1 business for the appointment of the department as trustee. Upon such notice to the licensee as
2 the court prescribes, but not exceeding ten days, or upon waiver of such notice in writing by the
3 licensee, the court shall proceed to hear and determine such application. If it appears to the
4 court that the licensee is insolvent within the meaning of this chapter and that it is in the best
5 interest of persons holding claims against the licensee that the department execute such trust,
6 the court shall issue an order appointing the department as a trustee, without bond, and the
7 department shall proceed in the manner set out in this chapter without further direction from the
8 court.

9 **4.1-25-16. Notice to file claims - When claims barred.**

10 The department, as trustee, shall notify all persons having claims against the licensee
11 personally by certified mail to file the claims with the department. Any person who fails to file a
12 claim with the department and to surrender any receipts obtained from the licensee within thirty
13 days after receiving notice is barred from pursuing the claim in any fund marshalled by the
14 department as prescribed in this chapter. The department may proceed as prescribed by law
15 when all producers have responded to the notification.

16 **4.1-25-17. Remedy of claimants - Separate action by claimant permissible.**

17 A claimant has no separate claim for relief against the required security of a licensee unless
18 the department fails or refuses to apply for appointment as trustee under this chapter. Any
19 claimant, either independently or in conjunction with other claimants, may pursue concurrently
20 with the department any other remedy the claimant or claimants may have against the licensee,
21 or against the property of the licensee, for the whole of their claim or claims or for any
22 deficiency that occurs after payments have been made from the trust fund.

23 **4.1-25-18. Appeal or compromising of action by department.**

24 The department may prosecute an action for any claims arising under this chapter in any
25 court, may appeal from any adverse judgment to the courts of last resort, and may settle and
26 compromise any such action whenever it is in the best interests of the claimants. Upon payment
27 to the department of the amount of any compromise, or of the full amount of any required
28 security, the department may exonerate the person compromising or paying from further liability
29 growing out of the action.

1 **4.1-25-19. Claims collections to be deposited in Bank of North Dakota.**

2 All money collected and received by the department as trustee must be deposited in the
3 Bank of North Dakota.

4 **4.1-25-20. Trust fund report - Notice to claimants - Approving or modifying report.**

5 Upon recovery of the trust fund, or so much as is possible to recover, or as is necessary to
6 pay all outstanding claims, the department shall file a report in court showing the amount
7 payable upon each claim, after recognizing any proper liens, pledges, assignments, or
8 deductions with legal interest. If the fund proves insufficient to redeem all claims in full, the fund
9 must be prorated among the claimants in such manner as the department deems fair and
10 equitable. Once the report is received from the department, the court shall notify all claimants
11 by mail to appear on a day fixed in the notice and show cause why the report should not be
12 approved and the funds distributed as outlined in the report. Upon such hearing the court shall
13 approve or modify the report as justice may require and shall issue an order directing the
14 distribution of the fund and discharging the department as trustee.

15 **4.1-25-21. Attorney general to represent department and may employ assistants -**
16 **Department need not pay court costs.**

17 The attorney general shall represent the department in any action or proceeding brought
18 under section 4.1-25-14, and may employ outside legal assistance when necessary. The
19 attorney general may deduct the expense of retaining outside legal assistance from the trust
20 fund. The department is not required to pay any filing fee or other court cost or disbursement in
21 connection with an application for appointment as trustee or with any action brought under
22 section 4.1-25-14 when such fee, cost, or disbursement accrues to the state or to a county of
23 the state.

24 **4.1-25-22. License needed to sample, haul, or test - Training - Examination - Term -**
25 **Fee.**

26 A person may not sample, haul, or test milk or milk products for the purpose of determining
27 the value or grade without obtaining a license from the department. In case of illness or
28 necessary absence, a licensee may appoint a substitute for a period not to exceed six days in
29 one calendar year, unless specific approval for a longer period is obtained from the
30 commissioner. The licensee is responsible for the acts of the substitute. An applicant shall file
31 an application with the department stating the type of sampling, hauling, or testing for which the

1 applicant wishes to be licensed. Before a license is issued, the applicant shall receive training in
2 the sampling of milk or milk products as may be required by the department, and shall pass a
3 written examination prepared and administered by the department. The applicant must show
4 knowledge of the requirements of this chapter and must prove by actual demonstration that the
5 applicant is competent and qualified to perform each type of sampling and testing listed on the
6 application. The commissioner shall issue a license which states the types of sampling, hauling,
7 or testing for which the applicant is qualified. Additions may be added to the application form
8 and license, without charge, after the license has been issued, upon the request of the licensee,
9 after receiving additional training and passing the required examinations. Examinations must be
10 given by the department at times and places as the department shall determine. A licensee is
11 not required to take additional examinations when renewing a license unless required by the
12 commissioner. All testers and samplers shall attend a training session sponsored by the
13 department every two years. Retraining or retesting or both may be required when the
14 commissioner reasonably determines it to be necessary. Licenses issued under this section
15 expire on December thirtieth of each year. Testers' licenses must be posted conspicuously in
16 the licensee's place of operation, and are not transferable. Samplers' licenses must be carried
17 by the sampler at all times during sampling activities and are not transferable. The annual
18 license fee is ten dollars. A five dollar penalty fee is applied if renewals are not paid by January
19 thirty-first.

20 **4.1-25-23. Commissioner to investigate complaint.**

21 The commissioner shall investigate any complaint claiming that any provision of this chapter
22 or the rules of the commissioner have been violated. If the commissioner finds that a provision
23 of this chapter or the rules of the commissioner have been violated, the commissioner may take
24 any action deemed appropriate.

25 **4.1-25-24. Inspections.**

26 Upon notification, the commissioner shall have free access to all places of business,
27 buildings, vehicles, and equipment used in the production, storage, handling, processing,
28 manufacturing, transporting, and marketing of milk and milk products, and their substitutes. The
29 commissioner may open and inspect any container suspected of containing a substance
30 produced, stored, handled, processed, manufactured, transported, sold, or offered for sale
31 under the provisions of this chapter. It is a violation of this chapter to refuse to allow inspections

1 of any dairy facilities licensed under this chapter. The commissioner may suspend a license for
2 failure to comply with this section.

3 **4.1-25-25. Suspension or revocation of license - Judicial review - Emergency order.**

4 Any proceedings under this chapter for the suspension or revocation of a license, or to
5 determine compliance with this chapter or the rules and orders of the commissioner, must be
6 conducted in accordance with the provisions of chapter 28-32 and appeals may be made as
7 provided. When an emergency exists requiring immediate action to protect the public health and
8 safety, without notice or hearing, the commissioner may issue an order reciting the existence of
9 the emergency and requiring that action be taken to protect the public health and safety.
10 Notwithstanding any provision of this chapter, the order is effective immediately, but on
11 application to the department an interested person must be afforded a hearing before the
12 department within ten days. On the basis of the hearing, the emergency order must be
13 continued, modified, or revoked within thirty days after the hearing.

14 **4.1-25-26. Sampling and testing procedures - Equipment - Supplies.**

15 The laboratory procedures, equipment, chemicals, and other apparatus or substances used
16 in the sampling, hauling, or testing of milk or milk products must conform to those described in
17 the Standard Methods, a copy of which must be kept on file in the department. Any equipment,
18 chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or
19 milk products not conforming to the requirements of this chapter may not be sold or offered for
20 sale. The commissioner, through the adoption of rules, may alter, amend, or prohibit any
21 specific requirement of this section and may approve other sampling, hauling, or testing
22 procedures or equipment. The commissioner, when appropriate, may check calibration of farm
23 bulk milk tanks and equipment.

24 **4.1-25-27. Sampling of milk.**

25 Every purchaser of milk from a dairy producer shall collect a minimum sample of two
26 ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must
27 be collected and maintained in accordance with those procedures contained in the Standard
28 Methods. Records must be kept, which readily identify the sample, with those items used to
29 determine payment for the milk. Such items must include weight, butterfat content, protein,
30 solids-not-fat, and the total amount of money paid for the milk.

1 **4.1-25-28. Standards for the production of manufacturing grade milk - Minimum**
2 **standards of rules.**

3 At a minimum, rules governing the production and processing of milk for manufactured dairy
4 products must comply with United States department of agriculture minimum standards for
5 manufacturing grade dairy products.

6 **4.1-25-29. Standards for dairy manufacturing or processing - Minimum standards of**
7 **rules.**

8 At a minimum, rules governing the approval of dairy processing and manufacturing plants
9 and standards for grades of dairy products must comply with United States department of
10 agriculture general specifications for approved dairy plants and standards for grades of dairy
11 products. A plant may not be operated or any dairy products sold in violation of these rules.

12 **4.1-25-30. Standards for grade A milk and milk products - Adoption of rules.**

13 Only grade A milk may be sold as a fluid beverage for human consumption. The minimum
14 standards for milk and milk products designated as grade A are the same as the minimum
15 requirements of the Pasteurized Milk Ordinance which includes provisions from the "Grade A
16 Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the
17 Grade A PMO". The commissioner may adopt rules imposing other standards in the interest of
18 public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability,
19 and promotion of grade A milk and milk products.

20 **4.1-25-31. State milk sanitation rating and sampling surveillance officer - Duties -**
21 **Guidelines.**

22 The state milk sanitation rating and sampling surveillance officer is responsible for the rating
23 and certification of milk and dairy products. The rating and certification of milk and dairy
24 products must be in accordance with the procedures outlined in the public health service food
25 and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk
26 Shippers - 2013 Revision, Edition" and the sampling of milk and dairy products must be in
27 accordance with the guidelines in the Standard Methods.

28 **4.1-25-32. Milk laboratory evaluations officer - Duties - Guidelines.**

29 The milk laboratory evaluations officer is responsible for the certification and evaluation of
30 milk and dairy products laboratories within the state. Evaluations and certification of milk
31 laboratories must be made in accordance with the Standard Methods and the procedures

1 outlined in the public health service food and drug administration publication entitled "Evaluation
2 of Milk Laboratories - 2013 Edition".

3 **4.1-25-33. Grade A Pasteurized Milk Ordinance.**

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

8 **4.1-25-34. Quality records to be kept - Term.**

9 Adequate records for testing and grading in conformance with this chapter and the rules of
10 the commissioner must be kept by each business sampling or testing milk for at least twelve
11 months in a manner approved by the commissioner.

12 **4.1-25-35. Milk haulers - License required - Commissioner to adopt rules.**

13 A person may not own or operate any tank truck, bulk milk truck, or other vehicle used or
14 designed to carry bulk raw milk without a license issued by the department. The commissioner
15 shall adopt rules governing the operation, inspection, design, and licensure of such persons.
16 The license of any person operating a vehicle in violation of this section or the rules of the
17 commissioner is subject to revocation or suspension in accordance with procedure established
18 by law. A license to haul milk issued under this section may be issued in conjunction with or as
19 part of any license to sample or test milk or milk products issued pursuant to section 4.1-25-22.

20 **4.1-25-36. Adulterated, impure, or unwholesome milk or milk products not to be**
21 **transported, stored, sold, or offered for sale.**

22 Any milk or milk products produced or kept under unclean or unsanitary conditions or;
23 produced from animals that are diseased or fed unwholesome, impure, or toxic feed; or milk
24 that tastes from colostrum, shall be deemed impure and unwholesome. Milk or milk product that
25 is deemed to be adulterated, impure, or unwholesome may not be transported, stored, sold, or
26 offered for sale in this state.

27 **4.1-25-37. Sale of milk or milk products in violation of this chapter prohibited.**

28 A person may not sell, or offer for sale, any milk or milk product, their imitations or
29 substitutes, that is produced, processed, manufactured, transported, or stored, in violation of
30 the laws of this state or the rules of the commissioner, or which do not subscribe to the
31 definition as stated in this chapter or defined by the commissioner.

1 **4.1-25-38. Exception for uses as directed by physicians.**

2 This chapter does not prohibit the manufacture or sale of filled dairy products or imitation
3 milk and imitation milk products when such products are prominently labeled to show their
4 composition and the fact that they are sold customarily for use as directed by order of a
5 physician and are prepared and designed for medicinal or special dietary use.

6 **4.1-25-39. Sale of foods not imitation milk, imitation milk products, or filled dairy**
7 **products.**

8 This chapter does not prohibit the manufacture or sale of proprietary foods that are clearly
9 not imitation milk, imitation milk products, or filled dairy products; which do not contain imitation
10 milk, imitation milk product, or filled dairy product; and which are not conducive to substitution,
11 confusion, deception, and fraud upon the purchasers of milk, milk products, or filled dairy
12 products by their manufacture or sale.

13 **4.1-25-40. Shared animal ownership agreement - Raw milk.**

14 It is not a violation of this chapter to transfer or obtain raw milk under a shared animal
15 ownership agreement. A person may not resell raw milk or raw milk products obtained under a
16 shared animal ownership agreement.

17 **4.1-25-41. Labeling and identity standards.**

18 A person who sells milk or milk products at retail in the state must comply with the labeling
19 standards and standards of identity set forth in 21 U.S.C. 343(q)(r) and in rules adopted by the
20 commissioner.

21 **4.1-25-42. Reports - Blanks - When made - Contents.**

22 The commissioner shall furnish blanks to all licensed creameries, cheese factories,
23 condenseries, drying plants, ice cream plants, ice milk plants, milk plants, and
24 producer-distributors for the purpose of making a report of the amount of milk and milk products
25 handled. Each proprietor or manager of such businesses shall report to the commissioner on
26 the last days of June and of December of each year, or immediately upon cessation of
27 operation, the pounds [kilograms] of butterfat in cream, the pounds [kilograms] of manufacturing
28 grade milk, and the pounds [kilograms] of bottling milk purchased during the period covered by
29 the report, the aggregate amount paid for each, the number of pounds [kilograms] of butter and
30 cheese, and the number of gallons [liters] of ice cream and ice milk manufactured during such
31 period.

1 **4.1-25-43. Test results disputes.**

2 If a disagreement between a seller and a buyer or the legal representatives of both or either
3 arises over the percentage of butterfat contained in any quantity of milk sold or offered for sale
4 at the request of the owner and in the owner's presence, a sample of such milk obtained as
5 provided in section 4.1-25-27 and mutually agreed upon by the interested parties as being a
6 representative sample must be sealed and mailed by the buyer to the office of the
7 commissioner. Each sample mailed to the commissioner must include a statement giving the
8 name and address of the seller and the buyer of the milk in question, the net weight, the
9 percentage and amount of butterfat contained, the price per pound [.45 kilogram] for butterfat,
10 and the amount of money paid or offered in payment for the same and bearing the signature of
11 the seller and the buyer. The commissioner shall determine the percentage of butterfat
12 contained in the sample and shall report of the result in triplicate, the original to be filed in the
13 commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk. The
14 percentage of butterfat so determined and reported constitutes the "official butterfat test" and is
15 the basis on which final settlement must be made. The fee for the official butterfat test and any
16 other tests required must be in such amount as set by rule of the commissioner, considering the
17 actual costs of the test, and such fee must be mailed to the commissioner at the time of
18 forwarding the sample for such official butterfat or other test.

19 **4.1-25-44. Test sample disputes.**

20 If the buyer and seller do not agree upon a sample of milk as provided in section 4.1-25-43,
21 the party selling or offering for sale such milk may require that the buyer or prospective buyer to
22 forward the sample taken to the department in compliance with section 4.1-25-27. Each sample
23 so forwarded must include an affidavit from the buyer or prospective buyer, stating that the
24 sample was taken in compliance with the provisions of section 4.1-25-27, and the statement
25 must contain all information required in section 4.1-25-43, except that the signature of the seller
26 is not required. Each sample must be tested and reported on as prescribed in section
27 4.1-25-43, and the percentage of butterfat determined and reported constitutes the "official
28 butterfat test" and is the basis on which final settlement must be made.

1 **4.1-25-45. Standards considered minimum - Municipality may provide more stringent**
2 **standards.**

3 The standards in this chapter constitute only minimum standards. Nothing in this chapter
4 may be construed to prevent any municipality from providing, by ordinance, more stringent or
5 comprehensive standards than are contained within this chapter. Nothing in this chapter or in
6 the rules of the commissioner may be construed to prevent any person concerned with the dairy
7 business from using standards, inspections, or other practices or procedures that are more
8 stringent or comprehensive.

9 **4.1-25-46. Fees and penalties collected to be placed in general fund.**

10 All fees and penalties collected under this chapter must be deposited with the state
11 treasurer and credited to the general fund.

12 **4.1-25-47. Disposal of illegal milk or milk products - Seizure.**

13 Any milk or cream offered for sale in violation of any provision of this chapter or the rules of
14 the commissioner must be colored with a harmless food coloring and returned to the seller. In
15 addition, any milk or milk product that is in violation of any provision of this chapter or the rules
16 of the commissioner may be seized or ordered held by the commissioner and must be disposed
17 of as any other illegal food or drug as provided in chapter 19-02.1.

18 **4.1-25-48. Penalty for violation of chapter - Additional civil penalty - Failure to pay**
19 **civil penalty.**

20 A person violating any provision of this chapter or any rule or order of the commissioner, for
21 which another criminal penalty is not specifically provided is guilty of a class B misdemeanor. In
22 addition, a civil penalty not to exceed five hundred dollars per day for each violation or
23 continuing violation may be imposed. The civil penalty may be imposed by the courts in a civil
24 proceeding or by the commissioner through an administrative hearing under chapter 28-32. If a
25 civil penalty is imposed by the commissioner through an administrative hearing and the civil
26 penalty is not paid, the commissioner may collect the civil penalty by a civil proceeding in any
27 appropriate court. The commissioner may suspend or revoke a license issued under this
28 chapter for failure to pay a civil penalty within thirty days after a final determination is made that
29 the civil penalty is owed. The commissioner may refuse to renew or issue a license if the
30 licensee or license applicant has repeatedly violated the provisions of this chapter or rules or
31 orders of the commissioner.

1 **4.1-25-49. State's attorney's endorsement to complaint unnecessary upon violation of**
2 **chapter.**

3 A complaint made for a violation of this chapter does not require the endorsement of the
4 state's attorney, but when the court hearing a complaint made is satisfied of the truthfulness of
5 the complaint, it shall issue a warrant.

6 **4.1-25-50. Rules.**

7 The commissioner may adopt rules under chapter 28-32 to implement this chapter.

8 **4.1-25-51. Shared animal ownership agreement rules limitation.**

9 Notwithstanding chapter 28-32, the commissioner may not adopt any rule that restricts,
10 limits, or imposes additional requirements on any person transferring or obtaining raw milk in
11 accordance with the terms of a shared animal ownership agreement.

12 **4.1-25-52. Enforcement.**

13 The commissioner shall administer and supervise the enforcement of this chapter, provide
14 for periodic inspections and investigations deemed necessary to ensure compliance with this
15 chapter or the rules under this chapter, receive and provide for the investigation of complaints;
16 and provide for the institution and prosecution of civil or criminal actions or both. This chapter
17 and the rules under this chapter may be enforced by injunction in any court having jurisdiction to
18 grant injunctive relief. Filled dairy products, imitation milk, or imitation milk products, illegally
19 held or otherwise in violation of this chapter may be seized and disposed under an appropriate
20 court order.

21 **SECTION 2. REPEAL.** Chapter 4-30 of the North Dakota Century Code is repealed.