

17.0019.01000

Sixty-fifth  
Legislative Assembly  
of North Dakota

FIRST DRAFT:  
Prepared by the Legislative Council staff for the  
Agriculture and Natural Resources Committee  
February 2016

Introduced by

1 A BILL for an Act

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

3 **SECTION 1. AMENDMENT.** Section 4-30-01 of the North Dakota Century Code is amended  
4 and reenacted as follows:

5 **~~4-30-014.1-23-01.~~ Definitions.**

6 In this chapter, ~~unless the context otherwise requires:~~

7 ~~1. "Approved laboratory" means a laboratory in which the entire facilities and equipment~~  
8 ~~have been approved by the department as being adequate to perform the necessary~~  
9 ~~official tests in accordance with the North Dakota laws and the rules of the~~  
10 ~~department.~~

**NOTE:** "Approved laboratory" is a phrase not used anywhere in this chapter except in this definition.

11 ~~2.1.~~ "Cheese factory" means a ~~place where~~facility that makes cheese is made for  
12 commercial purposes.

13 ~~3.2.~~ "Commissioner" means the agriculture commissioner or the commissioner's designee.

14 ~~4.~~ "Composite sample" means a mixture of single samples of milk or milk products taken  
15 from different lots or deliveries, the amount taken each time being in proportion to the  
16 amount of milk or milk products delivered. ~~Composite samples are usually taken for~~  
17 ~~determining the butterfat content of a product and are tested at a frequency of not less~~  
18 ~~than once every fifteen days. Preservatives may be added.~~

**NOTE:** The words "composite sample" and the word "composite" are never used in this chapter, except in this definition. In section 4-30-20, there is a description of samples to be taken by a purchaser, but it does not match this unused definition. The sampling requirement in Section 4-30-20 was revised in 1979, eliminating the use of the phrase "composite sample", but this definition was not eliminated at that time. It is obsolete.

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1     ~~5-3.~~    "Condensery" means a ~~place~~facility where condensed or evaporated milk is produced  
2                    or where milk is changed to a thick liquid by evaporation of a part of the water.

3     ~~6-4.~~    "Dairy animal" means any mammal maintained for the commercial production of milk  
4                    to be offered for sale for use in the processing or manufacturing of milk or dairy  
5                    products.

**NOTE:** This definition includes milk from any mammal. Chapter 4.1-05, on dairy promotion, defines dairy product as a product for human consumption which is derived from the processing of milk from cows. Chapter 4.1-26, on the Milk Marketing Board, defines milk as the lacteal secretion of a cow.

6     ~~7-5.~~    "Dairy ~~or dairy farm~~" means a place where one or more dairy animals are kept, ~~a part~~  
7                    or all of the milk or milk products from which is sold or offered for sale.

8     ~~8-6.~~    "Dairy product" includes milk, cream, sour cream, butter cream, skimmed milk, ice  
9                    cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk,  
10                   cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix,  
11                   sherbet, condensed milk, evaporated milk, or concentrated milk.

**NOTE:** "Dairy product" is used and partially defined in the definition of "Filled dairy products." Defining it here somewhat simplifies the definition of "Filled dairy products."

12    ~~7.~~     "Department" means the department of agriculture.

13    ~~9-8.~~    "Distributor" means a person ~~or company~~ that provides storage, transportation,  
14                   delivery, or distribution of ~~milk and milk~~dairy products to any person who ~~offers for sale~~  
15                   or sells to ~~any consumer milk or milk~~dairy products.

**NOTE:** This chapter does not define "milk" or "milk products." "Dairy products" is defined and is substituted. "Person" is defined for any use of the term in the Century Code in Section 1-01-49(8) to mean "an individual, organization, government, political subdivision, or government agency or instrumentality." However, the word is defined in this section, for this chapter, to mean "individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements." Use of "or company" in this subsection is incorrect because it is more restrictive than the definition in this section.

16    ~~10-9.~~   "Drying plant" means a ~~place which~~facility that manufactures dry milk products  
17                   obtained by the ~~removal of~~removing water from milk or milk products.

18    ~~11-10.~~  "Filled dairy products" means any milk, cream, or skimmed milk, or any combination  
19                   ~~thereof~~them, whether or not condensed, evaporated, concentrated, frozen,  
20                   powdered, dried, or desiccated, or any food product made or manufactured  
21                   ~~therefrom~~from those products, to which has been added, ~~or which has been blended,~~  
22                   or compounded with, any fat or oil, other than milkfat ~~so that the resulting product is in~~

1           ~~imitation or semblance of any, to imitate a~~ dairy product, including milk, cream, sour-  
2           cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim-  
3           milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed-  
4           cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or  
5           concentrated milk; provided, however, that this term shall. "Filled dairy products" may  
6           not be construed to mean or include:

- 7           a. Any distinctive proprietary food compound not readily mistaken for a dairy  
8           product, ~~where such~~if the compound is customarily used on the order of a  
9           physician and is prepared and designed for medicinal or special dietary use and  
10          prominently so labeled;
- 11          b. Any dairy product flavored with chocolate or cocoa, or the vitamin content of  
12          which has been increased, or both, ~~where~~if the fats or oils other than milkfat  
13          contained in ~~such~~the product do not exceed the amount of cacao fat naturally  
14          present in the chocolate or cocoa used and the food oil, not in excess of  
15          one-hundredth per centum of the weight of the finished product, used as a carrier  
16          of such vitamins; or

**NOTE:** It is uncertain what was intended here by use of "one-hundredth per centum." Per centum means one hundredth, so literal application is one-hundredth of one-hundredth or one-hundredth of one percent.

- 17          c. ~~Oleomargarine~~Margarine.

**NOTE:** Oleomargarine is pretty much obsolete usage for margarine. It is also not clear it covers the blends marketed today.

- 18   ~~42.11.~~ "Grading" means the examination of milk or milk products by sight, odor, taste, or  
19          laboratory analysis, the results of which determine a ~~grade-designating~~ rating of the  
20          quality of the product.

**NOTE:** Use of "grade" to define "grading" is improper usage.

- 21   ~~43.12.~~ "Ice cream plant" means a ~~place where~~facility that makes ice cream is made for  
22          commercial purposes.

- 23   ~~44.13.~~ "Ice milk plant" means a ~~place where~~facility that makes ice milk is made for  
24          commercial purposes.

**NOTE:** Use of "ice cream" or "ice milk" to define a plant making that product is improper usage and of questionable value to the reader.

- 25   ~~45.14.~~ "Imitation milk" or "imitation milk product" means a food product or food compound  
26          made to resemble milk or a milk product when any of the following occurs:

- 1           a.    The food physically resembles milk or a milk product. "Physical resemblance"  
2                    means those characteristics relating to the composition of food, including fat and  
3                    moisture content, nonfat solids content, and functional ingredient or food additive  
4                    content such as emulsifiers, stabilizers, flavor, or color additives.
- 5           b.    The packaging used resembles the packaging used for milk or for a milk product.
- 6           c.    The food product or food compound is displayed in a retail establishment in the  
7                    same manner as milk or a milk product.
- 8           d.    Verbal or pictorial expressions are used on the food products or food compounds,  
9                    labeling, or in advertisements or other similar devices used to promote the food  
10                  products or food compounds that state or imply that the food is milk or a milk  
11                  product.
- 12          e.    The food product or food compound in any other way is manufactured, packaged,  
13                  or labeled so as to resemble the identity, intended use, or physical and sensory  
14                  properties of milk or a milk product. "Physical and sensory properties" means  
15                  those characteristics relating to flavor, texture, smell, and appearance of a food  
16                  product or food compound.
- 17   ~~16-15.~~   "Milk hauler" means a person who owns vehicles used to transport raw milk from a  
18                  dairy farm to a dairy facility.
- 19   ~~17-16.~~   "Milk plant or bottling plant" means a ~~place~~facility where milk or milk products are  
20                  collected, handled, processed, stored, and prepared for distribution.
- 21   ~~18-17.~~   "Milk solids or total solids" means the total amount of solids in milk.
- 22    ~~19.~~    "~~Overrun~~" means ~~the increase in volume of a manufactured product due to the~~  
23                  ~~incorporation of water, air, or other substance commonly used in the manufacturing~~  
24                  ~~processes.~~
- NOTE:** The only section (Section 4-30-42) of the chapter using the term "overrun" was  
          repealed in 2001.
- 25   ~~20-18.~~   "Pasteurization" as applied to milk or skim milk means ~~the~~ either:  
26                  a.    The process of heating every particle of milk to at least one hundred forty-five  
27                  degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products  
28                  to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and  
29                  holding it at ~~such~~that temperature continuously for at least thirty minutes; or  
30                  heating

1           b. Heating every particle of milk to at least one hundred sixty-one degrees  
2           Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least  
3           one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it  
4           at ~~such~~that temperature continuously for at least fifteen seconds in approved and  
5           properly operated equipment.

6           When applied to cream for buttermaking, "pasteurization" means the cream ~~shall~~must  
7           be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit  
8           [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred  
9           eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds.

10           Nothing contained in this ~~definition~~subsection may be construed as barring any  
11           other process ~~which~~that has been demonstrated to be equally efficient which  
12           assures proper pasteurization and keeping quality, which is consistent with the  
13           most desirable quality, and which is approved by the dairy commissioner.

**NOTE:** There is no dairy commissioner.

14 ~~21-19.~~ "Pasteurized Milk Ordinance" means the 2013 revision of the Grade "A" Pasteurized  
15           Ordinance issued by the United States food and drug administration and by the United  
16           States department of agriculture's public health service.

17 ~~22-20.~~ "Peddler" means a person who purchases milk or milk products and sells them directly  
18           to consumers at any place other than from a store, stand, or other fixed place of  
19           business.

**NOTE:** "Peddler" occurs only in Section 2 of this draft, which requires a license for a place  
of business. By this definition there is no place of business. Is this of any value?

20 ~~23-21.~~ "Person" means individuals, firms, partnerships, associations, trusts, estates,  
21           corporations, and limited liability companies, and any and all other business units,  
22           devices, or arrangements.

23 ~~24-22.~~ "Processing or manufacturing" means the treatment of milk or milk products by  
24           pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging,  
25           coagulating, or treating in any manner ~~which~~that changes the natural, physical, or  
26           chemical properties of the original product.

27 ~~25-23.~~ "Producer dairy" means a dairy farm ~~which~~that sells milk or cream to a dairy plant for  
28           processing or manufacturing.

1 ~~26-24.~~ "Producer-processor" or "producer-distributor" means a producer who is also a  
2 processor or distributor.

**NOTE:** "Producer-distributor" is defined in this section but never used in any other provision of law.

3 ~~27-25.~~ "Raw milk or raw milk products" means products ~~which~~that have not been treated by  
4 the process of pasteurization ~~as defined in this section.~~

5 ~~28.~~ "~~Receiving and transfer station~~" means a place where milk or milk products are  
6 collected for shipment to a processing or manufacturing plant. This definition must not  
7 be interpreted to include the warehouses, docks, loading platforms, or storage rooms  
8 of commercial carriers.

**NOTE:** "Receiving and transfer station" is not used anywhere in this chapter except in this definition.

9 ~~29-26.~~ "Retail" means the sale of milk or milk products directly to the consumer.

10 ~~30-27.~~ "Sampler" means a person, other than a milk producer or dairy plant employee, who  
11 transports samples for official use or raw milk or milk products from a dairy farm to a  
12 dairy facility.

13 ~~31-28.~~ "Sampling" means a procedure whereby taking a portion ~~or specimen~~ of milk or milk  
14 products ~~is taken~~ for the purpose of grading or testing.

15 ~~32-29.~~ "Shared animal ownership agreement" means any contractual arrangement under  
16 which an individual:

- 17 a. Acquires an ownership interest in a milk-producing animal;  
18 b. Agrees to pay another for, reimburse another for, or otherwise accept financial  
19 responsibility for the care and boarding of the milk-producing animal at the dairy  
20 farm; and  
21 c. Is entitled to receive a proportionate share of the animal's raw milk production as  
22 a condition of the contractual arrangement.

23 ~~33-30.~~ "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been  
24 removed.

25 ~~34-31.~~ "Standard Methods" means the seventeenth edition of the Standard Methods for the  
26 Examination of Dairy Products published by the American public health association.

**NOTE:** It appears the 17<sup>th</sup> Edition, published 2004, is the most current publication.

1 ~~35-32.~~ "Testing" means an examination of milk, or milk products by sight, odor, taste, or  
2 laboratory analysis to determine the quality, wholesomeness, or composition thereof  
3 the product.

4 ~~36.~~ "3A standards" means standards which have been established for certain equipment,  
5 utensils, and other items by the 3A sanitary standards committee of the international  
6 association of milk and food sanitarians, incorporated.

**NOTE:** "3A" is not used anywhere in this chapter except in this definition. It is used in the dairy rules adopted by the Agriculture Commissioner, but is not defined there. It appears to be generally covered by federal laws and rules. There appears to be no reason for this definition in this chapter.

7 ~~37.~~ "Transfer station" means a place where milk or milk products are regularly transferred  
8 from one vehicle to another. This definition shall not be interpreted to include the  
9 warehouses, docks, loading platforms, or storage rooms of commercial carriers.

**NOTE:** "Transfer station" is not used anywhere in this chapter except in this definition and the definition of "Receiving and transfer station."

10 ~~38-33.~~ "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of  
11 resale.

**NOTE:** This does not appear to do anything not covered by the dictionary definition.

12 **SECTION 2. AMENDMENT.** Section 4-30-02 of the North Dakota Century Code is amended  
13 and reenacted as follows:

14 **4-30-024.1-23-02. Licenses required - Fees - Term.**

15 Every

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

18 a. A producer-processor, peddler, or distributor, every;

**NOTE:** Not sure about the use of "peddler." Dictionary definition is one who travels about selling something. It sounds like someone who does not have a place of business, which is the case in the definition in Section 1. This section provides it is the "place of business" for which a license would be required. "Producer-distributor" is defined in Section 1, but not listed here as someone needing a license nor is it used anywhere else in law.

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

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

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

1           e. An organization acquiring milk or milk products on its own behalf or as an agent  
2           for sale on behalf of others and doing business within this state shall obtain the  
3           license required by this section for each such place of business.

4           2. Application for a license must be made to the commissioner upon forms as prescribed  
5           by the commissioner may require. Upon makingAn application for a license, it is  
6           implied that consent is given by the applicantconstitutes the implied consent of the  
7           applicant for inspection by the department inspections. If the commissioner finds that  
8           the applicant conforms to the North Dakota laws and the rules and regulations of the  
9           departmentcommissioner, the commissioner shall issue a license for conducting  
10          these to conduct the operations listed on the application formlicense.

**NOTE:** It is the agency head in whom the ultimate legal authority of the agency is vested by law for purposes of Chapter 28-32. Therefore, it is the Commissioner who adopts rules, not the department. This correction is made in numerous places in this chapter.

11          3. If a licensee wishes to conduct operations other than those listed on an existing  
12          license, the licensee may request thatmake an application to the commissioner  
13          approve them, and if for a license to conduct additional operations. If the commissioner  
14          finds that the proposalsadditional operations are in conformance with North Dakota  
15          laws and the rules of the departmentcommissioner, the commissioner shall approve  
16          them.

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

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

20          6. The ~~fee for licenses~~license fee is twenty-five dollars.

**NOTE:** Should this provide that this is for an annual license? It could be read as a one-time license fee.

21          7. Every organization acquiring milk or milk products as an agent ~~for sale on behalf of~~  
22          others is, ~~for the purposes of this chapter,~~ is deemed to be a purchaser of milk from a  
23          dairy producer.

24          **SECTION 3. AMENDMENT.** Section 4-30-02.1 of the North Dakota Century Code is  
25          amended and reenacted as follows:



1        ~~4-30-02.14.1-23-03. Records release required~~ **Financial records release authorization**  
2 **with application for licensure.**

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

13        **SECTION 4. AMENDMENT.** Section 4-30-03.1 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15        ~~4-30-03.14.1-23-04. Financial condition - Assurance of prompt payment.~~

16        Each applicant for a license under section ~~4-30-024.1-23-02~~ who purchases milk from a  
17 dairy producer shall have first ~~satisfied~~ satisfy the department that the ~~applicant's financial-~~  
18 ~~condition~~ financial condition of the applicant is ~~such as to reasonably~~ adequate to assure prompt  
19 payment to the dairy producers for purchased milk.

20        **SECTION 5. AMENDMENT.** Section 4-30-03.2 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22        ~~4-30-03.24.1-23-05. Statement of business operations or financial condition - Filing -~~  
23 **Review by Bank of North Dakota - Confidential - Audited.**

24        Each applicant for a license under section ~~4-30-024.1-23-02~~ who purchases milk from a  
25 dairy producer shall annually file with the department an audited financial statement prepared  
26 by an independent certified public accountant or licensed public accountant in accordance with  
27 generally accepted accounting practices and principles, verified by the accountant as accurately  
28 representing business operations and financial conditions of the ~~plant business~~ applicant for  
29 which the statement is rendered, prepared as of the close of the ~~plant's~~ most recent fiscal year  
30 of the applicant. In lieu of filing an audited financial statement, an applicant may file other forms  
31 of security as provided in section ~~4-30-03.34.1-23-06~~. All audited financial statements shall be

1 reviewed by the Bank of North Dakota. All statements shall be confidential and shall not be  
2 open for public inspection. The department may require additional statements to be audited by a  
3 certified public accountant or a licensed public accountant.

4 **SECTION 6. AMENDMENT.** Section 4-30-03.3 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **~~4-30-03.34.1-23-06.~~ Surety bond, trustee agreement, other security or assurances.**

7 ~~In all cases where~~if it appears that the financial condition of any applicant or licensee who  
8 purchases milk from a dairy producer is not adequate to reasonably assure payment to dairy  
9 producers when due for the milk to be purchased, or in lieu of annually filing with the  
10 department an audited financial statement as required in section ~~4-30-03.24.1-23-05~~, the  
11 department shall require from an applicant or licensee security or other assurances in one of  
12 the following forms:

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

- 1            company or the department to all dairy producers ~~must in no event~~ may not exceed the  
2            amount of the bond.
- 3            2. ~~The providing of~~ Providing an amount of protection for dairy producers, ~~from whom milk~~  
4            ~~is purchased~~, equal to the amount of protection provided in subsection 1, ~~whereby the~~  
5            The security is to ~~is to~~ shall be held by the department solely for the protection of dairy  
6            producers, in one or more of the following forms:
- 7            a.    Cash deposited with a bank or trust company and held under an escrow  
8            agreement with the department.;
- 9            b.    Bonds of the United States deposited with the department.;
- 10           c.    Stocks, bonds, or other marketable securities at current market values, which  
11           securities have regularly reported quotations, deposited with the department.; or
- 12           d.    A certified bank draft, certified check, irrevocable letter of credit, or certificate of  
13           deposit held in favor of the department.
- 14           3.    The filing of an agreement providing ~~for the~~ complete control over all manufactured or  
15           processed milk and dairy products by a trustee to be selected at least annually by the  
16           dairy producers. The trustee shall ~~make and~~ file a trustee's bond and contracts signed  
17           by the owner or operator and the purchaser of the dairy products requiring that  
18           payment for all dairy products sold be made to the trustee. The trustee shall maintain  
19           a separate bank account for that purpose and shall at least annually render a true and  
20           correct account of trustee dealings to the department and to the dairy producers.

21           **SECTION 7. AMENDMENT.** Section 4-30-03.4 of the North Dakota Century Code is  
22           amended and reenacted as follows:

23           **4-30-03.44.1-23-07. Financial basis for license - Statement to producer - Notification**  
24           **to department.**

25           All milk purchasers licensed under section ~~4-30-024.1-23-02~~ shall inform producers  
26           ~~delivering milk~~ of the financial basis on which the license was issued, including the type and  
27           amount of security, if any, filed under section ~~4-30-03.34.1-23-06~~, by an annual written  
28           statement to each producer ~~patron at least once every year~~. ~~No~~ A person may not receive milk  
29           ~~which that~~ will increase the amount due and accrued beyond the amount represented as a basis  
30           for the issuance of a license without first notifying the department.

1       **SECTION 8. AMENDMENT.** Section 4-30-03.5 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **~~4-30-03.54.1-23-08.~~ Additional security.**

4       ~~Whenever~~When the department determines that the value of milk purchased or received  
5 from producers has increased or that an increase may reasonably be anticipated, so that the  
6 total amount of security does not comply with the amount required by subsection 1 or 2 of  
7 section ~~4-30-03.34.1-23-06~~, the department shall require additional security ~~as will~~to afford  
8 producers the protection intended by section ~~4-30-03.34.1-23-06~~. The department may suspend  
9 or revoke any license if the licensee fails to provide the additional security required by the  
10 department pursuant to this section.

11       **SECTION 9. AMENDMENT.** Section 4-30-03.6 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13       **~~4-30-03.64.1-23-09.~~ Filing of security before license year.**

14       ~~Surety~~An applicant or licensee shall file bonds or other security for the license year ~~must be~~  
15 ~~filed with the department not~~no later than the first day of ~~the month before~~June immediately  
16 preceding the beginning of each license year. ~~If any~~Any applicant or licensee who ~~purchases or~~  
17 ~~receives milk from dairy producers has not filed~~fails to file a surety bond or other security, and  
18 has not been relieved from filing a surety bond or other security, by ~~the~~July first day of ~~the~~  
19 ~~month~~ of the license year, the department shall notify producers ~~selling milk to the applicant or~~  
20 ~~licensee~~ that the applicant or licensee has not filed any security or made other provisions for  
21 assuring payments for milk purchases, for the license year.

22       **SECTION 10. AMENDMENT.** Section 4-30-03.7 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24       **~~4-30-03.74.1-23-10.~~ Failure to file security - Notice to producers.**

25       ~~Whenever~~If an applicant or licensee fails to file a surety bond or other security within the  
26 time fixed by section ~~4-30-03.64.1-23-09~~ or ~~the department's~~fails to comply with a demand for  
27 additional security, the department shall publish in ~~a newspaper or~~ newspapers having  
28 circulation in the ~~area or areas in which~~where the producers whose milk is sold or delivered to  
29 the applicant or licensee reside, a notice stating ~~that the:~~

30       1. The department made a demand or request for additional security from the applicant  
31       or licensee; ~~that~~

- 1        2.    That the applicant or licensee has failed to comply; ~~that~~
- 2        3.    That the department does not have on file a surety bond or other security as
- 3                    demanded; and ~~that~~
- 4        4.    That adequate security to protect producers may not be available to them.

5    In addition to a published notice to producers, the department shall send, by registered mail, a  
6    copy of the notice to each producer delivering milk to the applicant or licensee as ~~may be able~~  
7    ~~to be determined from available records and the~~. The notice must be addressed to the  
8    ~~producer's last-known place of residence of the producer.~~

9        **SECTION 11. AMENDMENT.** Section 4-30-03.8 of the North Dakota Century Code is  
10    amended and reenacted as follows:

11        **~~4-30-03.84.1-23-11.~~ 4-30-03.84.1-23-11. **Out-of-state dealers, processors, or producers not exempt.****

12        Sections ~~4-30-03.14.1-23-04~~ through ~~4-30-03.104.1-23-13~~ apply to all milk purchasers  
13    licensed under section ~~4-30-024.1-23-02~~ doing business in ~~whole or in part within~~ the state. The  
14    protection to producers afforded by sections ~~4-30-03.14.1-23-04~~ through ~~4-30-03.104.1-23-13~~ is  
15    available to the producers of any state selling milk to any licensee licensed under section  
16    ~~4-30-024.1-23-02~~, but the surety bond or other security required by sections ~~4-30-03.34.1-23-06~~  
17    and ~~4-30-03.54.1-23-08~~ is payable only for the benefit of producers who are located within this  
18    state.

19        **SECTION 12. AMENDMENT.** Section 4-30-03.9 of the North Dakota Century Code is  
20    amended and reenacted as follows:

21        **~~4-30-03.94.1-23-12.~~ 4-30-03.94.1-23-12. **Entry, inspection, and investigation.****

22        Authorized representatives of the department may enter, at reasonable hours, places of  
23    business where a licensee or license applicant maintains books, papers, accounts, records, or  
24    other documents related to the production, storage, processing, manufacturing, or sale of dairy  
25    products. The commissioner may subpoena, and the commissioner's authorized representative  
26    may inspect, audit, and make copies of relevant books, papers, records, accounts, or other  
27    documents of persons doing business with licensees. Any information gained by the department  
28    or by the commissioner under this section is confidential and may be used only for the  
29    administration of this chapter, ~~but the~~. The department or the commissioner may divulge the  
30    information when testifying in any departmental administrative hearing, in a duly noticed  
31    proceeding before the milk marketing board, or in any court proceeding in which the department

1 or the commissioner is a party. This chapter does not prevent the use of information procured  
2 by the department or the commissioner in the compiling or dissemination of from using the  
3 information to compile or disseminate general statistical data containing information procured  
4 from a number of licensees and compiled in a manner so as not to so long as the data does not  
5 reveal individual information for any licensee or license applicant.

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

9 **SECTION 13. AMENDMENT.** Section 4-30-03.10 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **~~4-30-03.10~~4-1-23-13. Records and reports.**

12 Licensees shall maintain the records the commissioner by rule ~~determines~~deems necessary  
13 to effectuate the purpose of ~~assuring~~assure that a licensee's financial condition the financial  
14 condition of the licensee is such as to reasonably adequate to assure prompt payment to  
15 producers.

16 **SECTION 14. AMENDMENT.** Section 4-30-04 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **~~4-30-04~~4-1-23-14. Department to become trustee upon default in required security.**

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

28 **SECTION 15. AMENDMENT.** Section 4-30-05 of the North Dakota Century Code is  
29 amended and reenacted as follows:

1        **4-30-054.1-23-15. Application by department for appointment of trustee - Hearing -**  
2 **Appointment.**

3        Upon the insolvency of a licensee as defined in section ~~4-30-044.1-23-14~~, the department  
4 shall apply to the district court of the county in which the licensee maintains its principal place of  
5 business for the appointment of ~~itself~~ the department as trustee. Upon such notice to the  
6 licensee as the court ~~shall prescribe~~ prescribes, but not exceeding ten days, or upon waiver of  
7 such notice in writing by the licensee, the court shall proceed to hear and determine such  
8 application ~~in a summary manner~~. If it ~~shall appear~~ appears to the court that the licensee is  
9 insolvent within the meaning of this chapter and that it ~~would be foris in~~ is in the best interest of  
10 persons holding claims against the licensee ~~for the purchase price of milk or milk products sold~~  
11 ~~to such licensee or agent~~ that the department shall execute such trust, the court shall issue an  
12 order appointing the department as a trustee, without bond, and the department shall proceed  
13 in the manner set out in this chapter without further direction from the court.

14        **SECTION 16. AMENDMENT.** Section 4-30-06 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16        **4-30-064.1-23-16. Notice to file claims - When claims barred.**

17        The department, as trustee, shall notify all persons having claims against the licensee  
18 personally by certified mail to file the same with the department. Any ~~such~~ person who fails to  
19 file a claim with the department and to surrender ~~to it~~ any receipts obtained from ~~such~~ the  
20 licensee within thirty days after receiving notice ~~must be~~ is barred from ~~participation upon~~  
21 ~~such~~ pursuing the claim in any fund marshalled by the department as prescribed in this chapter.  
22 The department may proceed as prescribed by law when all producers have responded to the  
23 notification.

24        **SECTION 17. AMENDMENT.** Section 4-30-07 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26        **4-30-074.1-23-17. Remedy of claimants - Separate action by claimant permissible.**

27        ~~No~~ A claimant has ~~an~~ no separate claim for relief against ~~any licensee's required security~~ the  
28 required security of a licensee unless the department fails or refuses to apply for ~~its own~~  
29 appointment as trustee ~~as provided in~~ under this chapter. Any claimant, either independently or  
30 in conjunction with other claimants, may pursue concurrently with the department any other  
31 remedy ~~which~~ the claimant or claimants may have against the licensee, or against the property

1 of the licensee, for the whole of their claim or claims or for any deficiency ~~which~~that occurs after  
2 payments have been made from the trust fund.

3 **SECTION 18. AMENDMENT.** Section 4-30-08 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **~~4-30-084.1-23-18.~~ Appeal or compromising of action by department.**

6 The department may prosecute an action for any claims arising under ~~the provisions of this~~  
7 chapter in any court, may appeal from any adverse judgment to the courts of last resort, and  
8 may settle and compromise any such action whenever ~~in its judgment it will be for it is in~~ the  
9 best interests of the claimants. Upon payment to ~~it~~the department of the amount of any  
10 compromise, or of the full amount of any required security, the department may exonerate the  
11 person compromising or paying from further liability growing out of the action.

12 **SECTION 19. AMENDMENT.** Section 4-30-09 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **~~4-30-094.1-23-19.~~ Moneys collected on claims**Claims collections to be deposited in  
15 **Bank of North Dakota.**

16 All ~~moneys~~money collected and received by the department as trustee must be deposited in  
17 the Bank of North Dakota ~~pending the marshalling of the fund.~~

18 **SECTION 20. AMENDMENT.** Section 4-30-10 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **~~4-30-104.1-23-20.~~ Department to file report upon recovery of trust**Trust fund report -  
21 **Notice to claimants - Approving or modifying report.**

22 Upon recovery of the trust fund, or so much thereof as it is possible to recover, or as is  
23 necessary to pay all outstanding claims, the department shall file ~~its~~a report in court showing  
24 the amount payable upon each claim, after recognizing any proper liens ~~or,~~ pledges ~~thereon~~or,  
25 assignments thereof, or deductions ~~therefrom,~~ with legal interest ~~thereon.~~ If the fund proves  
26 insufficient to redeem all claims in full, the fund must be prorated among the claimants in such  
27 manner as the department deems fair and equitable. ~~Thereupon~~Once the report is received  
28 from the department, the court shall ~~cite such~~notify all claimants ~~upon such~~ notice by mail as it  
29 ~~prescribes~~ to appear ~~upon~~on a day fixed in the notice and show cause why ~~such~~the report  
30 should not be approved and ~~distribution of the fund made~~the funds distributed as outlined in the  
31 report. Upon such hearing the court shall approve ~~such~~ report or modify the ~~same~~report as



1 justice may require and shall issue an order directing the distribution of the fund and  
2 discharging the department ~~from its trust~~ as trustee.

3 **SECTION 21. AMENDMENT.** Section 4-30-11 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **~~4-30-114.1-23-21.~~ Attorney general to represent department and may employ**  
6 **assistants - Department need not pay court costs.**

7 The attorney general shall represent the department in any action or proceeding brought  
8 under ~~the provisions of section 4-30-044.1-23-14,~~ and may employ outside legal assistance  
9 when necessary, ~~and.~~ The attorney general may deduct the expense ~~in connection therewith of~~  
10 retaining outside legal assistance from the trust fund. The department is not required to pay any  
11 filing fee or other court cost or disbursement in connection with an application for appointment  
12 as trustee or with any action brought ~~by it under the provisions of section 4-30-044.1-23-14~~  
13 when such fee, cost, or disbursement accrues to the state or to a county of ~~this~~ the state.

14 **SECTION 22. AMENDMENT.** Section 4-30-12 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **~~4-30-124.1-23-22.~~ License needed to sample, haul, or test - Training - Examination -**  
17 **Term - Fee.**

18 ~~No~~ A person ~~shall~~ may not sample, haul, or test milk or milk products for the purpose of  
19 determining the value or grade without obtaining a license from the department. In case of  
20 illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six  
21 days in one calendar year, unless specific approval for a longer period is obtained from the  
22 commissioner. The licensee is responsible for the acts of the substitute. An applicant ~~for license~~  
23 shall file an application with the department stating the type of sampling, hauling, or testing for  
24 which the applicant wishes to be licensed ~~for~~. Before a license is issued, the ~~sampler~~ applicant  
25 shall receive training in the sampling of milk or milk products as may be required by the  
26 department, and shall pass a written examination prepared and ~~given~~ administered by the  
27 department. The ~~sampler~~ applicant must show knowledge of the requirements of this  
28 chapter ~~which pertain to sampling or testing,~~ and must prove by actual demonstration that the  
29 ~~sampler~~ applicant is competent and qualified to perform each type of sampling and testing listed  
30 on the application. The commissioner shall ~~then~~ issue a license which ~~shall state~~ states the  
31 types of sampling, hauling, or testing for which the applicant ~~has proven to be able to perform~~ is

1 qualified. Additions may be added to the application form and license, without charge, after the  
2 license has been issued, upon the request of the licensee ~~and~~, after receiving ~~any~~ additional  
3 training and ~~satisfactorily~~ passing the required examinations. Examinations shall be given by  
4 the department at times and places as the department shall determine. A licensee ~~needs~~ not  
5 required to take any additional examinations when renewing a license unless required by the  
6 commissioner ~~or the commissioner's assistants~~. All testers and samplers ~~are required to~~ shall  
7 attend a training session sponsored by the department every two years. Retraining or retesting  
8 or both may be required ~~by the commissioner at any time~~ when the commissioner reasonably  
9 determines it to be necessary. Licenses issued under this section ~~shall~~ expire on December  
10 thirtieth of each year. Testers' licenses must be posted conspicuously in the licensee's place of  
11 operation, and are not transferable. Samplers' licenses must be carried by the sampler at all  
12 times during sampling activities and are not transferable. The ~~fee for the annual license fee~~ is  
13 ten dollars, ~~and a~~ A five dollar penalty fee is applied after the thirty-first day of January if  
14 renewals are not paid ~~prior to that date~~ by the thirty-first day of January.

15 **SECTION 23. AMENDMENT.** Section 4-30-13.1 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **~~4-30-13.14.1-23-23.~~ Commissioner to investigate complaint.**

18 ~~Upon receiving a statement~~ The commissioner shall investigate any complaint claiming that  
19 any provision of this chapter or the rules of the ~~department~~ commissioner have been violated,  
20 ~~the commissioner shall investigate the complaint as thoroughly and as soon as possible and~~  
21 ~~practicable.~~ If the commissioner finds ~~upon conducting such investigation~~ that a provision of this  
22 chapter or the rules of the ~~department~~ commissioner have been violated, the commissioner may  
23 take any action deemed appropriate.

24 **SECTION 24. AMENDMENT.** Section 4-30-13.2 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **~~4-30-13.24.1-23-24.~~ Inspections.**

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

1 under the provisions of this chapter. It is a violation of this chapter to refuse to allow inspections  
2 of any dairy facilities licensed under this chapter. The commissioner may suspend a license for  
3 failure to comply with this section.

4 **SECTION 25. AMENDMENT.** Section 4-30-15 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **4-30-154.1-23-25. Suspension or revocation of license - Judicial review - Emergency**  
7 **order.**

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

19 ~~Any person, firm, corporation, or limited liability company whose license is suspended is not~~  
20 ~~eligible during the period of the~~ During a period of license suspension to a person may not  
21 engage in activities that would be allowed by the suspended only under a valid license either  
22 personally, or indirectly by having a financial interest in the business.

23 **SECTION 26. AMENDMENT.** Section 4-30-18 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25 **4-30-184.1-23-26. Sampling and testing procedures - Equipment - Supplies.**

26 The laboratory procedures, equipment, chemicals, and other apparatus or substances used  
27 in the sampling, hauling, or testing of milk or milk products must conform to those described in  
28 the Standard Methods, a copy of which must be kept on file in the department. ~~No~~ Any  
29 equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing  
30 of milk or milk products which is not in conformance with conforming to the requirements of this  
31 chapter may not be sold or offered for sale. The commissioner, through the adoption of rules,

1 may alter, amend, or prohibit any specific requirement of this section and may approve other  
2 sampling, hauling, or testing procedures or equipment. The commissioner, when appropriate,  
3 may check calibration of farm bulk milk tanks and equipment.

4 **SECTION 27. AMENDMENT.** Section 4-30-20 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **~~4-30-204.1-23-27.~~ Sampling of milk.**

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

13 **SECTION 28. AMENDMENT.** Section 4-30-27 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **~~4-30-274.1-23-28.~~ Standards for the production of manufacturing grade milk -**  
16 **~~Commissioner to adopt~~Minimum standards of rules.**

17 ~~The commissioner may adopt rules governing the production and processing of milk for~~  
18 ~~manufactured dairy products. Rules shall, at~~At a minimum, rules governing the production and  
19 processing of milk for manufactured dairy products must comply with United States department  
20 of agriculture minimum standards for manufacturing grade dairy products.

**NOTE:** Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter. The Commissioner does not require added authority to make rules, but the minimum standards requirement must be retained.

21 **SECTION 29. AMENDMENT.** Section 4-30-28 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **~~4-30-28.~~ Farm certification.**

24 ~~The commissioner may promulgate rules and regulations concerning farm certification.~~

**NOTE:** Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

25 **SECTION 30. AMENDMENT.** Section 4-30-29 of the North Dakota Century Code is  
26 amended and reenacted as follows:

1        ~~**4-30-29. Grades of milk for manufacturing purposes.**~~

2        The commissioner may promulgate rules and regulations concerning grades of milk for  
3 manufacturing purposes.

**NOTE:** Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

4        **SECTION 31. AMENDMENT.** Section 4-30-30 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6        ~~**4-30-30. Milk grading program.**~~

7        The commissioner may promulgate rules and regulations concerning a milk grading  
8 program.

**NOTE:** Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

9        **SECTION 32. AMENDMENT.** Section 4-30-31 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11        ~~**4-30-31. Rejection and exclusion of milk.**~~

12        The commissioner may promulgate rules and regulations concerning rejection and  
13 exclusion of milk.

**NOTE:** Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

14        **SECTION 33. AMENDMENT.** Section 4-30-32 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16        ~~**4-30-32. New producers -- Transfer producers.**~~

17        The commissioner may promulgate rules and regulations concerning new producers and  
18 transfer producers.

**NOTE:** Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

19        **SECTION 34. AMENDMENT.** Section 4-30-33 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21        ~~**4-30-33.1-23-29. Standards for dairy manufacturing or processing - Commissioner to**~~  
22 ~~**adopt**~~**Minimum standards of rules.**

23        The commissioner may adopt rules governing the approval of dairy processing and  
24 manufacturing plants and standards for grades of dairy products. Rules must, ~~at~~At a minimum,  
25 rules governing the approval of dairy processing and manufacturing plants and standards for  
26 grades of dairy products must comply with United States department of agriculture general

1 specifications for approved dairy plants and standards for grades of dairy products. ~~No~~A plant  
2 may not be operated or any dairy products sold in violation of these rules.

**NOTE:** Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter. The Commissioner does not require added authority to make rules, but the minimum standards requirement must be retained.

3 **SECTION 35. AMENDMENT.** Section 4-30-34 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 ~~**4-30-34. Inspection of dairy plants manufacturing or processing milk products.**~~

6 ~~The commissioner may promulgate rules and regulations for an inspection program of dairy-~~  
7 ~~plants manufacturing or processing milk products.~~

**NOTE:** Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

8 **SECTION 36. AMENDMENT.** Section 4-30-35 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 ~~**4-30-35. Standards for manufactured dairy products.**~~

11 ~~The commissioner may promulgate rules and regulations establishing standards for-~~  
12 ~~manufactured dairy products.~~

**NOTE:** Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

13 **SECTION 37. AMENDMENT.** Section 4-30-36 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 ~~**4-30-36.1-23-30. Standards for grade A milk and milk products - Adoption of**~~  
16 ~~**amendmentsrules.**~~

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

24 **SECTION 38. AMENDMENT.** Section 4-30-36.2 of the North Dakota Century Code is  
25 amended and reenacted as follows:

1        **~~4-30-36.24.1-23-31~~. State milk sanitation rating and sampling surveillance officer -**  
2 **Duties - Guidelines.**

3        The state milk sanitation rating and sampling surveillance officer is responsible for the rating  
4 and certification of milk and dairy products. The rating and certification of milk and dairy  
5 products must be in accordance with the procedures outlined in the public health  
6 ~~service/food~~service food and drug administration publication entitled "Methods of Making  
7 Sanitation Ratings of Milk Shippers - 2013 Revision, Edition" and the sampling of milk and dairy  
8 products must be in accordance with the guidelines in the Standard Methods.

9        **SECTION 39. AMENDMENT.** Section 4-30-36.3 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11        **~~4-30-36.34.1-23-32~~. Milk laboratory evaluations officer - Duties - Guidelines.**

12        The milk laboratory evaluations officer is responsible for the certification and evaluation of  
13 milk and dairy products laboratories within the state. Evaluations and certification of milk  
14 laboratories must be made in accordance with the Standard Methods and the procedures  
15 outlined in the public health service/food and drug administration publication entitled "Evaluation  
16 of Milk Laboratories - 2013 Edition".

17        **SECTION 40. AMENDMENT.** Section 4-30-36.4 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19        **~~4-30-36.44.1-23-33~~. Grade A pasteurized milk ordinance.**

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

24        **SECTION 41. AMENDMENT.** Section 4-30-37 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26        **~~4-30-374.1-23-34~~. Quality records to be kept - Term.**

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

30        **SECTION 42. AMENDMENT.** Section 4-30-38 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1 ~~4-30-38. Transportation of milk for manufacturing, processing, or bottling purposes--~~

2 ~~Commissioner to adopt rules.~~

3 The commissioner may adopt rules governing the transportation of milk to be used for  
4 manufacturing, processing, or bottling purposes. No facility or vehicle may be used or operated  
5 in violation of these rules.

**NOTE:** Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

6 **SECTION 43. AMENDMENT.** Section 4-30-38.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 ~~4-30-38.14.1-23-35. Milk haulers - License required - Commissioner to adopt rules.~~

9 ~~No~~A person shall may not own or operate any tank truck, bulk milk truck, or other vehicle  
10 used or designed to carry bulk raw milk without a license issued by the department. The  
11 commissioner shall ~~promulgate~~adopt rules governing the operation, inspection, design, and  
12 licensure of such persons. The license of any person operating a vehicle in violation of this  
13 section or the rules of the ~~department~~commissioner is subject to revocation or suspension in  
14 accordance with procedure established by law. A license to haul milk issued under this section  
15 may be issued in conjunction with or as part of any license to sample or test milk or milk  
16 products issued pursuant to section ~~4-30-124.1-23-22.~~

**NOTE:** This imposes a mandatory rulemaking requirement, which is necessary to retain because the rulemaking authority otherwise provided by law is permissive.

17 **SECTION 44. AMENDMENT.** Section 4-30-39 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 ~~4-30-39. Transportation, labeling, and distribution of processed and manufactured~~  
20 ~~products -- Rulemaking -- Violations.~~

21 The commissioner may adopt rules governing the labeling, distribution, and transportation  
22 of processed and manufactured milk or milk products.

**NOTE:** Section 59 of this bill draft provides the Commissioner rulemaking authority for any matter within the coverage of this chapter.

23 **SECTION 45. AMENDMENT.** Section 4-30-40 of the North Dakota Century Code is  
24 amended and reenacted as follows:



1        ~~4-30-404.1-23-36.~~ **Adulterated, impure, or unwholesome milk or milk products not to**  
2 **be transported, stored, sold, or offered for sale.**

3        Any milk or milk products produced or kept under unclean or unsanitary conditions or  
4 produced from animals ~~which~~that are diseased or fed unwholesome, impure, or toxic feed; or  
5 milk ~~which~~that tastes from colostrum; shall be deemed impure and unwholesome. ~~No milk~~Milk  
6 or milk product ~~which~~that is deemed to be adulterated, impure, or unwholesome may not be  
7 transported, stored, sold, or offered for sale in this state.

8        **SECTION 46. AMENDMENT.** Section 4-30-41 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10       ~~4-30-414.1-23-37.~~ **Sale of milk or milk products in violation of this chapter prohibited.**

11       ~~No~~A person may not sell, or offer for sale, any milk or milk product, their imitations or  
12 substitutes, ~~which~~that is produced, processed, manufactured, transported, or stored, in violation  
13 of the laws of this state or the rules ~~and regulations~~ of the ~~dairy department~~commissioner, or  
14 which do not subscribe to ~~its~~the definition as stated in this chapter or hereafter defined by the  
15 ~~dairy~~ commissioner.

**NOTE:** There is no dairy commissioner or department.

16       **SECTION 47. AMENDMENT.** Section 4-30-41.2 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18       ~~4-30-41.24.1-23-38.~~ **Exception for uses as directed by physicians.**

19       This chapter does not prohibit the manufacture or sale of filled dairy products or imitation  
20 milk and imitation milk products when such ~~foods~~products are ~~clearly~~prominently labeled to  
21 show their composition and ~~the fact~~ that they are sold customarily for use as directed by order  
22 of a physician and are prepared and designed for medicinal or special dietary use ~~and~~  
23 ~~prominently so-labeled.~~

24       **SECTION 48. AMENDMENT.** Section 4-30-41.3 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26       ~~4-30-41.34.1-23-39.~~ **Sale of foods not imitation milk, imitation milk products, or filled**  
27 **dairy products.**

28       This chapter does not prohibit the manufacture or sale of proprietary foods ~~which~~that are  
29 clearly not imitation milk, imitation milk products, or filled dairy products; which do not contain  
30 imitation milk, imitation milk product, or filled dairy product; and which are not conducive to

1 substitution, confusion, deception, and fraud upon the purchasers of milk, milk products, or filled  
2 dairy products by their manufacture or sale.

3 **SECTION 49. AMENDMENT.** Section 4-30-41.4 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 ~~4-30-41.4~~**1-23-40. Shared animal ownership agreement - Raw milk.**

6 It is not a violation of this chapter to transfer or obtain raw milk under a shared animal  
7 ownership agreement. However, ~~a~~A person may not resell raw milk or raw milk products  
8 obtained under a shared animal ownership agreement.

9 **SECTION 50. AMENDMENT.** Section 4-30-45.1 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 ~~4-30-45.1~~**1-23-41. Labeling and identity standards.**

12 ~~All persons~~A person who ~~sell at retail in this state~~sells milk or milk products at retail in the  
13 state must comply with the labeling standards and standards of identity set forth in 21 U.S.C.  
14 343(q)(r) and in rules adopted by the commissioner.

15 **SECTION 51. AMENDMENT.** Section 4-30-46 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 ~~4-30-46~~**1-23-42. Reports - Blanks - When made - Contents.**

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

**NOTE:** There is no dairy commissioner.

28 **SECTION 52. AMENDMENT.** Section 4-30-47 of the North Dakota Century Code is  
29 amended and reenacted as follows:

1 ~~4-30-474.1-23-43. Dispute over test -- Official test made -- By whom -- Other tests --~~

2 **FeesTest results disputes.**

3 If a disagreement between a seller and a buyer or the legal representatives of both or either  
4 arises over the percentage of butterfat contained in any quantity of milk sold or offered for sale  
5 at the request of the owner and in the owner's presence, a sample of such milk obtained as  
6 provided in section ~~4-30-204.1-23-27~~ and mutually agreed upon by the interested parties as  
7 being a representative sample must be sealed ~~satisfactorily~~ and mailed by the buyer to the  
8 office of the dairy commissioner. ~~There must accompany each~~Each sample mailed to the  
9 commissioner must include a statement giving the name and address of the seller and the  
10 buyer of the milk in question, the net weight thereof, the percentage and amount of butterfat  
11 contained therein, the price per pound [.45 kilogram] for butterfat, and the amount of money  
12 paid or offered in payment for the same and bearing the signature of the seller and the buyer.  
13 The commissioner ~~or the commissioner's agent~~ shall determine the percentage of butterfat  
14 contained in the sample and shall ~~make a report of the result in triplicate, the original to be filed~~  
15 in the commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk.  
16 The percentage of butterfat ~~so~~ determined and reported constitutes the "official butterfat test"  
17 and is the basis on which final settlement must be made. The fee for ~~the making of the official~~  
18 butterfat test and any other tests required must be in such amount as set by ~~regulation~~rule of  
19 the dairy commissioner, considering the actual costs of ~~making~~ the test, and such fee must be  
20 mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat  
21 or other test.

**NOTE:** There is no dairy commissioner.

22 **SECTION 53. AMENDMENT.** Section 4-30-48 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 ~~4-30-484.1-23-44. Failure to agree on sample for official test -- Procedure to be~~  
25 **Test sample disputes.**

26 ~~Whenever it is impossible to secure or mutually~~If the buyer and seller do not agree upon a  
27 sample of milk as provided in section ~~4-30-474.1-23-43~~, then the party selling or offering for sale  
28 such milk may require that the buyer or prospective buyer ~~forward to the department to forward~~  
29 the sample taken to the department in compliance with section ~~4-30-204.1-23-27~~. Each sample  
30 ~~so~~ forwarded must be ~~accompanied by a statement in the form of~~include an affidavit from the  
31 buyer or prospective buyer, stating that the sample was taken in compliance with the provisions

1 of section ~~4-30-204.1-23-27~~, and the statement also must contain all information required in  
2 section ~~4-30-474.1-23-43~~, except that the signature of the seller is not required thereon. Each  
3 sample must be tested and reported on as prescribed in section ~~4-30-474.1-23-43~~, and the  
4 percentage of butterfat so determined and reported constitutes the "official butterfat test" and is  
5 the basis on which final settlement must be made.

6 **SECTION 54. AMENDMENT.** Section 4-30-49 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **~~4-30-494.1-23-45~~. Standards considered minimum - Municipality may provide more**  
9 **stringent standards.**

10 The standards set forth in this chapter ~~must be considered as~~ constitute only minimum  
11 standards ~~only~~. Nothing in this chapter may be construed to prevent any municipality from  
12 providing, by ordinance, more stringent or comprehensive standards than are contained herein-  
13 ~~nor is anything within this chapter~~. Nothing in this chapter or in the rules and regulations of the  
14 department ~~to~~ commissioner may be construed to prevent any person concerned with  
15 ~~dairying the dairy business~~ from using standards, inspections, or other practices or procedures  
16 ~~which that~~ are more stringent or comprehensive.

17 **SECTION 55. AMENDMENT.** Section 4-30-50 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **~~4-30-504.1-23-46~~. Fees and penalties collected to be placed in general fund.**

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

22 **SECTION 56. AMENDMENT.** Section 4-30-52 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **~~4-30-524.1-23-47~~. Disposal of illegal milk or milk products - Seizure.**

25 Any milk or cream offered for sale ~~and which is~~ in violation of any ~~provisions~~ provision of this  
26 chapter or the rules and regulations of the department commissioner must be colored with a  
27 harmless food coloring and returned to the ~~owner~~ seller. In addition, any milk or milk product  
28 ~~which that~~ is in violation of any provision of this chapter or the rules of the  
29 department commissioner may be seized or ordered held by the commissioner and must be  
30 disposed of as any other illegal food or drug as ~~outlined~~ provided in chapter 19-02.1.

1       **SECTION 57. AMENDMENT.** Section 4-30-53 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       ~~4-30-534.1-23-48.~~ **Penalty for violation of chapter - Additional civil penalty - Failure to**  
4 **pay civil penalty.**

5       Any~~A~~ person violating any of the ~~provisions~~provision of this chapter, ~~the rules of the~~  
6 ~~department,~~ or any rule or order of the commissioner, for which another criminal penalty is not  
7 specifically provided, is guilty of a class B misdemeanor. In addition, a civil penalty not to  
8 exceed five hundred dollars per day for each violation or continuing violation may be imposed.  
9 The civil penalty may be imposed by the courts in a civil proceeding or by the commissioner  
10 through an administrative hearing ~~pursuant to~~under chapter 28-32. If a civil penalty is imposed  
11 by the commissioner through an administrative hearing and the civil penalty is not paid, the  
12 commissioner may collect the civil penalty by a civil proceeding in any appropriate court. The  
13 commissioner may suspend or revoke a license issued ~~pursuant to~~under this chapter for failure  
14 to pay a civil penalty within thirty days after a final determination is made that the civil penalty is  
15 owed. The commissioner may refuse to renew or issue a license if the licensee or license  
16 applicant has repeatedly violated the provisions of this chapter, ~~the department rules,~~ or rules or  
17 orders of the commissioner.

18       **SECTION 58. AMENDMENT.** Section 4-30-54 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20       ~~4-30-544.1-23-49.~~ **State's attorney's endorsement to complaint unnecessary upon**  
21 **violation of chapter.**

22       It shall be unnecessary to have the endorsement of the state's attorney to a~~a~~ complaint  
23 made for a violation of the ~~provisions of~~ this chapter does not require the endorsement of the  
24 state's attorney, but when the court ~~before whom~~hearing a complaint is made is satisfied of the  
25 truthfulness of ~~such~~the complaint, it shall issue a warrant thereon.

26       **SECTION 59. AMENDMENT.** Section 4-30-55.1 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28       ~~4-30-55.14.1-23-50.~~ **Rules for enforcement of chapter.**

29       The ~~department is authorized to~~commissioner may adopt rules, ~~in accordance with~~ under  
30 chapter 28-32, ~~consistent with and necessary for the enforcement of~~ to implement this chapter.

**NOTE:** This section provides rulemaking authority for anything addressed in the chapter.

1       **SECTION 60. AMENDMENT.** Section 4-30-55.2 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       ~~4-30-55.24.1-23-51. Commissioner – Rulemaking authority – Limitation~~**Shared animal**  
4 **ownership agreement rules limitation.**

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

8       **SECTION 61. AMENDMENT.** Section 4-30-56 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10       ~~4-30-564.1-23-52. Enforcement.~~

11       The commissioner ~~is authorized and directed to~~shall administer and supervise the  
12 enforcement of this chapter; ~~to~~ provide for periodic inspections and investigations the  
13 ~~commissioner deems~~deemed necessary to ~~disclose violations of any acts prohibited by~~ ensure  
14 compliance with this chapter or the rules of the department; ~~to~~under this chapter, receive and  
15 provide for the investigation of complaints; and ~~to~~ provide for the institution and prosecution of  
16 civil or criminal actions or both, ~~upon the commissioner's own initiative. The provisions of~~  
17 ~~this~~This chapter and the rules of the department under this chapter may be enforced by  
18 injunction in any court having jurisdiction to grant injunctive relief, ~~and filled.~~ Filled dairy  
19 products, imitation milk, or imitation milk products, illegally held or otherwise ~~involved in~~  
20 violation of this chapter ~~are subject to seizure and disposition in accordance with~~ may be seized  
21 and disposed under an appropriate court order.