

AGRICULTURE

CHAPTER 58

HOUSE BILL NO. 1271
 (Representatives Thompson, Whalen, Payne)
 (Senators Bowman, O. Hanson)

BALLOT COUNT BASIS

AN ACT to amend and reenact sections 4-02-30, 4-22-48, and 23-18-03 of the North Dakota Century Code, relating to vote requirements on certain ballot questions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-02-30 of the North Dakota Century Code is amended and reenacted as follows:

4-02-30. Tax provided for to be submitted to vote. Whenever the board of county commissioners has voted and ordered a tax levied in aid of an agricultural fair, at the next general election the question of continuing the annual levy and collection of the tax must be submitted to a vote of the qualified electors of the county. The county auditor shall certify and give notice of the submission of the question as ~~in such cases~~ provided by law. The ballots to be used at the election shall be in the following form:

| | |
|-------------------------------|--------|
| For tax in aid of county fair | Yes // |
| | No // |

If a majority of the ballots heretofore or hereafter cast on the question at any ~~such~~ election is in favor of continuing ~~such the~~ tax, the board of county commissioners shall continue the annual levy hereof as long as the provisions of section 4-02-29 are complied with and until otherwise directed as herein provided.

Whenever a petition addressed to ~~such the~~ board, asking the discontinuance of ~~such the~~ tax and containing the signatures of the qualified electors of the county in a number equal to twenty percent of the total vote cast in the county at the last preceding general election, is filed in the office of the county auditor, the board shall submit to the qualified electors of the county at the next succeeding general election the question of whether or not the levying of ~~such the~~ tax shall be continued. The ballot must be in the following form:

| | |
|--|--------|
| Shall the board of county commissioners continue the annual levy of a tax in aid of county fair? | Yes // |
| | No // |

If a majority of all the ballots cast on the question at ~~such the~~ election is in favor of discontinuing the tax, the board of county commissioners may not thereafter levy any tax under this chapter until the question of resuming ~~such the~~ annual levy and collection of the tax is submitted to a vote of the

CHAPTER 59

SENATE BILL NO. 2136
(Committee on Agriculture)
(At the request of the State Seed Department)

SEED ARBITRATION BOARD

AN ACT to amend and reenact sections 4-09-03.1, 4-09-08, 4-09-14.4, and 4-09-20.2 of the North Dakota Century Code, relating to the state seed arbitration board, free laboratory tests, periodic statements, and state seed arbitration board procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-03.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-03.1. State seed ~~mediation~~ arbitration board. The state seed ~~mediation~~ arbitration board consists of the commissioner of agriculture, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the ~~chairman~~ chair of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the commissioner of agriculture, or their authorized designees.

SECTION 2. AMENDMENT. Section 4-09-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-08. Public laboratory service - Free tests - Fees for additional tests. Any resident of this state may send samples of cereals, flax, sunflower, alfalfa, soybean, and edible bean seed to the commissioner for germination tests. No more than three samples per year per person may be examined and reported on free of charge. The commissioner, by rule with the approval of the seed commission, shall prescribe the time of year when seed samples will be accepted for free tests, the fees which will apply to samples submitted by any resident of the state in excess of three, and the fees which will be charged for all other laboratory tests and services.

SECTION 3. AMENDMENT. Section 4-09-14.4 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-14.4. Permit. The commissioner is authorized at ~~his~~ the commissioner's discretion, under such rules as may be promulgated, to issue a permit to any person to sell agricultural, vegetable, flower, and tree and shrub seeds in North Dakota. The person shall apply to the commissioner for a permit and shall furnish the seed department with quarterly periodic statements of all seeds sold in North Dakota when requested by the seed commissioner. Each quarterly statement must be itemized to show the number of each class of containers referred to in section 4-09-14.3. Statements that must be furnished for each ~~calendar~~ quarterly reporting period, must be delivered to the commissioner not later than thirty days after the end of

each quarterly reporting period, and must be accompanied by the appropriate fee. Any person to whom a permit is granted shall show such information in connection therewith as the commissioner may require as part of the label on all seed sold. The commissioner or ~~his~~ the commissioner's authorized agent has the right at all reasonable times to examine the records of any permit holder to verify the correctness of its statements. The commissioner, when requested, may grant a farmer who grows his own seed and sells only his own seed, the right to report annually ~~instead of quarterly~~.

SECTION 4. AMENDMENT. Section 4-09-20.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-20.2. Seed mediation arbitration board - Petition - Mediation Arbitration hearing. A seed labeler ~~and~~ or a seed customer shall petition the commissioner of agriculture in writing for a hearing to settle a dispute involving a seed transaction. The commissioner of agriculture shall submit the dispute to the seed mediation arbitration board, and the board shall mediate arbitrate the dispute upon payment by the parties of a sum determined by the board to be sufficient to reimburse the board for the expenses of the mediation process, including reasonable compensation of board members. The board, within thirty days after the hearing, shall make a nonbinding recommendation for the resolution of the dispute. Evidence presented to the board and any findings or recommendations by the board are admissible as evidence in any subsequent proceeding. The board shall adopt rules and procedures for mediation arbitration proceedings, including a formula for reimbursement by the parties of the expenses of the mediation arbitration process.

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 60

HOUSE BILL NO. 1094
(Committee on Agriculture)
(At the request of the State Seed Department)

SEED OR GRAIN SELLERS' RECORDS

AN ACT to amend and reenact subsection 2 of section 4-09-15 of the North Dakota Century Code, relating to recordkeeping requirements for sellers of seed or grain.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 4-09-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~Grain~~ Seed or grain that is not intended for planting purposes.
 - a. The seller shall indicate on a form provided by the seller the purpose for which the seed or grain is purchased. The form must be available for inspection by the seed department.
 - b. It is unlawful for the seller or buyer to make a false representation as to the use of the seed or grain.
 - c. A farmer selling the farmer's own seed or grain to a commercial establishment is exempt from the recordkeeping requirements of this subsection.

Approved March 19, 1991
Filed March 19, 1991

CHAPTER 61

SENATE BILL NO. 2151
 (Committee on Agriculture)
 (At the request of the Oilseed Council)

OILSEED HANDLERS

AN ACT to amend and reenact subsection 3 of section 4-10.2-02 and sections 4-10.2-08, 4-10.2-09, and 4-10.2-11 of the North Dakota Century Code, relating to first purchasers of certain crops, assessments, and penalties; to repeal sections 4-10.2-12 and 4-10.2-14 of the North Dakota Century Code, relating to penalties for nonpayment of assessment and violations of the chapter; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 4-10.2-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Designated handler" means any person who initially places sunflower, safflower, rapeseed or canola, crambe, or flax, whether as an owner, agent, or otherwise, into the channels of trade and commerce, or who is engaged in the processing of sunflower, safflower, rapeseed or canola, crambe, or flax into any form. A grower selling the grower's unharvested sunflower, safflower, rapeseed or canola, crambe, or flax, or delivering the grower's sunflower, safflower, rapeseed or canola, crambe, or flax from the farm on which they are produced to storage facilities, packing shed, or processing plant, within the state, is not considered to be a designated handler. "First purchaser" means any person buying, accepting for shipment, or otherwise acquiring sunflower, safflower, rapeseed or canola, crambe, or flax, from a grower. The term includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower where the actual or constructive possession of the oilseed is taken as part payment or in satisfaction of the mortgage, pledge, lien, or claim. For the purposes of assessments and reporting, the term includes a grower selling the grower's unharvested sunflower, safflower, rapeseed or canola, crambe, or flax out of state, or delivering the grower's sunflower, safflower, rapeseed or canola, crambe, or flax from the farm where they were produced to any storage facilities, packaging sheds, or processing plants located outside the state.

SECTION 2. AMENDMENT. Section 4-10.2-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.2-08. Assessments levied. An assessment at the rate of two cents per hundredweight [45.36 kilograms] must be levied and imposed upon all sunflower, safflower, rapeseed or canola, and crambe grown in the state or sold to a ~~designated handler~~ first purchaser and an assessment at the rate of

two cents per bushel [35.24 liters] must be levied and imposed upon all flax grown in the state or sold to a designated handler first purchaser. This assessment is due upon any identifiable lot or quantity of sunflower, safflower, rapeseed or canola, crambe, or flax.

A designated handler first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler first purchaser is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the designated handler first purchaser, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the designated handler first purchaser. A designated handler first purchaser may not sell, process, or ship any sunflower, safflower, rapeseed or canola, crambe, or flax until it has secured a certificate as required by this section.

Every designated handler first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate specified in this section by deducting the assessment from the purchase price of all sunflower, safflower, rapeseed or canola, crambe, or flax subject to the assessment and purchased by the designated handler first purchaser.

Every designated handler first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw sunflower, safflower, rapeseed or canola, crambe, or flax, which may be examined by the council at all reasonable times. Every designated handler first purchaser shall report to the council stating the quantity of sunflower, safflower, rapeseed or canola, crambe, or flax received, sold, or shipped by it. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of an account or accounts designated "oilseed fund" to be used exclusively to carry out the intent and purposes of this chapter. Assessments collected from each crop must be used, for the purposes of this chapter, on each respective crop. However, for flax, emphasis should be given to utilize the assessment, except for that portion of the assessment necessary to administer the flax assessment, for nutritional and therapeutic research. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

SECTION 3. AMENDMENT. Section 4-10.2-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.2-09. Nonparticipating growers - Refunds. Any grower subject to the assessment provided in this chapter may, within sixty days following such assessment or final settlement, make application by personal letter to the council for a refund application blank. Upon the return of said blank, properly executed by the grower, accompanied by a record of the assessment by the designated handler first purchaser, the grower must be refunded the net amount of the assessment collected. If no request for refund has been made within the period prescribed above, then the grower is presumed to have

agreed to such assessment. However, a grower, for any reason, having paid the assessment more than once on the same sunflower, safflower, rapeseed or canola, crambe, or flax, upon furnishing proof of this to the council, is entitled to a refund of the overpayment.

The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the sunflower, safflower, rapeseed or canola, crambe, and flax assessment and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of sunflower, safflower, rapeseed or canola, crambe, and flax.

SECTION 4. AMENDMENT. Section 4-10.2-11 of the North Dakota Century Code is amended and reenacted as follows:

~~4-10.2-11. Collection of unpaid assessment Penalty. If a designated handler fails to pay the assessment provided in this chapter the council may enforce collection in any appropriate court within this state.~~

1. Any person who violates any provision of this chapter is guilty of a class B misdemeanor.
2. Any assessment levied by this chapter and not paid by the date that the assessment becomes due is delinquent and the council may levy a penalty on such delinquent payments of ten percent of the assessment due, plus interest at the rate of six percent per annum from the due date. The collection of any assessment or penalty must be made in an appropriate court within this state.

SECTION 5. REPEAL. Sections 4-10.2-12 and 4-10.2-14 of the North Dakota Century Code are repealed.

Approved April 16, 1991
Filed April 18, 1991

CHAPTER 62

SENATE BILL NO. 2191
(Committee on Agriculture)
(At the request of the Edible Bean Council)

EDIBLE BEAN HANDLER ASSESSMENT

AN ACT to amend and reenact subsection 3 of section 4-10.3-02 and sections 4-10.3-08 and 4-10.3-11 of the North Dakota Century Code, relating to the definition of a designated handler of edible beans and to assessments and penalties; and to repeal sections 4-10.3-12 and 4-10.3-14 of the North Dakota Century Code, relating to penalties; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 4-10.3-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Designated handler" means any person who initially places edible beans, whether as an owner, agent, or otherwise, into the channels of trade and commerce, or any person who is engaged in the processing of beans into food for human consumption in any form. A grower selling ~~his~~ the grower's unharvested edible beans, or delivering ~~his~~ the grower's edible beans from the farm on which they are produced to storage facilities, packing sheds, or processing ~~plant~~, plants within the state, is not considered to be a designated handler. For the purposes of assessments and reporting, "designated handler", includes a grower selling the grower's unharvested edible beans out of state, or delivering the grower's edible beans from the farm where they were produced to any storage facilities, packing sheds, or processing plants located outside the state.

SECTION 2. AMENDMENT. Section 4-10.3-08 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-08. Tax levies - Collection - Reports. Effective July 1, 1977, an assessment at the rate of five cents per hundredweight [45.36 kilograms] must be levied and imposed upon all edible beans grown in the state or sold to a designated handler. This assessment is due upon any identifiable lot or quantity of edible beans.

A designated handler of edible beans shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the first designated handler, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the

designated handler. A designated handler may not sell, process, or ship any edible beans until it has furnished a certificate as required by this section.

Every The first designated handler in North Dakota of edible beans shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of five cents per hundredweight [45.36 kilograms] by deducting the assessment from the purchase price of all edible beans subject to the assessment and purchased by the designated handler.

Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw edible beans, which may be examined by the council at all reasonable times. Every designated handler shall report to the council stating the quantity in individual and total amounts of edible beans received, sold, or shipped by it. The report must state from whom each individual amount was received. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of an account or accounts designated "edible bean fund" to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner of agriculture.

SECTION 3. AMENDMENT. Section 4-10.3-11 of the North Dakota Century Code is amended and reenacted as follows:

~~4-10.3-11. Collection of unpaid assessment Penalties. If a designated handler fails to pay the assessment provided in this chapter, the council may enforce collection in any appropriate court within this state.~~

1. Any person who violates the provisions of this chapter is guilty of a class B misdemeanor.
2. Any assessment levied by this chapter and unpaid by the date that the assessment becomes due is delinquent and the council may levy a penalty against the designated handler on such delinquent payments of ten percent of the assessment due, plus interest at the rate of six percent per annum from the due date. The collection of any assessment or penalty must be made in an appropriate court within this state.

SECTION 4. REPEAL. Sections 4-10.3-12 and 4-10.3-14 of the North Dakota Century Code are repealed.

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 63

SENATE BILL NO. 2282
(Senators Thane, Tallackson, Nelson)
(Representatives Nicholas, Miller, Nowatzki)

CORN UTILIZATION COUNCIL

AN ACT to provide for a North Dakota corn utilization council; to provide for an assessment on corn production; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Commissioner" means the commissioner of agriculture or the commissioner's designated representative.
2. "Corn" means all varieties of corn marketed in the state except sweet corn or popcorn.
3. "Council" means the North Dakota corn utilization council.
4. "Designated handler" means any person accepting for shipment, or otherwise acquiring an interest in or to corn from a grower. The term includes any person having a claim against the producer, when the actual or constructive possession of the corn is taken as security, part payment, or in satisfaction of a mortgage, pledge, lien, or claim.
5. "Grower" means a person who plants, raises, and harvests corn.
6. "Marketed in this state" means the sale of corn to a designated handler residing in or doing business in this state and actual delivery of the corn in this state.
7. "Participating grower" means a grower who has paid the assessment on corn production under this Act and who has not applied for a refund of the assessment.
8. "Voting grower" means a grower who has paid the assessment under this Act, whether or not the grower has applied for a refund.

SECTION 2. North Dakota corn utilization council - Members - Election - Term. The North Dakota corn utilization council must be composed of one member elected from each district established by section 3 of this Act. The chairman of the council must be a member of the council elected by a majority vote of the council. Each member must be a resident of and participating grower in the district the member represents. The term of each member is four years, beginning on April first of the year of election, except that

initially three members must be elected for four-year terms; two members must be elected for three-year terms; and two members must be elected for two-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications required by this Act, the member's office is deemed vacant and the council shall appoint a qualified participating grower from any district to complete the term of office. For the initial council, the North Dakota corn growers association shall nominate two candidates for each position. Each candidate must be supported by a petition bearing the signatures of twenty-five growers from the candidate's district. Additional candidates may be nominated by written petition of twenty-five growers from the respective district. A list of all the candidates must be presented to the commissioner who shall cooperate with the cooperative extension service and hold the first election no later than August 15, 1991. The council shall administer all elections thereafter, and may request the assistance of the commissioner. Beginning in 1993, the elections must be conducted no later than April first of each year. Prior to the expiration of a member's term, the council shall appoint a nominating committee made up of three participating growers who reside in the member's district. The committee shall nominate two resident participating growers as candidates for the office. Each candidate must be supported by a petition bearing the signatures of twenty-five growers from the candidate's district. Additional candidates may be nominated by a written petition of twenty-five growers from the district. No council member may serve more than two consecutive four-year terms. When a member's office is vacant, the council, before beginning the nominating process, shall publish a conspicuous notice of the vacancy, in the official newspaper of every county in the district.

SECTION 3. Corn districts. The following corn districts are established:

1. District one consists of Richland County.
2. District two consists of Cass, Traill, and Steele counties.
3. District three consists of Benson, Burke, Bottineau, Cavalier, Divide, Grand Forks, McHenry, Mountrail, Nelson, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, Walsh, Ward, and Williams counties.
4. District four consists of Barnes, Eddy, Foster, Griggs, and Stutsman counties.
5. District five consists of Sargent and Ransom counties.
6. District six consists of Dickey and Lamoure counties.
7. District seven consists of all remaining counties in this state where corn is grown.

SECTION 4. Meetings - Compensation and expenses of council. The chairman shall call all meetings of the council. The chairman shall call special meetings on the petition of three council members, within seven days of receiving the petition. Each council member is entitled to receive the same per diem compensation as provided for members of the legislative council under section 54-35-10, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any

member who receives compensation or salary as a regular state employee or official.

SECTION 5. Expenditure of funds. The council or its designated agent shall approve every expenditure of funds made pursuant to this Act and submit the approved expenditure upon an itemized voucher to the office of management and budget for approval.

SECTION 6. Council authority. In the administration of this chapter, the council may:

1. Contract and cooperate with any person for market maintenance and expansion, utilization research, transportation, and education.
2. Expend the funds collected pursuant to this Act and appropriated for its administration.
3. Appoint, employ, bond, discharge, fix compensation for, and prescribe the duties of personnel.
4. Accept donations of funds, property, services, or other assistance from any source for the purpose of furthering the objectives of the council.
5. Investigate and prosecute in the name of the state any action or suit to enforce the collection or ensure payment of the assessments authorized by this Act, and to sue and be sued in the name of the council.
6. Provide educational and informational materials.

SECTION 7. Certification of designated handlers. A designated handler shall file with the council a form containing the name under which the designated handler is transacting business within the state; the designated handler's places of business; the location of loading and shipping places of the designated handler's agents; if a partnership, the names and addresses of the persons constituting the firm partnership; and if a corporation, the corporate name and the names and addresses of the principal officers and agents in this state. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any corn until it has a certificate as required by this section.

SECTION 8. Assessment. Effective July 1, 1991, an assessment at the rate of one-quarter of one percent of the value of a bushel must be levied and imposed upon all corn marketed in this state, until a national corn checkoff is implemented. This assessment is due upon any identifiable lot or quantity of corn.

SECTION 9. Collection of assessment. Every designated handler shall collect the assessment from the seller by deducting the assessment from the purchase price of all corn subject to the assessment and purchased by the designated handler.

SECTION 10. Records by designated handlers. Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of corn which may be examined by the council at all reasonable times. Every designated handler shall report to the council, in a

manner and at a time prescribed by the council. The assessments collected by the designated handler must accompany the report. All moneys levied and collected under this chapter must be paid within thirty days of the end of each quarterly period to the council for deposit in the state treasury to the credit of an account designated as the corn fund to be used exclusively to carry out this Act. Quarterly periods end on March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

SECTION 11. Nonparticipating growers - Refunds. The council shall develop and disseminate information and instructions relating to the purpose of the corn assessment and manner in which refunds may be claimed, and shall cooperate with governmental agencies and private businesses engaged in the purchase of corn. Any grower subject to the assessment provided by this Act, within ninety days following an assessment or final settlement, may apply to the council for a refund application. If the refund application is properly executed by the grower, returned within ninety days of the date it was mailed to the grower, and accompanied by a record of the assessment by the designated handler, the grower must be refunded the net amount of the assessment collected. If no request for refund is made within the period prescribed above, the grower is presumed to have agreed to the assessment. However, if a grower pays the assessment on the same corn more than once, the grower is entitled to a refund upon furnishing the council with proof of the overpayment.

SECTION 12. Advisory referendum by voting growers. Whenever fifteen percent of the voting growers petition the council, the council shall conduct an advisory referendum to determine whether the assessment imposed by this Act should be changed. The referendum may be conducted only among voting growers who have paid all assessments pursuant to this Act for the preceding year. The ballots must be prepared by the council and available at each county extension office for a vote on a date set by the council. Each ballot must be accompanied by a notice stating the date and place where the council will open and tabulate the ballots and stating that any voting grower may be present. Voting growers who reside outside the state or voting growers within the state who expect to be absent from their county on the day of the vote may request an absentee ballot. The council shall provide to any voting grower an absentee ballot upon request beginning thirty days prior to the vote. A voting grower requesting an absentee ballot shall file a statement with the council affirming the grower's eligibility to vote. The council shall provide a statement form upon request. All absentee ballots and statements must be received by the council at least two working days prior to a vote. If a majority of the voting growers vote for the proposed change, the council shall certify the result to the commissioner and request that the commissioner prepare appropriate proposed legislation for submission to the next legislative assembly.

SECTION 13. Collection of unpaid assessment. If a designated handler fails to pay the assessment provided by this Act, the council may enforce collection in any appropriate court within this state.

SECTION 14. Penalty for nonpayment of assessment. A designated handler who fails to pay the assessment provided by this Act on the date the assessment becomes due is delinquent. The council may levy a penalty on that designated handler in the amount of ten percent of the assessment due, plus

interest at the rate of twelve percent per annum from the due date. The penalty and interest must be collected in the manner prescribed by this Act.

SECTION 15. Records of council - Inspection. All records of the council must be available for inspection at the council office during regular business hours.

SECTION 16. Penalty. Any person who willfully violates this Act is guilty of a class B misdemeanor.

SECTION 17. APPROPRIATION. There is hereby appropriated from the corn fund the sum of \$600,000, or so much thereof as may be necessary, to the North Dakota corn utilization council for the purpose of carrying out this Act for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 17, 1991
Filed April 18, 1991

CHAPTER 64

HOUSE BILL NO. 1571
 (Representatives Miller, Muhs, Wilkie)
 (Senator Marks)

BEES

AN ACT to create and enact a new section to chapter 4-12.2 of the North Dakota Century Code, relating to revocation of registration of an apiary; to amend and reenact sections 4-12.2-01, 4-12.2-04, 4-12.2-04.1, 4-12.2-06, 4-12.2-07, 4-12.2-08, 4-12.2-14, 4-12.2-18, 4-12.2-19, 4-12.2-20, 4-12.2-21, 4-12.2-22, and 4-12.2-24 of the North Dakota Century Code, relating to licensure of beekeepers, and registration, identification, and certification of apiaries; to repeal sections 4-12.2-09, 4-12.2-10, 4-12.2-11, 4-12.2-12, and 4-12.2-13 of the North Dakota Century Code, relating to a two-mile radius restriction for apiary locations; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-12.2-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Apiary" means any place where one or more colonies of bees are kept.
2. "Apparently disease free" means being within accepted tolerance levels as established by rule.
3. "Beekeeper" means any person who owns and maintains or leases and maintains one or more colonies of bees and maintains the bees in this state.
- ~~3-~~ 4. "Bees" means honey producing insects of the genus *Apis*, including all life stages of such insects. ~~The word "bees" as used in this chapter term is not limited to the common honey bee but includes Africanized bees.~~
- ~~4-~~ 5. "Colony" means the hive and its equipment including bees, comb and honey, and brood.
5. "~~Commercial apiary~~" means ~~an apiary where twenty-four or more colonies of bees are kept and all vacant locations established pursuant to sections 4-12.2-04 and 4-12.2-13.~~
- ~~6-~~ "~~Commercial operator~~" means ~~any beekeeper who maintains more than one hundred colonies of bees.~~

- ~~7-~~ 6. "Commissioner" means the commissioner of agriculture, or the commissioner's authorized representative.
- ~~8-~~ 7. "Department" means the department of agriculture.
- ~~9-~~ 8. "Disease" means American foulbrood or European foulbrood, sacbrood, bee paralysis, or any disease, parasite, or pest that affects bees or brood.
- ~~10-~~ 9. "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives; ~~and also includes any containers of honey and wax which may be used in any apiary or in transporting bees and their products and apiary supplies; and those items used in the operation of a honey house.~~
- ~~11-~~ "Hobby operator" means any beekeeper who maintains one hundred or fewer colonies of bees.
- ~~12-~~ "Noncommercial apiary" means an apiary where twenty-three or fewer colonies of bees are kept.
- ~~13-~~ "Pollination location" means an apiary established pursuant to section ~~4-12.2-10.~~
- ~~14-~~ "Property owner" means the person, including a lessee, who has actual use and exclusive possession of the land. However, any person leasing land for the primary purpose of establishing an apiary thereon is not a property owner within the meaning of this definition.
- ~~15-~~ "Property owner location" means an apiary established pursuant to section ~~4-12.2-11.~~
10. "Property owner" means the person, including a lessee, who has actual use and exclusive possession of the land.

SECTION 2. AMENDMENT. Section 4-12.2-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-04. Beekeeper's license required.

1. A beekeeper ~~No person~~ may not maintain bees in this state ~~unless the beekeeper has~~ without first obtaining a valid beekeeper's license. ~~Annually,~~ ~~on~~ On or before the first day of ~~May~~ March in each year, each beekeeper shall apply to the commissioner, on a form to be furnished by the commissioner, for a beekeeper's license ~~except that initial licensees shall within ten days after first acquiring bees in this state apply to the commissioner for a beekeeping license.~~
2. Each application, ~~for an initial license or annual renewal,~~ must ~~set forth~~ include the applicant's name of the applicant, address, and telephone number, the total number of colonies to be maintained ~~within in~~ this state, the name of the owner of the bees ~~if different from the applicant,~~ and the name and address of all persons, other than the applicant, who are responsible for

maintaining the bees within the state. The application must be signed by the applicant ~~and~~, the owner of the bees ~~if different from the applicant~~, and all persons responsible for maintaining the bees within this state. If the applicant ~~is does not the owner of own~~ the bees, the application must disclose the nature of the relationship between the owner and the applicant. If the applicant is leasing the bees from the owner, a copy of a ~~written~~ the lease agreement ~~between the owner and the lessee~~ must be submitted with the application.

3. ~~The application must designate the number of colonies to be maintained at noncommercial apiaries. The application must also specify which apiaries, if any, will remain vacant during the current license period. The license required by this section is not transferable. No person may bring bees or equipment into this state without obtaining an entrance permit pursuant to section 4-12.2-20.~~
4. Each application for an initial license or renewal must also state the applicant's name, place of residence, and post-office address must include the name, address, and telephone number of a resident agent who is authorized to accept service of process, notice, or demand arising from the beekeeper's activities under this chapter and for which the law requires or permits service upon the beekeeper.

SECTION 3. AMENDMENT. Section 4-12.2-04.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-04.1. Application of minors for beekeeper's license - Liability for minor. ~~A person must be at least eighteen years of age to be licensed as a beekeeper in this state. However, a~~ A person who is less than eighteen years of age may be licensed as a beekeeper, if that person's application for license is signed by either the mother, father, or legal guardian of the applicant. Any civil or administrative liability for violation of the beekeeping laws of this chapter by a beekeeper who is less than eighteen years of age must be imputed to the person who has signed the application of that beekeeper for a license, which person is jointly and severally liable with the beekeeper.

SECTION 4. AMENDMENT. Section 4-12.2-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-06. Prevention of disease - Assessment of fees. In addition to the license fee required by section 4-12.2-05, an applicant for a license must submit ~~the following fees with the application-~~

1. ~~Hobby operator - ten cents per colony for each colony maintained in this state.~~
2. ~~Commercial operator - twenty-five~~ thirty cents per colony for each colony maintained in this state.

The commissioner may not issue a beekeeper's license until all civil penalties and all fees required by this section and section 4-12.2-05 are paid.

SECTION 5. AMENDMENT. Section 4-12.2-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-07. Registration of an apiary.

1. Each beekeeper shall ~~make application apply~~ for registration of all apiaries ~~which that are or will be~~ maintained by the beekeeper within the state at the same time an application for license is made. The application forms for registration must be furnished by the department. The applicant shall provide the following information on the form provided:
 - a. The location of each apiary, ~~setting forth specifically the type of apiary, the location~~ to the nearest section, quarter section, township, and range, and, if within the corporate limits of a city, the number or name of the lot, block, and addition in the city.
 - b. The name of the property owner on whose property the apiary is located; where the registrant is not the property owner, a copy of the written lease or other document from the property owner granting the applicant permission to maintain an apiary at that location. The written lease or other document is adequate for subsequent registrations if the parties to the agreement remain the same.
 - c. Any other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.
2. New ~~commercial~~ apiaries may be submitted for registration with the department at any time.
3. ~~Priority in time of application gives the superior right to occupy a location.~~
4. A beekeeper may maintain or establish an apiary only after application is made and registration of the apiary is approved by the department.

SECTION 6. AMENDMENT. Section 4-12.2-08 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-08. Revocation of location by property owner. The property owner ~~of the land~~ on which an apiary is located may revoke the permission granted a beekeeper to place an apiary at that location by providing written notice to the department and the beekeeper. This section does not relieve the property owner from any liability to the beekeeper for the violation of rights granted by a lease or other legal agreement between the beekeeper and the property owner.

SECTION 7. A new section to chapter 4-12.2 of the North Dakota Century Code is created and enacted as follows:

Revocation of registration of an apiary. The commissioner of agriculture may cancel the registration of an apiary when the bees located on the apiary site are causing a nuisance as defined in chapter 42-01.

SECTION 8. AMENDMENT. Section 4-12.2-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-14. Identification of colonies. All colonies must be identified as prescribed by the commissioner by rule. Each beekeeper shall specifically state on the application for license, each year, what form of identification will be used by that beekeeper to identify colonies. A beekeeper may not list another beekeeper's brand as an identifying mark on the application or otherwise use another beekeeper's brand to identify that beekeeper's colonies unless the other beekeeper's brand is not being used by that beekeeper to identify any bees maintained in North Dakota and written permission is obtained from the other beekeeper to use the brand post a board or weatherproof placard bearing the beekeeper's name, address, and telephone number at or near the main entrance of each apiary, or on a bee hive. The board or placard must measure at least eight inches [20.32 centimeters] high by eleven inches [27.94 centimeters] long. The letters and numbers must be at least one-half inch [1.27 centimeters] high and must be legible. The commissioner may approve, in writing, alternative sign or lettering dimensions. Failure to post each apiary causes the apiary, all equipment, and bees to be deemed abandoned and subject to seizure by the state bee inspector.

SECTION 9. AMENDMENT. Section 4-12.2-18 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-18. Certificate of health - Issuance. At the request of the beekeeper, the commissioner, after an official inspection has been made, if a certificate of health is required for the interstate movement of bees and equipment, the beekeeper shall request the state bee inspector to make an official inspection for that purpose. If the inspector finds that the bees and equipment have been found to be are apparently disease free, and if all fees and civil or criminal penalties have been paid, the state bee inspector shall issue a certificate of health signed by the bee inspector. The certificate of health must state that the bees and equipment have been inspected; the date of the inspection; and that they are apparently free of disease. If for any reason, an additional inspection is required prior to the issuance of a certificate of health, the beekeeper shall submit to the commissioner a fee set by the commissioner to cover the costs of the additional inspection.

SECTION 10. AMENDMENT. Section 4-12.2-19 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-19. Infected bees and equipment - Sale or exposure. No person may sell, barter, offer for sale or barter, move, transport, deliver, ship, or offer for shipment within this state, any bees or equipment which has not received a certificate of health from the inspector having evidence of disease without written permission of the department. No person may expose any bees or equipment in any place in such a manner that disease could be transmitted or disseminated therefrom.

SECTION 11. AMENDMENT. Section 4-12.2-20 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-20. Shipment into state - Permit - Fees. Before any person transports any bees or used equipment into this state, that person must

obtain an entrance permit from the bee inspector. The applicant for an entrance permit shall submit:

1. A copy of the certificate of health issued by the official bee inspector, or equivalent official in another state or country, certifying the bees and equipment have been inspected within ninety days prior to the date of shipment and have been found to be free from any contagious or infectious disease. Possess a North Dakota certificate of health issued within the past twelve months for all colonies for which an entrance permit is requested, or obtain a certificate of health from the state bee inspector or from an equivalent official in another state or country, certifying that the bees and equipment have been inspected within the last ninety days and have been found to be apparently disease free;
2. Submit a complete description of the shipment; and
3. Such Submit any other information as may be required by rule.

Entrance permits for applicants whose applications are received after March first are effective sixty days after the date of the application for a license. For purposes of the 1991 season, the due date for license applications is May first. Immediately upon the arrival in this state of any bees or equipment, the beekeeper shall comply with this chapter. Upon showing of good cause, the commissioner may on a case-by-case basis waive the sixty-day waiting period.

SECTION 12. AMENDMENT. Section 4-12.2-21 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-21. Abandoned apiary and abandoned equipment - Seizure, destruction, or sale. Any apiary, equipment, or bees not regularly maintained and attended in accordance with this chapter or any rules adopted pursuant to this chapter or which comprises a hazard or threat to disease control in the beekeeping industry may be considered abandoned and will be subject to seizure by the state bee inspector. Any bees not properly hived, or hives or equipment not properly stored, so as to prevent possible spread of disease may be considered abandoned bees or equipment. Any diseased bees and equipment which have been seized may, when necessary, be immediately burned or otherwise destroyed and any bees or equipment not destroyed may be sold at public auction. The proceeds, after the cost of sale ~~is~~ and all costs resulting from the action are deducted, must be returned to the former owner or the former owner's estate; provided, however, that before causing the bees or equipment to be sold, the bee inspector shall give the beekeeper or agent a written notice at least five days prior to the date on which the property will be sold. This notice is to be given by registered mail or by personal service upon the owner, or person in charge, of such property.

SECTION 13. AMENDMENT. Section 4-12.2-22 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-22. Penalties - Criminal - Civil - License revocation or nonrenewal.

1. A person who violates this chapter or any rules adopted under this chapter is guilty of a class A misdemeanor.

2. In addition to criminal sanctions which may be imposed pursuant to subsection 1, a person found guilty of violating this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32.
3. The department may, in accordance with the laws of this state, maintain an appropriate civil action in the name of the state against any person violating this chapter or rules adopted under this chapter.
4. The commissioner may refuse to grant a license to any person found guilty of repeated violations of this chapter or rules adopted under this chapter, or to any person who has failed to pay an adjudicated civil penalty for violation of this chapter within thirty days after a final determination that the civil penalty is owed.
5. Any person who knowingly makes a false statement, representation, or certification in any application, record, report, or other document may be subject to the penalties provided in this chapter.

SECTION 14. AMENDMENT. Section 4-12.2-24 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-24. Service of process on beekeeper.

- 1- ~~Each beekeeper shall have and continuously maintain in this state an agent, who is authorized to accept service of any process, notice, or demand arising from the beekeeper's activities under this chapter and for which the law requires or permits service upon the beekeeper.~~
- 2- ~~The name and address of the beekeeper's authorized agent must be submitted with the application for license required under section 4-12.2-04. Failure to submit the name and address of the beekeeper's agent is a ground for the denial of a license.~~
- 3- ~~Whenever a beekeeper fails to appoint an agent in this state, or whenever~~ Whenever the beekeeper or the beekeeper's agent cannot be found with reasonable diligence, the commissioner is an agent of ~~such the~~ beekeeper and service of any process, notice, or demand may be made upon the commissioner. If any process, notice, or demand is served on the commissioner, ~~the commissioner shall forward it by certified mail to the beekeeper at the address submitted to the department under section 4-12.2-04 and service must be deemed complete whether or not the beekeeper claims the certified mail.~~
- 4- ~~The commissioner shall keep a record of all processes, notices, and demands served upon the commissioner under this section, and shall record the time of such service and the action taken.~~
- 5- This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a beekeeper in any other manner permitted by law.

SECTION 15. REPEAL. Sections 4-12.2-11 and 4-12.2-12 of the North Dakota Century Code, and sections 4-12.2-09, 4-12.2-10, and 4-12.2-13 of the 1989 Supplement to the North Dakota Century Code are repealed.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 16, 1991
Filed April 18, 1991

CHAPTER 65

HOUSE BILL NO. 1118
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

ALFALFA LEAFCUTTER BEES

AN ACT to repeal chapter 4-12.3 of the North Dakota Century Code, relating to the regulation of alfalfa leafcutter bees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 4-12.3 of the North Dakota Century Code is repealed.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 11, 1991
Filed March 11, 1991

CHAPTER 66

SENATE BILL NO. 2591

(Lindaas)

(Approved by the Committee on Delayed Bills)

POULTRY LAW PENALTIES

AN ACT to amend and reenact section 4-13.2-06 of the North Dakota Century Code, relating to violations of the poultry law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-13.2-06 of the North Dakota Century Code is amended and reenacted as follows:

~~4-13.2-06. Penalty. A violation of this chapter, or the rules and regulations promulgated thereunder, constitutes an infraction, and, in addition, the commissioner of agriculture may issue under, and may restrain by injunction the continuance of any operations covered by this chapter.~~

1. Any person who violates any provision of this chapter or rule adopted under this chapter is guilty of a class A misdemeanor.
2. Any person who violates any provision of this chapter or rule adopted under this chapter may be subject to a civil penalty not to exceed one thousand dollars for each violation. This penalty may be adjudicated by the courts or by the commissioner of agriculture through an administrative hearing conducted by an independent hearing officer pursuant to chapter 28-32.
3. The commissioner of agriculture may maintain an appropriate civil action in the name of the state against any person violating this chapter or rule adopted under this chapter.
4. Any person who knowingly makes a false statement, representation, or certification in any application, record, report, or other document is subject to the penalties provided in this chapter.
5. For purposes of this section, "person" means an individual, partnership, corporation, association, cooperative, or any business entity.

Approved April 16, 1991

Filed April 18, 1991

CHAPTER 67

SENATE BILL NO. 2342
(Senator Nelson)
(Representative Belter)

NORTHERN CROPS COUNCIL MEMBERSHIP

AN ACT to amend and reenact sections 4-14.2-02 and 4-14.2-03 of the North Dakota Century Code, relating to the northern crops institute.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.2-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.2-02. Northern crops council - Establishment - Chairman - Meetings - Compensation.

1. The northern crops council is hereby established. The council shall establish policies for the operation of the northern crops institute. The council consists of:
 - a. The president of North Dakota state university of agriculture and applied science or the president's designee.
 - b. A member of the North Dakota wheat commission selected by that commission.
 - c. A member of the North Dakota oilseed council selected by that council.
 - d. A member of the North Dakota barley council selected by that council.
 - e. A member of the North Dakota soybean council selected by that council.
 - f. The commissioner of agriculture or the commissioner's designee.
 - ~~e~~ g. Five ~~Four~~ to ~~seven~~ five producers of northern crops selected by the members designated in subdivisions a through ~~d~~ f.
 - ~~f~~ h. Up to two representatives of industries which process northern crops selected by the members designated in subdivisions a through ~~d~~ f.
2. The term of office for each member of the council, except the president of North Dakota state university of agriculture and applied science and the commissioner of agriculture, is three years, and those members are limited to two 3-year terms. Each

term of office begins with the first reorganizational meeting after the date of appointment.

3. The chairman of the council must be a member of the council elected annually by a majority vote of the council. Provided, the members designated in subdivisions a and ~~e~~ f of subsection 1 are not eligible to serve as chairman.
- ~~3-~~ 4. The council shall meet at least three times annually at such times and places as must be determined by the council and may meet in special meeting upon such call and notice as may be prescribed by rules adopted by the council. A council member unable to attend a meeting of the council may be represented by a person who has a written proxy from the member.

SECTION 2. AMENDMENT. Section 4-14.2-03 of the North Dakota Century Code is amended and reenacted as follows:

4-14.2-03. Purpose - Powers and duties. The purpose of the northern crops institute is to provide technical and marketing assistance through specialized training courses and technical services which facilitate domestic and market development and expanded sales of northern grown crops. The institute shall render services consistent with its purpose which include, but are not limited to:

1. In-plant consultations for the purpose of discussing grain crop quality problems, product manufacturing, and possible purchasing methods and standards.
2. Short courses in product milling and processing, plant management, county elevator management, grain grading, and marketing of crops.
3. Educational and vocational training programs in milling, processing, manufacturing, purchasing methods, marketing procedures, product sales techniques, and other related subjects to be conducted for users of northern crops.
4. Short-term investigations, consultation, evaluation, and research to solve technical problems involved in the maintenance of quality and utilization of northern crops.
5. Annual surveys and quality analyses of new northern crops and monitoring of the quality and condition of commodities in market channels.
6. Research on northern crop damage problems and solutions.
7. Identification of problem areas in marketing northern crops abroad.
8. Preparation of instructional, informational, and reference publications on the end use of northern crops, technical aspects of marketing northern crops, and utilization of northern crops for distribution domestically and abroad.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 68

HOUSE BILL NO. 1030
(Legislative Council)
(Interim Budget Committee on Government Finance)

STATE FORESTER RESERVE ACCOUNT

AN ACT to create and enact a new section to chapter 4-19 of the North Dakota Century Code, relating to a state forester reserve account.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-19 of the North Dakota Century Code is created and enacted as follows:

State forester reserve account. The state forester reserve account is established as a special account in the state treasury. All moneys received for charges in excess of the cost of production of seedlings from the state nursery must be deposited in the reserve account. The state forester may use the reserve account after receiving approval from the legislative council's budget section and within limits of legislative appropriations for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding as determined necessary by the state forester. If the balance of the state forester reserve account exceeds five hundred thousand dollars, charges for state nursery seedlings must not exceed estimated production costs until the account balance is less than two hundred thousand dollars, at which time the state forester may charge one hundred ten percent of production costs.

Approved March 11, 1991
Filed March 11, 1991

CHAPTER 69

SENATE BILL NO. 2520
(Lindaas, Marks, Meyer)

WHEAT COMMISSION VOTING

AN ACT to amend and reenact section 4-28-03 of the North Dakota Century Code, relating to voting entitlement for the North Dakota wheat commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-28-03. Wheat commission - Members. There is hereby created the North Dakota state wheat commission which consists of seven members. One member must be appointed or elected from each of the districts of the state established by the provisions of this chapter and one member must be appointed or elected from the state at large. Each member, except the member from the state at large, must be a bona fide resident of and a qualified elector in the district ~~he~~ the member represents, must have farming operations in such district, and must have been actually engaged in the production of wheat and have derived a substantial portion of ~~his~~ the member's income therefrom for at least five years next preceding ~~his~~ the member's appointment or election. The member from the state at large must have similar qualifications except as limited by district lines.

Not more than sixty days prior to expiration of the term of the member from the state at large, a nominating committee consisting of the commissioner of agriculture, the president of the North Dakota crop improvement association, the director of the North Dakota agricultural experiment station, the director of the North Dakota state university extension service, the president of the North Dakota farm bureau, the president of the North Dakota farmers union, and the president of the North Dakota grain dealers association, or their duly authorized representatives, shall submit to the governor a list of three names and within sixty days after expiration of the term the governor shall appoint, from the nominees so named, the member at large to the commission.

Each member of the commission shall hold office for a term of four years and until ~~his~~ the member's successor has been selected and has qualified except that the commissioners elected and serving from the first and fourth districts shall hold office for terms ending on June 30, 1984; the commissioners elected and serving from the second and fifth districts shall hold office for terms ending on June 30, 1985; and the commissioners elected and serving from the third and sixth districts shall hold office for terms ending on June 30, 1982; and the commissioner appointed and serving as the state at large member shall hold office for a term ending on June 30, 1983. No producer is entitled to serve more than three terms.

At least sixty days prior to the expiration of the term of office of a commissioner representing any district, a meeting of producers must be held in each county in the district for the purpose of electing a county representative. The county agent shall call such meeting by publishing notice in the official newspaper of the county for two successive weeks, the last publication to be not less than five nor more than ten days prior to the meeting. The meeting must be held at a central location within the county and must be called to order by the county agent. Each producer whose name appears as a wheat producer on the list of the county agricultural stabilization committee, if present in person, is entitled to vote. The county agent, in cooperation with the cooperative extension service, shall conduct all elections under this section in each county in the manner the county agent deems fair and reasonable. Votes must be canvassed by the county agent and certified by ~~him~~ the county agent with the name and post-office address of the elected county representative to the director of the North Dakota state university extension service who shall thereupon, as expeditiously as possible, call a meeting of the county representatives of the district. Notice of such meeting must be sent to each county representative by registered or certified mail not less than five days prior to the meeting which must be held at a central location within the district. At such district meeting, the county representatives shall elect one of their number as the district member of the commission. The ballots at such meeting must be canvassed by the North Dakota state university extension service and the result of election certified to the governor by the director. Additional meetings of county representatives may be called by the state wheat commission for the purpose of promoting its programs. All expenses of all such meetings and elections must be paid from commission funds. County representatives must be reimbursed for expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers. Any vacancy occurring on the commission other than by expiration of term of office must be filled by the county representatives who shall elect one of their number as the district member of the commission for the remainder of the unexpired term. If the vacancy is from the state at large, appointment must be made from three nominations submitted by the nominating committee as in the case of the original appointment.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 70

SENATE BILL NO. 2253
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

DAIRY REGULATIONS

AN ACT to amend and reenact sections 4-30-01, 4-30-02.1, 4-30-03.2, 4-30-11, 4-30-12, 4-30-15, 4-30-16, 4-30-18, 4-30-20, 4-30-21, subsection 5 of section 4-30-22, sections 4-30-26, 4-30-36, 4-30-36.2, 4-30-36.3, 4-30-37, 4-30-38.1, 4-30-45, 4-30-47, and 4-30-51 of the North Dakota Century Code, relating to dairy regulations; and to repeal section 4-30-44 of the North Dakota Century Code, relating to brands or marks for milk product containers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-30-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Adulterated milk or adulterated milk products" means any milk or cream to which water has been added, or any milk or milk product which contains any unwholesome substance, or any other inhibitors, or which, if defined by state law or by the rules of the dairy department, does not conform with its definition.
2. "Agent" means a person ~~who is~~ authorized by another person to act ~~for him~~ on behalf of another person in dealing with a third person.
3. "Approved laboratory" means a laboratory in which the entire facilities and equipment have been approved by the dairy commissioner as being adequate to perform the necessary official tests in accordance with the North Dakota laws and the rules of the dairy department.
4. "Butter" means that product usually known by that name which is manufactured exclusively from milk, cream, or both, with or without common salt, with or without additional coloring matter.
5. "Buttermilk" means a fluid product resulting from the churning of milk or cream.
6. "C.I.P." means a method of cleaning, commonly called "cleaned-in-place" whereby equipment is cleaned by circulating washing solutions and sanitizers through it and thereby eliminating the necessity of dismantling the equipment.

7. "Canned milk" means milk sealed in metal cans for sale to consumers. It is commonly a sweetened, condensed and sterile fluid or evaporated milk.
8. "Cheese" means that product which is usually known by that name which is the sound, solid and ripened product of milk and cream made by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.
9. "Cheese factory" means a place where cheese is made for commercial purposes.
10. ~~"Collecting station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.~~
- ~~11.~~ "Commercial carrier" means a person or business which is subject to regulation by state or federal authorities.
- ~~12.~~ 11. "Commissioner" means the dairy commissioner.
- ~~13.~~ 12. "Composite sample" means a mixture of single samples of milk or milk products taken from different lots or deliveries, the amount taken each time being in proportion to the amount of milk or milk products delivered. Composite samples are usually taken for determining the butterfat content of a product and are tested at a frequency of not less than once every fifteen days. Preservatives may be added.
- ~~14.~~ 13. "Concentrated milk" means a fluid product, unsterilized and unsweetened, resulting from the removal of a considerable portion of the water from milk. When recombined with water, in accordance with instructions printed on the container, the resulting product conforms with the standards for milkfat and solids-not-fat of milk.
- ~~15.~~ 14. "Concentrated milk products" means and includes homogenized concentrated milk, vitamin D concentrated milk, concentrated skim milk, concentrated flavored milk, concentrated flavored drink, and similar concentrated products made from concentrated milk or concentrated skim milk, as the case may be, and which, when recombined with water in accordance with instructions printed on the container, conform with the standards of the corresponding milk products.
- ~~16.~~ 15. "Condensed milk or evaporated milk" means milk which has been concentrated by removing water with or without the addition of sugar.
- ~~17.~~ 16. "Condensery" means a place where condensed or evaporated milk is produced or where milk is changed to a thick liquid by evaporation of a part of the water.
- ~~18.~~ 17. "Cottage cheese" means the soft uncured cheese prepared from the curd obtained by adding harmless, lactic-acid-producing bacteria, with or without enzymatic action, to pasteurized skim milk or pasteurized reconstituted skim milk.

- ~~19.~~ 18. "Cream" means the fatty liquid or semiliquid separated from milk, with or without the addition thereto of milk or skim milk.
- ~~20.~~ 19. "Cream station" means any place other than a creamery where deliveries of cream are weighed, graded, sampled, tested, or collected for purchase.
- ~~21.~~ 20. "Creamed cottage cheese" means the soft uncured cheese which is prepared by mixing cottage cheese with pasteurized cream, or with a pasteurized mixture of cream and milk or skim milk.
- ~~22.~~ 21. "Creamery" means a place where butter is made for commercial purposes.
- ~~23.~~ 22. "Cultured buttermilk" means a fluid product resulting from the souring or treatment, by a lactic acid or other culture, of pasteurized skim milk or pasteurized reconstituted skim milk.
- ~~24.~~ 23. "Cultured milk" means a fluid or semifluid product resulting from the souring or treatment, by a lactic acid or other culture, of pasteurized milk, pasteurized reconstituted milk, or pasteurized concentrated milk.
- ~~24.1.~~ 24. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.
25. "Dairy or dairy farm" means a place where one or more dairy animals are kept, a part or all of the milk or milk products from which is sold or offered for sale.
26. "Department" means the dairy department.
27. "Distributor" means a person who purchases milk or milk products and transports them to a retail dealer or a consumer.
28. "Dry buttermilk powder or dry buttermilk" means buttermilk dehydrated to dryness.
29. "Dry milk products or powdered milk products" means milk or milk products dehydrated by evaporation.
30. "Drying plant" means a place which manufactures dry milk products obtained by the removal of water from milk or milk products.
31. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milkfat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or

concentrated milk; provided, however, that this term shall not be construed to mean or include:

- a. Any distinctive proprietary food compound not readily mistaken for a dairy product, where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;
 - b. Any dairy product flavored with chocolate or cocoa, or the vitamin content of which has been increased, or both, where the fats or oils other than milkfat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredths per centum of the weight of the finished product, used as a carrier of such vitamins; or
 - c. Oleomargarine.
32. "Flavored drink or flavored dairy drink" means a beverage or confection consisting of skim milk to which has been added a syrup or flavor made from wholesome ingredients.
 33. "Flavored milk" means a beverage or confection consisting of milk to which has been added a syrup or flavor made from wholesome ingredients.
 34. "Flavored reconstituted drink or flavored reconstituted dairy drink" means a flavored drink made from reconstituted skim milk.
 35. "Flavored reconstituted milk" means a flavored milk made from reconstituted milk.
 36. "Fortified milk and milk products" means milk to which has been added vitamins or minerals in an approved method.
 37. "Frozen milk" means milk which has been processed by freezing.
 38. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating the quality of the product.
 39. "Half and half" means a product consisting of a mixture of milk and cream.
 40. "Homogenized milk" means milk which has been treated in such a manner as to ensure breakup of the fat globules to such an extent that, after forty-eight hours of quiescent storage, no visible cream separation occurs on the milk, and the fat percentage of the top one hundred milliliters of milk in a quart bottle, or of proportionate volumes in containers of other sizes, does not differ by more than ten percent of itself from the fat percentage of the remaining milk as determined after thorough mixing. The word "milk" must be interpreted to include homogenized milk.
 41. "Ice cream" means the pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry

form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients.

42. "Ice cream and ice milk mix" means and includes any frozen, or unfrozen substance, mixture, or compound which is not ice cream, milk sherbet, ice, or frozen or frosted malted milk as the same are defined by the department, regardless of the name under which it is sold or offered for sale:
 - a. If the freezing of such substance, mixture, or compound is accompanied by agitation of the ingredients thereof;
 - b. If such substance, mixture, or compound is made in imitation or semblance of ice cream;
 - c. If such substance, mixture, or compound is prepared or frozen in the same manner as ice cream is customarily prepared or frozen.
43. "Ice cream mix" means the mix from which ice cream is frozen, made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer.
44. "Ice cream plant" means a place where ice cream is made for commercial purposes.
45. "Ice milk plant" means a place where ice milk is made for commercial purposes.
46. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:
 - a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.
 - b. The packaging used resembles the packaging used for milk or for a milk product.
 - c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.
 - d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.

- e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.
47. "Instant dry powder or instant dry milk" means milk dehydrated to dryness and which dissolves "instantly" when reconstituted.
48. "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy dairy animals.
49. "Milk or cream hauler" means a person, ~~other than a milk producer or a dairy plant employee, who transports milk or milk products to or from a dairy plant or a collecting point business, or corporation that owns vehicles used to transport raw milk from a dairy farm to a dairy facility.~~
50. "Milk plant or bottling plant" means a place where milk or milk products are collected, handled, processed, stored and prepared for distribution.
51. "Milk producer" means a person who owns or controls one or more dairy animals, a part or all of the milk or milk products from which is sold, or offered for sale.
52. "Milk products or dairy products" means and includes cream, sour cream, half and half, whipped cream, concentrated milk, concentrated milk products, low fat skim milk, nonfat milk, flavored milk, flavored drink, flavored reconstituted milk, flavored reconstituted drink, buttermilk, cultured buttermilk, cultured milk, vitamin D milk, fortified milk, reconstituted or recombined milk, reconstituted cream, reconstituted skim milk, cottage cheese, creamed cottage cheese, butter, ice cream, ice milk, cheese, unsweetened condensed milk, sweetened condensed milk, evaporated milk, dry buttermilk, dry whole milk, dry skim milk, and any other product made by the addition of any substance to milk or to any of these milk products, and used for similar purposes, and designated as a milk product by the dairy commissioner.
53. "Milk solids or total solids" means the total amount of solids in milk.
54. "Misbranded milk or misbranded milk products" means any milk or milk product which carries a grade label, unless such grade label has been awarded by the dairy commissioner and not revoked, or which fails to conform in any other respect with the statements on the label.
55. "Nonfat, fat-free, or defatted milk" means skim milk which contains not more than fifteen hundredths of one percent milkfat.
56. "Overrun" means the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes.

57. "Pasteurization" as applied to milk or skim milk means the process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at such temperature continuously for at least thirty minutes; or heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment. When applied to cream for buttermaking, the cream shall be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds. Nothing contained in this definition may be construed as barring any other process which has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the dairy commissioner.
58. "Peddler" means a person who purchases milk or milk products and sells them directly to consumers at any place other than from a store, stand, or other fixed place of business.
59. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and any and all other business units, devices or arrangements.
60. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner which changes the natural, physical or chemical properties of the original product.
61. "Producer dairy" means a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing.
62. "Producer-processor" or "producer-distributor" means a producer who is also a processor or distributor.
63. "Raw milk or raw milk products" means products which have not been treated by the process of pasteurization as defined in this section.
64. "Receiving and transfer station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
65. "Reconstituted or recombined cream" means a product which results from the combination of dry cream, butter, or milkfat, with cream, milk, skim milk, or water, and which complies with the milkfat standards of cream.

- ~~65-~~ 66. "Reconstituted, or recombined, half and half" means a product resulting from the combination of reconstituted milk or reconstituted skim milk with cream or reconstituted cream.
- ~~66-~~ 67. "Reconstituted or recombined milk" means a product which results from the recombining of milk constituents with water, and which complies with the standards for milkfat and solids-not-fat of milk.
- ~~67-~~ 68. "Reconstituted or recombined skim milk" means a product which results from the recombining of skim milk constituents with water.
- ~~68-~~ 69. "Retail" means the sale of milk or milk products directly to the consumer.
70. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use or raw milk or milk products from a dairy farm to a dairy facility.
- ~~69-~~ 71. "Sampling" means a procedure whereby a portion or specimen of milk or milk products is taken for the purpose of grading or testing.
- ~~70-~~ 72. "Skim milk or low fat milk" means milk from which a portion of milkfat has been removed.
- ~~71-~~ 73. "Skim milk powder or dry skim milk" means skim milk dehydrated to dryness.
- ~~72-~~ 74. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.
- ~~73-~~ 75. "Testing" means an examination of milk, or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof.
- ~~74-~~ 76. "3A Standards" means standards which have been established for certain equipment, utensils, and other items by the 3A Sanitary Standards Committee of the International Association of Milk and Food Sanitarians, Incorporated.
- ~~75-~~ 77. "Transfer station" means a place where milk or milk products are regularly transferred from one vehicle to another. This definition shall not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
- ~~76-~~ 78. "Vitamin D milk" means milk the vitamin D content of which has been increased by an approved method.
- ~~77-~~ 79. "Whipped butter" means butter to which a harmless gas has been added.
- ~~78-~~ 80. "Whipped cream" means cream to which a harmless gas has been added to cause whipping of the product. It may also contain sugar, a harmless flavoring, or a harmless stabilizer.
- ~~79-~~ 81. "Whole milk powder or dry whole milk" means milk which has been dehydrated to dryness.

~~60-~~ 82. "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of resale.

SECTION 2. AMENDMENT. Section 4-30-02.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-02.1. Records release required with application for licensure. ~~An applicant for a license~~ A purchaser of milk or cream in North Dakota shall file with the license application a release authorizing the commissioner access to the applicant's financial records held by financial institutions, accountants, and others. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing the applicant or in the course of an investigation of the applicant due to a complaint against the applicant or when based upon evidence establishing probable cause of a violation of this chapter. Information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to any state agency and to any prosecutorial official requiring the information for use in performing official duties.

SECTION 3. AMENDMENT. Section 4-30-03.2 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.2. Statement of business operations or financial condition - Filing - Review by Bank of North Dakota - Confidential - Audited. Each applicant for a license under section 4-30-02 who purchases milk or cream from a dairy producer, ~~except cream stations,~~ shall annually file with the department an audited financial statement prepared by an independent certified public accountant or licensed public accountant in accordance with generally accepted accounting practices and principles, verified by the accountant as accurately representing business operations and financial conditions of the plant business for which the statement is rendered, prepared as of the close of the plant's most recent fiscal year. In lieu of filing an audited financial statement an applicant may file other forms of security as provided in section 4-30-03.3. All audited financial statements shall be reviewed by the Bank of North Dakota. All statements shall be confidential and shall not be open for public inspection. The department may require additional statements to be audited by a certified public accountant or a licensed public accountant. ~~The applicant shall pay the cost of any statements and audits made by the department.~~

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

4-30-11. Attorney general to represent dairy department and may employ assistants - Dairy department need not pay court costs. The attorney general shall represent the dairy department in any action or proceeding brought under the provisions of section 4-30-04, and ~~he~~ may employ outside legal assistance when ~~he deems it necessary to do so,~~ and may deduct the expense in connection therewith from the trust fund. The department is not required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought by it under the provisions of section 4-30-04 when such fee, cost, or disbursement accrues to the state or to a county of this state.

SECTION 5. AMENDMENT. Section 4-30-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-12. License needed to sample, grade haul, or test - Training - Examination - Term - Fee. No person shall sample, grade haul, or test milk or milk products for the purpose of determining the value or grade without obtaining a license from the dairy department. In case of illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six days in one calendar year, unless specific approval for a longer period is obtained from the commissioner. The licensee is responsible for the acts of his substitute. An applicant for license shall file an application with the department stating the type of sampling, grading hauling, or testing he the applicant wishes to be licensed for. Before a license is issued, the applicant sampler shall receive training in the sampling or grading of milk or milk products as may be required by the department, and shall pass a written examination prepared and given by the department. He The sampler shall show that he is conversant with knowledge of the requirements of this chapter which pertain to sampling, grading, or testing, and must prove by actual demonstration that he the sampler is competent and qualified to perform each type of sampling, grading, and testing listed on his application. The commissioner shall then issue a license which shall state the types of sampling, grading hauling, or testing which the applicant has proven to be able to perform. Additions may be added to the application form and license, without charge, after the license has been issued, upon the request of the licensee and after he has taken any additional training and has satisfactorily passed the required examinations for each addition. Examinations shall be given by the department at times and places as the department shall determine. A licensee need not take any examinations when renewing his license unless his ability at performing sampling, grading, or testing is questioned by the commissioner or his assistants. All testers and samplers are required to attend a training session sponsored by the department every two years. Retraining or retesting or both may be required by the commissioner at any time when the commissioner reasonably determines it to be necessary. Licenses issued under this section shall expire on December thirtieth of each year. Testers' licenses must be posted conspicuously in the licensee's place of operation, and are not transferable. Samplers' licenses must be carried by the sampler at all times during sampling activities and are not transferable. The fee for the annual license is five ten dollars, and a one five dollar penalty fee is applied after the thirty-first day of January if renewals are not paid prior to that date.

SECTION 6. AMENDMENT. Section 4-30-15 of the North Dakota Century Code is amended and reenacted as follows:

4-30-15. Suspension or revocation of license - Judicial review - Emergency order. Any proceedings under this chapter for the suspension or revocation of any license, or to otherwise determine compliance with this chapter and the rules and regulations of the dairy department, must be conducted in accordance with the provisions of chapter 28-32 and appeals may be taken as therein provided. Where an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that action be taken as necessary to meet the emergency. Notwithstanding any provision of this chapter, the order is effective immediately, but on application to the department an interested person must be afforded a hearing before the department within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing.

Any person, firm, or corporation whose license for any place of business is suspended is not eligible during the period of the suspension to engage in the purchase, sale, processing, manufacturing, sampling, grading, or testing of milk or milk products at the place of business activities allowed by the suspended license either personally, or indirectly by having a financial interest in the business.

SECTION 7. AMENDMENT. Section 4-30-16 of the North Dakota Century Code is amended and reenacted as follows:

4-30-16. Witnesses - Subpoena. The commissioner hearing officer has the power to subpoena witnesses, to compel their attendance, and to administer oaths as provided for in chapter 28-32.

SECTION 8. AMENDMENT. Section 4-30-18 of the North Dakota Century Code is amended and reenacted as follows:

4-30-18. Sampling and testing procedures - Equipment - Supplies. The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, grading hauling, or testing of milk or milk products must conform to that described in the latest edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association, incorporated, a copy of which shall be on file in the department. No equipment, chemicals, or other apparatus or substance used in the sampling, grading hauling, or testing of milk or milk products which is not in conformance with the requirements of this chapter may be sold or offered for sale. The commissioner through the adoption of rules may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, grading hauling, or testing procedures or equipment. The commissioner, where he deems it appropriate, may check calibration of farm bulk milk tanks and equipment.

SECTION 9. AMENDMENT. Section 4-30-20 of the North Dakota Century Code is amended and reenacted as follows:

4-30-20. Sampling of milk. Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the latest edition of "Standard Methods for the Examination of Dairy Products" published by the American Public Health Association, Incorporated public health association, incorporated. Records must be kept which readily identify the sample with the those items used to determine payment for the milk. Such items must include: weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk. All milk samples must be kept for at least twenty-four hours after testing has been completed.

SECTION 10. AMENDMENT. Section 4-30-21 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-21. Standards for the production of cream for manufacturing purposes. Cream for manufacturing purposes must be separated from the milk of healthy cows and from herds which are kept in conformance with the laws of North Dakota and the rules of the board of animal health and the state dairy department. Cows must not be fed any hay, silage, or other feed which contains any unwholesome substance. Milk from cows treated with an

antibiotic ~~or~~, other drug, or other inhibitor must be excluded from the market for at least seventy-two hours unless specifically stated otherwise on the label of such antibiotic or drug. The cowyards, premises, and buildings must be kept reasonably clean. Utensils, equipment, and other items used in handling the milk or cream must be kept clean, in good condition, and free of rust. New utensils and equipment must subscribe to 3A standards if such standards have been established for said utensils or equipment. Udders must be washed before milking. The milk and cream must be protected at all times from contamination with flies, rodents, and sediment, and from extremes of temperature.

SECTION 11. AMENDMENT. Subsection 5 of section 4-30-22 of the North Dakota Century Code is amended and reenacted as follows:

5. All regulatory officials and all persons, firms, or corporations authorized to purchase cream shall add a harmless vegetable color to all "unlawful cream" offered for sale. Cream so colored must then be returned to the party offering it for sale. All licensed cream buyers shall keep a record of cream or butterfat purchased as to grade and sediment test. Such record must be available for inspection for ~~six~~ twelve months from the date of purchase.

SECTION 12. AMENDMENT. Section 4-30-26 of the North Dakota Century Code is amended and reenacted as follows:

4-30-26. Purchases of cream - Prices of grades to be kept posted. The prices being offered for butterfat at every cream purchasing establishment must be properly posted. If a different price is being paid at any one cream purchasing establishment owned, operated, or controlled by the same person, firm, or corporation for butterfat shipped directly, than is being offered for butterfat delivered at such point, all direct shipment and delivered prices must be so posted. All prices must be posted in a place ~~where they can be clearly seen from the street~~ available to the general public. A price different from that so posted must not be paid and at no time may a price differential between grades be less than one cent per pound [.45 kilograms] of butterfat.

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

4-30-36. Standards for grade A milk and milk products - Adoption of amendments. Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the "Grade A Pasteurized Milk Ordinance, ~~1978~~ 1989 Recommendations of the United States Public Health Service" and all supplements added thereto except that the minimum requirements for solids not fat in all grade A milk is eight and one-half percent and the butterfat content of grade A whole milk is three and one-fourth percent. The ~~dairy~~ commissioner may adopt as dairy department regulations other standards in addition to any amendments, supplements to, or new editions of said milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade "A" milk and milk products.

SECTION 14. AMENDMENT. Section 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines. The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Supplies - ~~1978~~ 1989 Edition" and the sampling of milk and dairy products must be in accordance with the guidelines recommended in the latest edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.

SECTION 15. AMENDMENT. Section 4-30-36.3 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines. The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the latest edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~1978~~ 1989 Edition".

SECTION 16. AMENDMENT. Section 4-30-37 of the North Dakota Century Code is amended and reenacted as follows:

4-30-37. Quality records to be kept - Term. Adequate records for testing and grading in conformance with this chapter and the rules and regulations of the dairy department must be kept by each business sampling, or testing, or grading milk or cream for at least ~~six~~ twelve months in a manner approved by the dairy commissioner.

SECTION 17. AMENDMENT. Section 4-30-38.1 of the North Dakota Century Code is amended and reenacted as follows:

4-30-38.1. Milk haulers - License required - Commissioner to adopt rules. No ~~natural~~ person shall own or operate any tank truck, bulk milk hauler truck, or other vehicle used or designed to carry bulk raw milk without a license issued by the department. The commissioner shall promulgate rules governing the operation, inspection, design, and licensure of such persons. The license of any person operating a vehicle in violation of this section or the rules of the department is subject to revocation or suspension in accordance with procedure established by law. A license to haul milk issued under this section may be issued in conjunction with or as part of any license to sample, grade, or test milk or milk products issued pursuant to section 4-30-12.

SECTION 18. AMENDMENT. Section 4-30-45 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-45. Labeling of milk and milk products for sale at retail. A package, carton, box, or any other container which holds milk or milk products for sale at retail may not bear any statement, design, or device regarding the product, or ingredients and substances contained therein, which is false, deceiving, misleading, or confusing in any particular, or which infers falsely as to the locality, state, or county of its origin. All containers must be so labeled as to clearly show the proper and correct net

weight, volume, quantity, or size of the products contained therein as the case may be and they must be filled as full as practicable. All containers must be labeled so as to clearly show the name of the product, its correct grade, if a grade is stated, and whether or not the product is raw, pasteurized, homogenized, reconstituted, or condensed. A container containing milk or milk products produced from a dairy animal other than a cow must be labeled so as to designate the dairy animal from which the milk or milk product was produced. All containers must be readily identifiable with the dairy plant which last processed, manufactured, or packaged the product either by having the name and location of said plant printed on the container or by registering with the dairy department, a code or mark of identity, which may be a number, name, letter, or any other mark of identity and having this mark plainly painted or stamped on each container. The dairy commissioner shall keep record of all such marks of identity and may not register any mark which is identical to or is so similar to any mark already registered by another person that it would be difficult to differentiate between them. Lettering on all labels on or attached to all such containers must be readily legible and all information required by this section must appear on at least one single panel of all containers. No person, firm, or corporation may use, in connection or association with the sale, exposure for sale, or advertisement of any substance designed to be used as a substitute for butter, the word "butter", "creamery", or "dairy", except as otherwise required by the laws of this state, nor use the name or representation of any breed of dairy cattle, any combination of such word or words and representation, or any other words, or symbols, or combination thereof commonly used in the sale of butter.

SECTION 19. AMENDMENT. Section 4-30-47 of the North Dakota Century Code is amended and reenacted as follows:

4-30-47. Dispute over test - Official test made - By whom - Other tests - Fees. If a disagreement between a seller and a buyer or the legal representatives of both or either arises over the percentage of butterfat contained in any quantity of milk or cream sold or offered for sale at the request of the owner and in his the owner's presence, a sample of such milk or cream obtained as provided in sections 4-30-19 and 4-30-20 and mutually agreed upon by the interested parties as being a representative sample, must be sealed satisfactorily and mailed by the buyer to the office of the dairy commissioner. There must accompany each sample a statement giving the name and address of the seller and the buyer of the milk or cream in question, the net weight thereof, the percentage and amount of butterfat contained therein, the price per pound [.45 kilogram] for butterfat, and the amount of money paid or offered in payment for the same and bearing the signature of the seller and the buyer. The commissioner or his the commissioner's agent shall determine the percentage of butterfat contained in the sample and shall make a report of the result in triplicate, the original to be filed in his the commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk or cream. The percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the making of the official butterfat test and any other tests required must be in such amount as set by regulation of the dairy commissioner, considering the actual costs of making the test, and such fee must be mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat or other test.

SECTION 20. AMENDMENT. Section 4-30-51 of the North Dakota Century Code is amended and reenacted as follows:

4-30-51. Commissioner to investigate complaint. Upon receiving a written statement claiming that any provisions of this chapter or the rules and regulations of the dairy department have been violated, the ~~dairy~~ commissioner shall investigate ~~said~~ the complaint as thoroughly and as soon as possible and practicable. If the commissioner finds upon conducting such investigation that the provisions of this chapter or the rules and regulations of the dairy department have been violated, ~~he shall~~ the commissioner may take any action ~~he deems~~ deemed appropriate.

SECTION 21. REPEAL. Section 4-30-44 of the North Dakota Century Code is repealed.

Approved April 3, 1991
Filed April 4, 1991

CHAPTER 71

SENATE BILL NO. 2227
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

PESTICIDE REGULATION

AN ACT to amend and reenact sections 4-35-05, 4-35-12.1, subsection 13 of section 4-35-15, sections 4-35-16, 4-35-20, and subsections 4 and 6 of section 4-35-24 of the North Dakota Century Code, relating to the regulation of pesticides.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-05. Definitions. As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first aid treatment.
- 2.1. "Applicator" means any person who applies a pesticide to land.
3. "Beneficial insects" means those insects which, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
4. a. "Certified applicator" means any individual who is certified under this chapter as authorized to use any restricted use pesticide covered by the applicator's certification.
b. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
c. "Commercial applicator" means a certified applicator, whether or not the applicator is a private applicator with respect to some uses, who uses any pesticide which is classified for restricted use for any purpose or on any property other than as provided for by subdivision b.
5. "Dealer" means any person who sells a pesticide to an end user.

- ~~5-~~ 6. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
- ~~6-~~ 7. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
- ~~7-~~ 8. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
- ~~8-~~ 9. "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.
- ~~9-~~ 10. "Environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.
- ~~10-~~ 11. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land, but shall not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.
- ~~11-~~ 12. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
- ~~12-~~ 13. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta, comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.
- ~~13-~~ 14. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- ~~14-~~ 15. "Labeling" means the label and all other written, printed, or graphic matter:
- a. Accompanying the pesticide or device; and
 - b. To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board; the United States environmental

protection agency; the United States departments of agriculture and interior; the United States department of health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

- ~~15-~~ 16. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.
- ~~16-~~ 17. "Mixture" means a diluted pesticide combination.
18. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
- ~~17-~~ 19. "Person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons, whether or not incorporated.
- ~~18-~~ 20. "Pest" means:
- a. Any insect, snail, slug, rodent, nematode, fungus, weed; or
 - b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living man or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
- ~~19-~~ 21. "Pesticide" means:
- a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
 - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- ~~20-~~ 22. "Pesticide dealer" means any person who distributes restricted use pesticides.
- ~~21-~~ 23. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
- ~~22-~~ 24. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.
- ~~23-~~ 25. "Public operator" means a certified applicator who applies restricted use pesticides as an employee of a state agency,

municipal corporation, public utility, or other governmental agency.

- ~~24-~~ 26. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the board.
27. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- ~~25-~~ 28. "Snails or slugs" include all harmful mollusks.
- ~~26-~~ 29. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- ~~27-~~ 30. "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
- ~~28-~~ 31. "Weed" means any plant which grows where not wanted.
- ~~29-~~ 32. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including, but not limited to, mammals, birds, and aquatic life.

SECTION 2. AMENDMENT. Section 4-35-12.1 of the North Dakota Century Code is amended and reenacted as follows:

4-35-12.1. "Stop-sale" orders. Where an emergency exists requiring immediate action to protect the public health and safety, based on inspection or tests, the commissioner of agriculture may issue and enforce a stop-sale order to the distributor of any pesticide when the commissioner finds that the pesticide is being offered for sale in violation of this chapter, and the order must direct that the pesticide be held at a designated place until released in writing by the commissioner. The owner or custodian of the pesticide may petition a court of competent jurisdiction in the county where the pesticide is found for an order releasing the product for sale in accordance with the findings of the court. Whenever any pesticide or device is found by the commissioner and there is reason to believe on the basis of inspection or tests that the pesticide or device is in violation of any of the provisions of this chapter, or when the registration of the pesticide has been canceled by the state or United States environmental protection agency or has been suspended, the commissioner may issue a written or printed "stop-sale, use, or removal" order to any person who owns, controls, or has custody of the pesticide or device, and after receipt of the order, no person may sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

SECTION 3. AMENDMENT. Subsection 13 of section 4-35-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13. Knowingly made false statements during or after an inspection concerning any infestation of pests found on the land.

SECTION 4. AMENDMENT. Section 4-35-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-16. Commercial applicators to keep records - Duration - Submission to commissioner. The board shall require the holders of certificates, ~~except private applicators,~~ to maintain records ~~with respect to applications and sales of restricted use pesticides.~~ of sales of restricted use and special exemption pesticides and all commercial applications of pesticides. ~~The board may also require restricted use pesticide application records of private applicators.~~ Such relevant information as the board may deem necessary may be specified by rule. The records must be kept for a period of three years from the date of the application or sale of the restricted use pesticide to which the records refer. Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

SECTION 5. AMENDMENT. Section 4-35-20 of the North Dakota Century Code is amended and reenacted as follows:

4-35-20. Discarding and storing of pesticides ~~and pesticide containers, and pesticide rinsate.~~ No person may discard, store, display, or permit the disposal of surplus pesticides ~~and~~ empty pesticide containers and devices, or pesticide rinsate in such a manner as to endanger ~~man and his~~ the environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. The board shall promulgate regulations governing the discarding, storage, display, or disposal of any pesticide, pesticide rinsate, pesticide containers, or devices.

SECTION 6. AMENDMENT. Subsections 4 and 6 of section 4-35-24 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. For the purpose of carrying out the provisions of this chapter, the commissioner may enter upon any public or private premises at reasonable times, in order to:
 - a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which such equipment is stored or used.
 - b. Inspect or sample lands actually or reported to be exposed to pesticides.
 - c. Inspect storage or disposal areas.
 - d. Inspect or investigate complaints of injury to humans or land.
 - e. Sample Draw samples of a reasonable amount of tank mix pesticides and tank mixes being applied or to be applied without compensation to the applicator for values less than three dollars. If the value of the sample is over three dollars, the applicator has the option of being given a receipt to be paid at a later date, or of not being reimbursed.
 - f. Observe the use and application of a pesticide.

- g. Have access for the purpose of inspecting any premises or other place where pesticides or devices are held for distribution, sale, or for use or for the purpose of inspecting and obtaining samples of any pesticides packaged, labeled, and released for shipment and samples of any containers or labeling for such pesticides.
6. Should When access is refused or in situations where the commissioner feels critical enforcement documentation may be lost, the commissioner be denied access to any land or records pertaining to pesticide application and sales where such access was sought or the commissioner's designated agent for the purposes set forth in this chapter, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such land or records for said purposes. The court may, upon such application and upon compliance with the provisions of chapter 29-29.1, issue the search warrant for the purposes requested.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 72

SENATE BILL NO. 2025
(Legislative Council)
(Interim Agriculture Committee)

PESTICIDE CONTAINER DISPOSAL PROGRAM

AN ACT relating to an agricultural pesticide and pesticide container disposal program; to provide an appropriation; to provide a statement of legislative intent; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Agricultural pesticide and pesticide container disposal pilot project - Compensation.

1. The words used in this section are as defined in North Dakota Century Code section 4-35-05.
2. In consultation with an advisory board consisting of the state health officer; the state engineer; the state geologist; the director of the North Dakota state university extension service; the administrative officer of the state soil conservation committee; the attorney general; and two individuals representing agribusiness organizations, one individual representing a farm organization, and one member of the legislative assembly, all of whom must be selected by the commissioner of agriculture, the commissioner of agriculture shall design and implement a project to:
 - a. Collect and either recycle or dispose of unused pesticides and empty, triple-rinsed or pressure-rinsed agricultural pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the containers and pesticides. The commissioner may limit the type and quantity of containers and pesticides acceptable for collection.
 - b. Demonstrate and promote proper agricultural pesticide container management. The commissioner, in consultation with the director of the North Dakota state university extension service, shall develop informational and educational materials to promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
 - c. Evaluate current pesticide container management methods and the cause and the extent of problems associated with pesticide containers. The commissioner shall conduct surveys and collect information on proper and improper pesticide container rinsing, collection, storage, and disposal.

- d. Evaluate recycling options and investigate markets and business opportunities to encourage recycling of containers for resource recovery.
3. Any entity collecting the pesticide containers shall manage and dispose of the containers in compliance with applicable federal and state requirements. State agencies, when called upon, shall assist the commissioner in implementing the pilot project.
4. For services rendered in connection with the design and implementation of the pilot project, the legislator member of the advisory board is entitled to compensation and expense reimbursement in the amounts provided for in section 54-35-10 and the other members selected by the commissioner of agriculture are entitled to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

SECTION 2. Project scope and evaluation - Proposed legislation. The project must occur in areas to be determined by the commissioner of agriculture in consultation with the persons listed in subsection 2 of section 1 of this Act. Before December 1, 1992, the commissioner of agriculture shall determine whether the project implemented under section 1 of this Act should be continued or expanded to a statewide project. If the commissioner determines that the project should be continued or expanded, the commissioner shall recommend appropriate legislation to the fifty-third legislative assembly.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the environment and rangeland protection fund, not otherwise appropriated, the sum of \$600,000, or so much thereof as may be necessary, to the commissioner of agriculture for the purpose of analyzing and disposing of unused pesticides and triple-rinsed or pressure-rinsed pesticide containers for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 4. LEGISLATIVE INTENT. It is the intent of the legislative assembly that a greater emphasis and effort be placed on the recycling or disposal of unused pesticides.

SECTION 5. EXPIRATION DATE. This Act is effective through June 30, 1993, and after that date is ineffective.

Approved April 16, 1991
Filed April 18, 1991

CHAPTER 73

SENATE BILL NO. 2458
 (Senators Dotzenrod, Stenehjem, Marks)
 (Representatives Dalrymple, Nowatzki)

ORGANIC FOODS

AN ACT to create and enact two new sections to chapter 4-38 of the North Dakota Century Code, relating to organic foods; to amend and reenact sections 4-38-02 and 4-38-03 of the North Dakota Century Code, relating to organic foods; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-38-02 of the North Dakota Century Code is amended and reenacted as follows:

4-38-02. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Certifying agent" means a person or persons registered with the North Dakota commissioner of agriculture who have demonstrated to the North Dakota commissioner of agriculture that they have the staff and expertise to carry out the requirements of certification as outlined in this chapter.
2. "Organic food" means any food product, including meat, dairy, or a beverage, that is marketed or sold using the term or a derivative of the term organic food in the labeling or advertising of the product.
- ~~3.~~ "Pesticides" means synthetic herbicides, insecticides, and fungicides, and all other toxic materials. The term does not include material from naturally derived substances.
- ~~4.~~ "Synthetic fertilizer" means all nitrogen sources derived from ammonia; phosphorus derived from the acid treatment of rock phosphates; refined or highly soluble potassium salts, whether manufactured or mined; and all other chemically refined, synthesized, or acid treated material.
- ~~5.~~ "Vendor" means any person who sells organic food to a consumer or another vendor, or who processes, manufactures, or otherwise transforms an organic food on behalf of a seller of organic food.
- ~~6.~~ "Verification" means a system maintained by the vendor of organic foods that demonstrates compliance to standards under which product identity may be traced from farm to consumer, using a series of documents that record information about the vendor's production and processing techniques, including records documenting inspection visits by the vendor or the vendor's designee a certifying agent,

records documenting inventory, and records documenting adherence to standards.

SECTION 2. AMENDMENT. Section 4-38-03 of the North Dakota Century Code is amended and reenacted as follows:

4-38-03. Production standards. The minimum standards qualifying a product to be labeled as an organic food require that:

1. The product was grown or raised, or is composed of ingredients that were grown or raised, without the use of synthetic fertilizers, pesticides, hormones, antibiotics, growth stimulants, arsenicals, or other synthetic products. However, treated seed may be used if untreated seed is not available.
2. The soil on which an organic food is grown or raised must have been free of synthetic fertilizers, pesticides, hormones, antibiotics, growth stimulants, and arsenicals for a minimum of three years prior to the harvest of the organic food.
3. ~~No synthetic products were used in the storage, processing, or manufacturing process.~~ The producer or handler must be certified by a registered certifying agent.
4. The producer or handler seeking certification under this chapter has submitted an organic plan to the certifying agent. The plan must be reviewed by the certifying agent who shall determine if the plan meets the requirements of the program. All farm plans must include provisions to foster soil fertility, primarily through the management of the organic content of the soil through proper tillage, crop rotation, and manuring. All handling plans must contain provisions designed to ensure that agricultural products that are sold or labeled as organically produced are purchased and handled in a manner that is consistent with the purposes of this chapter.

SECTION 3. A new section to chapter 4-38 of the North Dakota Century Code is created and enacted as follows:

Violations - Ineligibility - Reporting of violations.

1. Misuse of label. Any person who knowingly sells or labels a product as organic, except in accordance with this chapter, is guilty of a class B misdemeanor. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person including a producer, handler, or vendor must be deemed to be the act, omission, or failure of the employer as well as the person employed. In addition to guilt of a class B misdemeanor, a person who violates this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding.
2. Ineligibility. Any person who:
 - a. Makes a false statement;

- b. Attempts to have a label indicating that an agricultural product is organically produced affixed to the product that the person knows, or should have reason to know, to have been produced or handled in a manner that is not in accordance with this chapter; or
- c. Otherwise violates the purposes of the applicable organic certification program as determined by the commissioner after notice and an opportunity to be heard, is not eligible, for a period of five years from the date of the occurrence, to receive certification under this title with respect to any farm or handling operation in which the person has an interest. The commissioner may reduce or eliminate the period of ineligibility in this subsection if the commissioner determines that reduction or elimination is in the best interests of the applicable organic certification program.
3. Reporting of violations. A certifying agent shall immediately report any violations of this chapter to the commissioner.
4. Violations by certifying agent. A certifying agent who violates a provision of this chapter or who falsely or negligently certifies any farming or handling operation that does not meet the terms and conditions of the applicable organic certification program as an organic operation, as determined by the commissioner, after notice and an opportunity to be heard:
- a. Is subject to revocation of registration as a certifying agent under this chapter; and
- b. Is ineligible to be registered as a certifying agent under this chapter for a period of not less than three years subsequent to the date of revocation.

SECTION 4. A new section to chapter 4-38 of the North Dakota Century Code is created and enacted as follows:

Rules. The commissioner of agriculture may adopt rules to implement this chapter which must at least comply with title XXI of the Food, Agriculture, Conservation, and Trade Act of 1990.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 74

HOUSE BILL NO. 1065
(A. Olson)

GINSENG CULTIVATION

AN ACT to create and enact a new chapter to title 4 of the North Dakota Century Code, relating to cultivated ginseng; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 4 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Commissioner" means the commissioner of agriculture.
2. "Cultivated ginseng" means ginseng dry root, live root, tissue culture, or seed propagated in this state.
3. "Dealer" means a person who buys cultivated ginseng for the purpose of resale. The term does not include a person who buys cultivated ginseng dry root, solely for the purpose of final retail sale to consumers in the United States.
4. "Ginseng" means *Panax quinquefolius* L.
5. "Grower" means a person who grows cultivated ginseng and who sells cultivated ginseng to a dealer.
6. "Out-of-state cultivated ginseng" means cultivated ginseng grown or nurtured outside this state.

Growers and dealers - Registration - Fees. A person who desires to act as a grower or a dealer shall register with the commissioner on a form provided by the commissioner. A person who acts as a dealer and a grower shall register as both. Each dealer shall pay a registration fee of twenty-five dollars. Each grower shall pay a registration fee of ten dollars. The fee must be submitted with the registration form. The commissioner shall assign a registration number to each person registered. Each dealer's registration is valid for one year from the date of issuance. Each grower's registration is valid for two years from the date of issuance.

Sale or shipment of cultivated ginseng.

1. Upon request, the commissioner shall provide each registered grower and dealer with shipment certificates and report forms. The commissioner shall stamp each shipment certificate and report form with the registration number of the grower or dealer who requests the form. A shipment certificate and report form is valid only if

used during the registration period for which the stamped registration number of the grower or dealer is issued. The commissioner may charge a fee not exceeding five dollars to recover the costs related to providing shipment certificates and report forms.

2. Except as provided in subsection 6, no person may sell or ship cultivated ginseng to a dealer or ship cultivated ginseng out of this state unless the cultivated ginseng is accompanied by a completed shipment certificate provided by the commissioner. The shipment certificate must specify the year in which the cultivated ginseng was harvested. The person selling or shipping the cultivated ginseng shall submit a report form describing to the commissioner the source of all cultivated ginseng included in the sale or shipment. The report must be within thirty days after the sale or shipment. Each person who completes a shipment certificate or report form must retain a duplicate copy for three years from the date of the sale or shipment.
3. No dealer may purchase or receive cultivated ginseng unless it is accompanied by a completed shipment certificate. A dealer shall retain a copy of each shipment certificate received for a period of three years from the date of receipt.
4. No dealer may purchase or receive out-of-state cultivated ginseng unless it is accompanied by a valid certificate, issued by the state of origin, certifying that the shipment consists solely of out-of-state cultivated ginseng. The certificate must include the source, year of harvest, and dry weight of the out-of-state cultivated ginseng included in the shipment. The dealer must retain a copy of each certificate received for a period of three years from the date of receipt.
5. No person may import out-of-state cultivated ginseng into this state unless the imported shipment is accompanied by a valid certificate issued by the state of origin. No person may ship out-of-state cultivated ginseng using a shipment certificate issued by this state.
6. Subsection 2 does not apply to a person who sells or ships cultivated ginseng dry root to a person outside this state who is buying or receiving the cultivated ginseng dry root solely for the purpose of final retail sale to consumers in the United States, if the person selling or shipping keeps a record of the sale or shipment which includes the following:
 - a. The name and address of the purchaser or recipient.
 - b. The dry weight of the cultivated ginseng dry root included in the sale or shipment.
 - c. The date of the sale or shipment.
 - d. The source of all of the cultivated ginseng dry root included in the sale or shipment.

- e. The year in which the cultivated ginseng dry root was harvested.

Inspection or submission of records. Each dealer or grower shall make all records, including records that are located outside of this state, required to be kept under this chapter available for inspection or copying by the commissioner upon the commissioner's request.

Certain records not public information. Documents and records relating to transactions in cultivated ginseng dry root submitted to the commissioner pursuant to this chapter by a grower or dealer are not public information.

Enforcement actions. The commissioner may deny, suspend, or revoke the registration of any dealer or grower and may invalidate shipment certificates completed by the dealer or grower, if the commissioner finds that the dealer or grower has violated this chapter. The commissioner may, without prior notice or hearing, suspend or invalidate the registration and shipment certificates of a dealer or grower if the commissioner finds that there is a need for immediate action to prevent a violation of this chapter. Any action of the commissioner pursuant to this section must be in writing. Any person who receives a notice under this section is entitled to a hearing before the commissioner if requested within ten days after receipt of the notice. Hearings must be conducted within ten days after receipt of a request for the hearing. Enforcement of any action may not be stayed pending the hearing.

Penalties.

1. A person who violates this chapter, or rules adopted to implement this chapter, is guilty of an infraction.
2. A person who violates this chapter, or rules adopted to implement this chapter, is subject to a civil penalty not to exceed five hundred dollars. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32.
3. The commissioner may maintain an appropriate civil action in the name of the state against any person violating this chapter or rules adopted to implement this chapter.

Approved March 11, 1991
Filed March 11, 1991