

Introduced by

1 A BILL for an Act

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

3 **SECTION 1. AMENDMENT.** Section 4-18.1-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 ~~**4-18.1-01. Declaration of policy relating to milk.**~~

6 It is hereby declared:

7 1. ~~That milk is a necessary article of food for human consumption.~~

8 2. ~~That the production and maintenance of an adequate supply of healthful milk of proper
9 chemical and physical content, free from contamination, is vital to the public health
10 and welfare.~~

11 3. ~~That the production, transportation, processing, storage, distribution, and sale of milk,
12 in the state of North Dakota, is an industry affecting the public health and interest.~~

13 4. ~~That unfair, unjust, destructive, and demoralizing trade practices have been and are
14 now being carried on in the production, transportation, processing, storage,
15 distribution, and sale of milk, milk products, and frozen dairy products, which trade
16 practices constitute a constant menace to the health and welfare of the inhabitants of
17 this state and tend to undermine the sanitary regulations and standards of content and
18 purity of milk.~~

19 5. ~~That health regulations alone are insufficient to prevent disturbances in the industry
20 and to safeguard the consuming public from further inadequacy of a supply of this
21 necessary commodity.~~

22 6. ~~That it is the policy of this state to promote, foster, and encourage the intelligent
23 production and orderly marketing of milk and cream, to eliminate speculation and
24 waste, and to make the distribution thereof between the producer and consumer as~~

1 direct as can be efficiently and economically done, and to stabilize the marketing of
2 such commodities.

3 7. ~~That investigations have revealed and experience has shown, that due to the nature of~~
4 ~~milk and the conditions surrounding the production and marketing of milk, and due to~~
5 ~~the vital importance of milk to the health and well-being of the citizens of this state, it is~~
6 ~~necessary to invoke the police powers of the state to provide a constant supervision~~
7 ~~and regulation of the milk industry of the state to prevent the occurrence and~~
8 ~~recurrence of those unfair, unjust, destructive, demoralizing, and chaotic conditions~~
9 ~~and trade practices within the industry, which have in the past affected the industry~~
10 ~~and which constantly threaten to be revived within the industry and to disrupt or~~
11 ~~destroy an adequate supply of pure and wholesome milk to the consuming public and~~
12 ~~to the citizens of this state.~~

13 8. ~~That milk is a perishable commodity, which is easily contaminated with harmful~~
14 ~~bacteria, which cannot be stored for any great length of time, which must be produced~~
15 ~~and distributed fresh daily, and the supply of which cannot be regulated from day to~~
16 ~~day, but, due to natural and seasonal conditions, must be produced on a constantly~~
17 ~~uniform and even basis.~~

18 9. ~~That the demand for this perishable commodity fluctuates from day to day and from~~
19 ~~time to time making it necessary that dairy farmers, processors, and distributors~~
20 ~~produce and carry on hand a surplus of milk in order to guarantee and ensure to the~~
21 ~~consuming public an adequate supply at all times, which surplus must of necessity be~~
22 ~~converted into byproducts of milk at great expense and at times at a loss to the dairy~~
23 ~~farmer, processor, and distributor.~~

24 10. ~~That this surplus of milk, though necessary and unavoidable, unless regulated, tends~~
25 ~~to undermine and destroy the milk industry, which causes producers to relax their~~
26 ~~diligence in complying with the provisions of the health authorities and oftentimes to~~
27 ~~produce milk of an inferior and unsanitary quality.~~

28 11. ~~That investigation and experience have further shown that, due to the nature of milk~~
29 ~~and the conditions surrounding its production and marketing, unless dairy farmers,~~
30 ~~processors, distributors, and others engaged in the marketing of milk are guaranteed~~
31 ~~and ensured a reasonable profit on milk, both the supply and quality of milk are~~

1 affected to the detriment of, and against the best interest of the citizens of this state
2 whose health and well-being are thereby vitally affected.

3 12. That, where no supervision and regulation is provided for the orderly and profitable
4 marketing of milk, past experience has shown that the credit status of dairy farmers,
5 processors, and distributors of milk is adversely affected to a serious degree, thereby
6 entailing loss and hardship upon all within the community with whom these dairy
7 farmers, processors, and distributors carry on business relations.

8 13. That, due to the nature of milk and the conditions surrounding its production and
9 distribution, the natural law of supply and demand has been found inadequate to
10 protect the industry in this and other states, and in the public interest it is necessary to
11 provide state supervision and regulation of the milk industry in this state.

NOTE: In accordance with Legislative Council drafting guidelines, statements of purpose
and declarations of policy are not to be used.

12 **SECTION 2. AMENDMENT.** Section 4-18.1-02 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **~~4-18.1-02. Purpose.~~**

15 The purpose of this chapter is to protect and promote public welfare and to eliminate unfair
16 and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police
17 powers of the state.

NOTE: In accordance with Legislative Council drafting guidelines, statements of purpose
and declarations of policy are not to be used.

18 **SECTION 3. AMENDMENT.** Section 4-18.1-03 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **~~4-18.1-03. Definitions.~~**

21 As used in this chapter, unless the context otherwise requires:

22 1. ~~"Adjudicatory matter" means any proceeding which results in a "decision".~~

NOTE: The phrase "adjudicatory matter" is not used in this chapter and therefore does not
need to be defined. (Chapter 28-32, the Administrative Practices Act, defines an
"adjudicative proceeding.")

23 2. ~~"Board" means the state agency created by this chapter, to be known as the North~~
24 ~~Dakota milk marketing board.~~

NOTE: As rewritten, references within the various sections clarify that the "board" is the
North Dakota Milk Marketing Board.

1 ~~3-1.~~ "Bulk milk" means milk which is purchased by a processor from a person other than a
2 dairy farmer and which is purchased in a container other than the one in which the
3 milk will be resold to a retailer or to a consumer.

4 ~~4-2.~~ "Dairy farmer" means any person who produces grade A raw milk for sale to a
5 processor.

6 ~~5-3.~~ "Dairy farmer-processor" means a person who is both a dairy farmer and a processor
7 and who purchases no raw milk from other dairy farmers. For the purposes of this
8 chapter, a dairy farmer-processor is a dairy farmer in any sale of raw milk produced by
9 that person to a processor, and is a processor in any processing, manufacturing, or
10 sale of milk products or frozen dairy products or in any receipt of bulk milk from a
11 source other than that person's own production.

12 ~~6-4.~~ "Dealer" means any processor or distributor.

13 ~~7.~~ "Decision" means the whole or any part of the final disposition (whether affirmative,
14 negative, injunctive, or declaratory in form) by the board in any matter other than a
15 rulemaking matter. The term "decision" includes the final disposition of any matter
16 involving the issuance, denial, suspension, or revocation of a license. The term also
17 includes any ruling by the board concerning the applicability of one or more provisions
18 of a stabilization plan to a particular person, but does not include a ruling concerning
19 the validity of any such provision.

NOTE: The term "decision" is widely used and broadly understood. It is therefore
recommended that this subsection be deleted.

(The North Dakota Century Code includes only a definition of a "health care decision."
Section 4-18.1-11 uses the word "decision" in a context that is entirely unrelated to this
definition.)

20 ~~8-5.~~ "Distributor" means a person, other than a processor, who sells to consumers on one
21 or more retail (home delivery) routes or to retailers, or to both. ~~If such person also~~
22 ~~operates one or more retail establishments at which milk products or frozen dairy~~
23 ~~products are sold to consumers, such person does not, thereby, lose that person's~~
24 ~~classification as a distributor.~~

NOTE: A definition section should include only the definition of terms. Additional directives
or explanations, if they are needed, require placement in a different section.

1 ~~9-6.~~ "Distributor price" means the price at which any milk product or frozen dairy product,
2 not intended for resale at a fixed location owned by a distributor, is purchased by a
3 distributor.

4 ~~10-7.~~ "Frozen dairy product" means any of the following:

- 5 a. Ice cream, ~~fruit~~;
- 6 b. Fruit ice cream, ~~nut~~;
- 7 c. Nut ice cream, ~~frozen~~;
- 8 d. Frozen or frosted malt ice cream (~~frosted malt ice cream~~), ~~frozen~~;
- 9 e. Frozen custard, ~~French~~;
- 10 f. French ice cream, ~~ice~~;

NOTE: Is it necessary to distinguish "French ice cream" from "ice cream"?

- 11 g. Ice milk, ~~mellorine, olarine, sherine, fruit~~;
- 12 h. Mellorine;

NOTE: "Mellorine" is an ice cream substitute. Its fat content comes not from butterfat but from animal fat, vegetable fat, or both.

- 13 i. Olarine;

NOTE: Olarine is mentioned in the laws of Louisiana and North Dakota, and in a handful of historical publications. A definition could not be found. Is it still sold? Must its reference be continued?

- 14 j. Sherine;

NOTE: No reference was found to sherine.

- 15 k. Fruit sherbets, ~~fruit~~;

- 16 l. Fruit sherbines, ~~the~~;

NOTE: No reference was found to sherbine.

- 17 m. The mix from which any ~~such~~ product listed in subdivisions a through l is made, ~~and those frozen products which contain~~;

- 19 n. Any frozen product that contains milk solids not fat, or butterfat, and which ~~are~~is
20 commonly referred to in the dairy industry as "~~novelties~~": a novelty; and

- 21 ~~b-o.~~ Any frozen product (except, other than baked goods) containing either, that
22 contains milk solids not fat, butterfat, or a milk derivative, and which is found by
23 the board to require regulation in order to effectuate the purposes of this chapter.

NOTE: The committee may wish to review the content of this subdivision, in order to determine whether there is sufficient notice of the products that the board may regulate.

1 11. "Licensee" means any person who holds a license from the board which has neither
2 been suspended nor revoked.

NOTE: The term "licensee" is widely used and broadly understood. It is therefore recommended that this subsection be deleted.

3 ~~12.8.~~ "Marketing area" means ~~that a~~ geographical portion of ~~the~~this state of North Dakota,
4 within which minimum or maximum prices established by the board ~~shall~~must be
5 uniform.

6 ~~13.9.~~ "Milk" means the lacteal secretion of a cow ~~or cows~~ (including such secretions when
7 raw, cooled, pasteurized, standardized, homogenized, recombined, or concentrated)
8 which meets applicable grade A requirements.

9 ~~14.10.~~ "Milk product" means any of the following:

- 10 a. Raw milk,~~regular~~;
11 b. Regular or creamline milk,~~standardized~~;
12 c. Standardized milk,~~whole~~;
13 d. Whole pasteurized milk,~~special~~;
14 e. Special milk,~~homogenized~~;

NOTE: What is included within the term "special milk"?

- 15 f. Homogenized milk,~~fortified~~;
16 g. Fortified milk,~~plain~~;
17 h. Plain or creamed buttermilk,~~cottage~~;
18 i. Cottage cheese,~~creamed~~;
19 j. Creamed cottage cheese,~~flavored~~;
20 k. Flavored milk,~~flavored~~;
21 l. Flavored skim milk,~~sour~~;
22 m. Sour cream,~~half~~;
23 n. Half and half,~~whipping~~;
24 o. Whipping cream,~~whipped~~;
25 p. Whipped cream,~~skim~~;
26 q. Skim milk,~~low~~;
27 r. Low fat milk,~~fluid~~;
28 s. Fluid cream,~~concentrated~~;
29 t. Concentrated milk,~~yogurt, and eggnog.~~

1 u. Yogurt;

2 v. Eggnog; and

NOTE: The components of this subsection were placed into a list in order to assist the committee in reviewing the definition.

3 ~~b-w.~~ Any product ~~which~~that contains milk solids not fat, butterfat, or a milk derivative,
4 and which is manufactured in the semblance of one of the products listed in
5 ~~subdivision a~~subsection 10, and which is found by the board to require regulation
6 in order to effectuate the purposes of this chapter.

NOTE: The committee may wish to review the content of this subdivision, in order to determine whether there is sufficient notice of the products that fall under the definition of a "milk product."

7 ~~e. The term "milk products" does not include butter, cheese (other than cottage~~
8 ~~cheese or cream cottage cheese), nonfat dry milk, skim condensed milk, whole~~
9 ~~condensed milk, whole dry milk, dried cream, evaporated milk, sweetened~~
10 ~~condensed milk, or baked goods.~~

NOTE: If a definition includes a specific list, it is not generally necessary to include language indicating products that are not mentioned in the list.

11 ~~15. "Person" means any individual, partnership, corporation, limited liability company,~~
12 ~~cooperative corporation or association, governmental agency, or other business entity.~~

NOTE: A person is defined in Section 1-01-49 as "an individual, organization, government, political subdivision, or government agency or instrumentality." It does not have to be redefined for purposes of this chapter.

13 ~~16-11.~~ a. "Processor" means a person who ~~processes;~~

14 (1) Processes or manufactures milk products or frozen dairy products, ~~or a~~
15 ~~person who purchases;~~

16 (2) Purchases raw milk from a grade A dairy farmer for resale to a person who
17 processes or manufactures milk products or frozen dairy products, ~~or a~~
18 ~~person who purchases; or~~

19 (3) Purchases bulk milk from anyone for resale to a person who processes or
20 manufactures milk products or frozen dairy products.

21 b. The term "processor" does not include a person who purchases ice cream mix,
22 ice milk mix, or other frozen dairy products mix ~~and whose~~ provided:

23 (1) The person's processing activities are limited to converting ~~such~~the mix into
24 a frozen dairy product, ~~more;~~ and

1 (2) More than half the sales of which are then made by ~~such~~the person to
2 consumers at retail on the premises where ~~such~~the processing activities
3 take place.

NOTE: How are the activities described in this subdivision monitored by the board?

4 17. ~~"Regulation" means any statement by the board of general applicability and future-~~
5 ~~effect that implements, interprets, carries into effect, or makes more specific, the-~~
6 ~~provisions of this chapter. However, the term does not include any such statement~~
7 ~~which is properly a part of a stabilization plan, nor does it include any such statement~~
8 ~~that deals with matters of practice or procedure.~~

NOTE: The North Dakota Century Code recognizes rules, as defined in Section 28-32-01(11), i.e., "the whole or a part of an agency statement of general applicability which implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency." The term "rule" is widely used and broadly understood. It would therefore not be necessary to define a rule.

9 ~~18-12.~~ "Retail price" means the price at which any milk product or frozen dairy product is
10 purchased by any person who makes such purchase for purposes other than resale.

11 ~~19-13.~~ "Retailer" means any person who is engaged in transferring title to milk products or
12 frozen dairy products to consumers at one or more ~~fixed places of business (~~retail
13 establishments) located in this state.

14 ~~20-14.~~ "Rule of practice" means any statement by the board of general applicability and future
15 effect prescribing matters relating to procedure and practice.

NOTE: This chapter is the only one in the North Dakota Century Code that references a "rule of practice."

It is not clear whether this is intended to mean a rule, as defined in Section 28-32-01(11), which has the force and effect of law, or an agency guideline that is merely suggestive and does not directly and substantially affect the substantive or procedural rights or duties of the public.

16 ~~21.~~ "Rulemaking matter" means any ~~proceeding which results in the adoption,~~
17 ~~amendment, or repeal of rules of practice, regulations, or of any stabilization plan.~~

NOTE: The phrase "rulemaking matter" is found only in the definition of a "decision." Because it has been recommended that the definition of a "decision" be deleted, it is no longer necessary to define a "rulemaking matter."

18 ~~22-15.~~ "Stabilization plan" means ~~anya~~ plan of general applicability and ~~future effect~~
19 ~~which~~that contains the minimum ~~or~~prices, maximum prices, or both, ~~that the board is~~
20 ~~authorized to establish and such~~and any ancillary requirements ~~as are~~ necessary and

1 appropriate in order to make such ~~minimums and maximums~~minimum and maximum
2 prices effective and meaningful.

NOTE: The committee may wish to determine what is intended by the reference to ancillary requirements that are necessary and appropriate to make the minimum and maximum prices "effective and meaningful."

3 A stabilization plan may be of general applicability although effective within only one
4 marketing area and although some provision of such plan is of immediate concern to
5 only one person, provided the form of the stabilization plan (and of each of its
6 provisions) is general so that others who may qualify in the future will fall within the
7 provisions of such stabilization plan.

NOTE: This subsection begins by providing that a stabilization plan must be of general applicability. The sentence preceding this note appears to be defining the phrase "general applicability." The committee may wish to review the language to determine if the reference to "general applicability" is appropriate.

8 ~~23-16.~~ "Wholesale price" means the price at which any milk product or frozen dairy product is
9 purchased by a retailer.

10 **SECTION 4. AMENDMENT.** Section 4-18.1-04 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **4-18.1-04. Milk**North Dakota marketing board.

NOTE: Many of the provisions currently in this section need to be placed in separate sections.

13 1. ~~There is created a milk marketing board to consist of five members appointed by the~~
14 ~~governor. The board~~The milk marketing board consists of one individual who is a dairy
15 farmer selling to a processor, who must be selected by the governor from two names
16 submitted to the governor;

17 a. A dairy farmer appointed by the governor from a list of two names submitted by
18 the milk producers association of North Dakota ~~milk producers association; one~~
19 individual who is a processor, who must be selected;

NOTE: The rewrite uses the association's formal name.

20 b. A processor appointed by the governor from a list of two names submitted to the
21 governor by the North Dakota dairy industries association; ~~one individual who is a~~

NOTE: Is the intended reference to be the "North Dakota Dairy Coalition?"

22 c. ~~A retailer, who must be selected~~ appointed by the governor from a list of two
23 names submitted to the governor by the North Dakota association of food
24 retailers; and ~~two individuals must be selected~~

1 7. If at any time during a member's term the member ceases to possess any of the
2 qualifications required by this chapter, the member's office is deemed vacant and the
3 governor shall appoint another individual for the remainder of the term.

NOTE: Vacancies in office are defined in Section 44-02-01 and include death, disability, resignation, removal, failure to discharge duties, failure to qualify, ceasing to be a resident, conviction of a felony, etc.

4 ~~3. Three members of the board constitute a quorum for the regular transaction of~~
5 ~~business.~~

NOTE: The reference to a quorum is being deleted because Section 1-01-10 already defines a quorum as a majority of any board or commission. The only time that additional clarifying verbiage would be required is if a board consists of both voting and nonvoting members.

6 ~~8. The board shall choose one of its members~~Annually, the board shall elect one
7 member to serve as the chairman, who shall hold office as a chairman for one year;
8 ~~provided, election as chairman does not interfere with the member's right to vote on all~~
9 ~~matters before the board.~~

10 ~~4.9. a. The board shall determine the amount of compensation payable to each member~~
11 ~~of the board. The amount payable may not exceed~~Each member of the board is
12 entitled to receive compensation in the amount established by the board, but not
13 exceeding one hundred thirty-five dollars per day plus reimbursement for
14 expenses as provided by law for state officers ~~while, if the member is attending~~
15 meetings or performing duties directed by the board.

16 ~~b. A member's per diem payments may not exceed~~fifteenone thousand five
17 hundred dollars in any one year.

18 ~~5. Each member of the board shall give bond conditioned for the faithful performance of~~
19 ~~the member's duties.~~

NOTE: Unless there is a legitimate reason to require that board members post a bond, this provision should be deleted.

In other instances, the North Dakota Century Code has authorized a board, commission, or council to "employ, bond, and compensate necessary personnel."

20 ~~10. The board shall employ and compensate a director who serves under the direction~~
21 ~~and at the pleasure of the board and whose qualifications, duties, and compensation~~
22 ~~must be determined by the board. The director shall serve as financial officer of the~~
23 ~~board and is authorized to accept money paid to the board in accordance with this~~
24 ~~chapter.~~

NOTE: In other instances, the North Dakota Century Code specifies that a board, commission, or council is to review the appointment of its executive on an annual basis.

1 ~~6.11.~~ The board shall employ, in addition to the director, such assistants and employees,
2 permanent and temporary, as may be necessary to carry out the duties and
3 responsibilities of the board under this chapter. The board shall determine the
4 qualifications, duties, and compensation of such employees may employ and
5 compensate necessary personnel.

6 ~~12.~~ The board may employ a licensed attorney of the licensed in this state of North
7 Dakota as its legal counsel, ~~who shall serve on a full time or a part time basis, and the~~
8 ~~board may obtain the services of such additional attorneys as it deems necessary.~~

9 ~~13.~~ The board may also contract for auditing, economic research, and other technical
10 services, ~~whenever it determines that such services are needed~~ with any person for
11 any purpose related to this chapter.

12 ~~7.14.~~ All expenditures under this chapter must be paid from the receipts under this chapter.

13 ~~15.~~ Meetings of the board must be held at least every sixty days at the call of the chairman
14 or a majority of the board.

NOTE: Generally, it is provided that the chairman shall call all meetings of a board, commission, or council and shall call a special meeting within seven days when petitioned to do so by two members of the entity.

15 **SECTION 5. AMENDMENT.** Section 4-18.1-05 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **4-18.1-05. General powers of the board.**

18 1. The milk marketing board is hereby declared to be the instrumentality of the state of
19 North Dakota for the purpose of administering the provisions of this chapter and of
20 executing the legislative intent herein expressed may do all things necessary and
21 proper to enforce and administer this chapter.

22 2. a. The board is hereby delegated the power to may supervise, investigate, and
23 regulate every segment of the state's dairy industry.

24 b. However, ~~nothing contained in this~~ This chapter may be construed to does not
25 limit, decrease, or amend in any respect the authority of the North Dakota
26 department of agriculture commissioner, county boards of health, or municipal
27 health officials, with respect to matters of health and sanitation; and ~~nothing~~

1 ~~contained in this chapter may be construed as giving~~ does not give the board any
2 authority to regulate the sale of raw milk that is not grade A.

NOTE: The committee may wish to examine the scope of the authority granted under this subsection.

3 ~~2.3.~~ The board may act as mediator or arbitrator in connection with any controversy or
4 issue among or between dairy farmers, processors, distributors, retailers, or
5 consumers, ~~if such~~ the controversy or issue pertains to the production, transportation,
6 processing, storage, distribution, or sale of milk products or frozen dairy products.

NOTE: Is this a free service that can be requested by disputing parties? If the board functions as a mediator or an arbitrator in a dispute, does that in any way color its ability to be a fair and impartial regulator?

7 ~~3.4.~~ The operation and effect of any provision of this chapter, conferring a general power
8 upon the board, do not impair or limit any specific power or powers granted to the
9 board by this chapter or by some other constitutional or statutory provisions.

NOTE: This subsection appears to address the question raised in the preceding note, and as such, is worthy of examination by the committee.

10 **SECTION 6. AMENDMENT.** Section 4-18.1-06 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **4-18.1-06. Marketing areas.**

13 1. The milk marketing board shall designate such marketing areas ~~which~~ that, together,
14 must embrace all the geographical territory of the state.

NOTE: Current law allows the board to determine how many marketing areas are to exist.

15 2. The board may, from time to time, increase or decrease the number of marketing
16 areas, ~~divide or combine one or more marketing areas, or~~ and may alter the
17 boundaries of such areas.

NOTE: Is there a hearing process or any opportunity for affected persons to provide comment?

18 3. In establishing, ~~as well as in changing the~~ marketing areas or altering their boundaries
19 of, ~~such marketing areas,~~ the board shall take into consideration the:

20 a. The various conditions affecting the production, distribution, and sale of milk
21 products and frozen dairy products in ~~such~~ the areas, ~~the;~~

22 b. The need for establishing area boundaries in a manner ~~which~~ that will facilitate
23 cooperation between the board and federal authorities engaged in regulating
24 prices paid by processors for raw milk; ~~and all~~

NOTE: This particular subdivision is at the very least awkward when read in conjunction with the lead-in language. More importantly, it is not clear how the delineation of market area boundaries facilitates cooperation between the board and federal entities.

1 c. ~~Any other factors necessary to effectuate the purposes and policies of implement~~
2 this chapter.

3 4. Minimum or maximum prices established by the board pursuant to this chapter may
4 vary from one marketing area to another.

5 **SECTION 7. AMENDMENT.** Section 4-18.1-07 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **4-18.1-07. Stabilization plans.**

8 1. The milk marketing board shall establish for each marketing area the uniform minimum
9 prices to be paid by processors to dairy farmers for raw milk.

NOTE: Is this subsection requiring a stabilization plan for each marketing area?

10 a. Each stabilization plan issued by the board must provide the means for
11 determining which ~~such~~stabilization plan is applicable to the raw milk purchases
12 of a processor engaged in selling milk products in two or more marketing areas;
13 ~~and the.~~

NOTE: Is the applicable stabilization plan determined by the marketing area in which the processor is located or the marketing area in which the dairy farmer is located?

14 2. The applicability of any such plan to raw milk purchased by a processor from a
15 particular dairy farmer ~~may in no way be is~~ not dependent upon the location of the
16 seller's dairy farm nor upon the location at which title passes.

NOTE: If the applicability of a stabilization plan is not based on the marketing area in which the dairy farmer is located, and it is not dependent upon the location at which title passes (which would normally be the dairy farm, would it not?), then is the stabilization plan dependent on where the processor is located? Is raw milk sold to out-of-state processors?

This provision is in need of an explanation.

17 3. In establishing or changing minimum prices to be paid by processors to dairy farmers
18 for raw milk in each marketing area, the board shall ~~take into consideration the~~
19 ~~following factors applicable to such area: the~~consider:

20 a. The available supply of raw milk, ~~the~~ in the marketing area;

21 b. The adequacy of the reserve supply of raw milk in the marketing area available to
22 processors, ~~the;~~

NOTE: Review the placement of the phrase "in the marketing area." It is not clear whether one should be addressing the reserve supply of raw milk in the marketing area that is

available to processors or the adequacy of the reserve supply of raw milk that is available to processors who are in the marketing area.

1 c. The balance between production and consumption, the in the marketing area:

NOTE: Is consumption tracked by marketing area? Should the reference be to the quantity of retail sales in a marketing area?

2 d. The cost of dairy feed; in the marketing area:

NOTE: What sources are used to determine the cost of dairy feed in a particular marketing area?

3 e. The cost of farm wage rates; in the marketing area; and such

NOTE: What sources are used to determine farm wage rates in a particular marketing area?

4 f. Any other factors as will effectuate the purposes and policies of this chapter.

NOTE: Because the rewrite eliminates references to the purposes and policies of the chapter, are there other parameters that should be inserted with respect to the factors that the board might consider or are those listed in subdivisions a through e sufficient?

5 4. All such minimum prices must be those which will be beneficial to the public interest,
6 protect the dairy farmers, and ensure an adequate supply of pure and wholesome milk
7 to the inhabitants of the state.

NOTE: The statutory thresholds listed in this subsection are arguably subject to significantly varying interpretations.

8 5. AnyA stabilization plan issued by the board may provide for a classified pricing system
9 predicated upon utilization, and may provide for a marketwide pooling arrangement, or
10 a handler pooling arrangement, all as defined in the Agricultural Marketing Agreement
11 Act of 1937 (as amended) [7 U.S.C. 601 et seq.].

12 6. AnyA stabilization plan issued by the board for a marketing area, some portion of
13 which is included within the marketing area of a federal milk marketing order, may
14 require licensed processors subject to both the state stabilization plan and to the
15 federal milk marketing order to pay minimum;

16 a. Minimum raw milk class prices ~~which that~~ exceed the minimum raw milk class
17 prices established by ~~such the~~ federal order ~~and may require such processors to~~
18 ~~pay all of; and~~

19 b. Directly to dairy farmers, on a handler pool basis, the difference between the
20 federal and state minimums ~~direct to dairy farmers on a handler pool basis.~~

21 7. AnyA stabilization plan issued by the board may contain a formula ~~to be used in~~
22 ~~computing minimum prices payable to dairy farmers. Such formula may be utilized by~~

1 ~~the board to bring about such~~that brings about automatic changes in the minimum
2 ~~dairy farmer prices as are justified on the basis of~~prices payable to dairy farmers,
3 provided the formula is based on changes in production costs, supply conditions, and
4 ~~in~~ the other factors to be considered by the board in establishing ~~such~~ minimum
5 prices.

6 8. ~~Any~~A stabilization plan may ~~also contain provisions establishing;~~

7 a. Establish the prices payable by a processor for raw milk purchased from sources
8 other than dairy farmers; ~~and may contain such other~~

9 b. Contain provisions ~~as are necessary and appropriate in order~~ to ensure that the
10 prices paid for butterfat and milk solids not fat (whether in the form of raw milk
11 or otherwise) ~~must be,~~ are uniform for all processors whose raw milk purchases
12 are regulated by the same stabilization plan.

13 9. If the board issues a stabilization plan containing a marketwide pooling arrangement, it
14 may require that raw milk produced by dairy farmer-processors be included in ~~such~~the
15 pooling arrangement.

16 10. ~~Any~~A stabilization plan may provide for price adjustments based upon ~~the;~~

17 a. The butterfat content of the raw milk;:

18 b. The location ~~whereat~~ which the raw milk is received;:

19 c. The location of a plant ~~to which a portion of the raw milk~~receiving raw milk that
20 the processor purchased ~~is~~and thereafter transferred or diverted ~~by the processor~~
21 from the plant ~~whereat~~ which such raw milk is normally utilized, ~~and other such;~~
22 and

23 d. Any other factors for which price adjustments are provided in the Agricultural
24 Marketing Agreement Act of 1937, as amended.

25 ~~2-11.~~ For each marketing area, the board shall establish minimum prices for ~~each of the~~
26 ~~following classifications of sales:~~

27 a. Sales of milk products by ~~processors or distributors to retailers.~~ Such a processor
28 to a retailer, provided the minimum price for each item is applicable regardless of
29 the location at which the retailer accepts delivery;:

- 1 b. Sales of milk products by a distributor to a retailer, provided the minimum price
2 for each item is applicable regardless of the location at which the retailer accepts
3 delivery; and
- 4 c. Sales of milk products by any person to consumers.
- 5 ~~3-12.~~ For any marketing area, the board may establish the minimum prices for each of the
6 following classifications of sales:
- 7 a. Sales of milk products by processors to distributors;:
- 8 b. Sales of frozen dairy products by a:
- 9 (1) A processor;:
- 10 (2) A distributor;: or
- 11 (3) A retailer to any person;:
- 12 c. Sales of milk products by a:
- 13 (1) A processor to another processor; or by a
- 14 (2) A distributor to another distributor; and
- 15 d. Sales of milk products ~~or~~ and frozen dairy products not otherwise provided for in
16 subsections 211 and 312.

NOTE: According to current law (Section 4-18.1-07(2)), the board ***shall*** establish minimum prices for the sales of milk products by:

- A processor to a retailer;
- A distributor to a retailer; and
- Any person to a consumer.

According to current law (Section 4-18.1-07(3)), the board ***may*** establish minimum prices for the sales of milk products or frozen dairy products by a variety of entities to other entities and for the sales of milk products or frozen dairy products not otherwise provided for in subsections 2 and 3.

It would therefore appear that Section 4-18.1-07(3), or subsection 12, as it is referenced in the rewrite, could be reworded as follows:

3. For any marketing area, the board may establish the minimum prices for each of the following classifications of sales:
- a. Sales of milk products by processors to distributors.
 - b. Sales of frozen dairy products by a processor, distributor, or retailer to any person.
 - c. Sales of milk products by a processor to another processor or by a distributor to another distributor.
 - d. Sales sales of milk products ~~or~~ and frozen dairy products not otherwise, other than those provided for in subsections 2 and 3 subsection 2.

- 1 ~~4-13.~~ a. For any marketing area, the board may establish the maximum prices for
2 ~~whichever sales of~~ milk products are sold by a:
3 (1) A processor; ~~a;~~
4 (2) A distributor; ~~or a~~
5 (3) A retailer ~~to any person.~~
- 6 b. However, in ~~so doing so,~~ the board shall take into account all of the economic
7 factors ~~which~~ that apply to the establishment of minimum prices for stabilization
8 plans ~~which factors are set out in subdivisions a, b, c, and d of , as provided for in~~
9 subsection ~~6~~15.
- 10 ~~5-14.~~ The in the stabilization plan for any marketing area, the board may include a provision
11 ~~authorizing~~ authorize processors and distributors to give quantity discounts to retailers,
12 in connection with the sales of milk products and frozen dairy products. ~~In order to~~
13 ensure the availability of a sufficient variety of brands to consumers purchasing from
14 retailers having sufficient display space, ~~and in order to avoid injury to small~~
15 independent processors and distributors, ~~the board shall, if~~
- 16 a. If the board authorizes quantity discounts ~~are authorized, in accordance with this~~
17 subdivision, the board shall establish for each eligible retailer a:
18 (1) A quantity discount rate for purchases of milk products; ~~and a~~
19 (2) A quantity discount rate for purchases of frozen dairy products, ~~which~~
20 discount.
- 21 b. The rates established under subdivision a must be based upon ~~such a~~ retailer's
22 total:
23 (1) Total purchases of milk products from all suppliers; ~~and upon such retailer's~~
24 total
25 (2) Total purchases of frozen dairy products from all suppliers.
- 26 c. ~~All processors and distributors~~ Any processor or distributor delivering milk
27 products ~~and/or~~ frozen dairy products to ~~such an~~ eligible retailer ~~are authorized to~~
28 ~~give~~ may provide the quantity discounts ~~in accordance with such rates,~~ regardless
29 of the quantities of such products actually purchased by ~~such~~ the eligible retailer
30 from each ~~individual~~ processor or distributor.

1 d. ~~The schedules of board shall base the~~ quantity discount rates established by the
2 ~~board must be based upon~~under this section on a graduated scale of
3 ~~discounts~~that is proportionate to purchases made by retailers during a base
4 period (~~one month, one quarter, six months, or one year~~) to be designated by the
5 board. The base period may have a duration of one month, three months, six
6 months, or twelve months.

7 e. ~~When~~If a retailer operates two or more separate places of business, the board
8 shall ~~base~~establish the quantity discount rate for each place of business based
9 upon the quantity of milk products ~~or~~and frozen dairy products that the retailer
10 purchased for resale at ~~that~~each particular place of business alone.

11 6.15. ~~The minimum and maximum prices (other than dairy farmer prices) established by the~~
12 ~~board, as well as the other provisions included in a stabilization plan, must be those~~
13 ~~which will tend to maintain in the business of processing and distributing milk products~~
14 ~~and frozen dairy products such reasonably efficient processors, distributors, and~~
15 ~~retailers as are necessary to ensure to consumers an adequate and continuous supply~~
16 ~~of high quality milk products and frozen dairy products at fair and reasonable prices;~~
17 ~~will tend to foster and encourage stability in the dairy industry and orderly and efficient~~
18 ~~marketing of milk products and frozen dairy products; will tend to prevent unfair trade~~
19 ~~practices, unfair methods of competition, conditions of monopoly or combinations in~~
20 ~~restraint of trade; and will enable the dairy industry to maintain the highest quality.~~

21 In establishing minimum prices (~~o~~ther than those that must be paid by a
22 ~~processor to a dairy farmer prices) for a marketing area, the board shall take into~~
23 ~~consideration all of the following economic factors that are operative in such marketing~~
24 ~~area~~consider:

25 a. ~~The prevailing raw milk prices in the marketing area regardless of whether such~~
26 ~~prices are state established, federally established, or negotiated.;~~

27 b. ~~All reasonably necessary~~The costs of processing and distribution incurred by
28 representative processors, distributors, and retailers, including together with a
29 reasonable return upon any necessary investment.;

NOTE: Do retailers incur "costs of processing and distribution"?

30 c. Quantities of milk products and frozen dairy products consumed in ~~such~~the
31 marketing area; and

1 d. All other economic factors ~~which~~that substantially and directly affect market-
2 supply and demand for milk products and frozen dairy products in ~~such~~the
3 marketing area.

NOTE: Subdivision d requires the board to consider "all" other economic factors that substantially and directly affect supply and demand for milk products, etc. Unless that is a known and closed list, it would be preferable to reference "other" economic factors.

4 ~~7-16.~~ In exercising the authority contained in subsection ~~3~~12, the board may establish
5 minimum prices for some items in a category without the necessity for establishing
6 minimum prices for the other items in such category and may establish one type of
7 minimum price without establishing the other types of minimum prices applicable to a
8 product. For example, the board may establish minimum prices for minimum standard
9 ice cream, but may refrain from establishing minimum prices for ice cream which
10 exceeds minimum standards; the board may establish minimum prices for half-gallons
11 and gallons of ice cream, but may refrain from establishing minimum prices for ice
12 cream packaged in containers of other sizes; and the board may establish minimum
13 wholesale prices for frozen dairy products without establishing minimum retail prices
14 for such products.

NOTE: This subsection needs to be reworked and included with the language of subsection 12 (current subsection 3, as rewritten).

The board's duties and the board's powers must be clearly articulated. Examples of the board's powers do not belong in the North Dakota Century Code.

15 ~~8-17.~~ In lieu of establishing minimum wholesale prices for one or more frozen dairy products
16 ~~items~~, the board may require ~~dealers~~that processors and distributors file with the
17 board the uniform wholesale price at which each ~~such item~~frozen dairy product will be
18 sold ~~by each such dealer~~ within each marketing area.

NOTE: The board has the option of establishing minimum prices for frozen dairy products in a particular marketing area. The board is not required to set such prices for each marketing area.

This subsection provides that the board may elect, instead, to require wholesale price filings. Is it the intent that these price filings be applicable to all marketing areas within the state or only to those marketing areas in which the board does not set minimum prices for frozen dairy products?

19 ~~18.~~ If the board elects to require ~~such~~ price filings, as provided for in this subsection, the
20 board:

21 a. Shall prescribe the time at which and the manner in which ~~and the date on-~~
22 which the initial price filings must be ~~made-~~submitted to the board;

- 1 b. ~~(1) Shall prescribe the procedure to be followed by manner in which processors~~
2 ~~and dealers in amending and supplementing may amend~~ their initial price-
3 ~~filings. The board's authority in this connection includes the power to:~~
4 ~~(2) May prescribe how much time shall elapse~~ the amount of time allowable
5 ~~between the filing of any supplemental price or any submission of an~~
6 ~~amended price filing and the date on which such filing becomes~~ its effective,
7 ~~provided that the board may date:~~
8 ~~(3) May not prohibit dealers~~ a processor or distributor from meeting lawful
9 competition without delay in connection with the sale of ~~any such~~ a frozen
10 dairy product, ~~but may;~~ and
11 ~~(4) May require the dealer to file an~~ a processor or distributor to submit an
12 ~~amended price filing for the purpose of meeting competition before actually~~
13 ~~meeting such competition.;~~
14 c. Shall permit a ~~dealer~~ processor or distributor desiring to meet the lower prices of a
15 competitor to do so in such portions of the marketing area as are specified in
16 ~~such dealer's~~ the amended price filing.;
- 17 d. May require that the wholesale prices filed by a processor for a marketing area
18 ~~are automatically~~ be applicable to sales by distributors of that processor's
19 ~~products within such~~ the marketing area.;
- 20 e. ~~May prescribe such~~ establish any other requirements ~~relative~~ pertaining to price
21 ~~filing as will tend to effectuate the purposes of this chapter~~ filings required by this
22 subsection.

NOTE: Since subdivision e provides the board with the authority to set whatever parameters it chooses, with respect to price filings, it is not necessary to statutorily articulate what some of those parameters could be. (i.e., There is no necessity for subdivisions a through d.)

- 23 ~~9-19.~~ a. The minimum and maximum prices established by the board for products other
24 than raw milk may reflect packaging cost differences; and
- 25 b. The minimum and maximum prices established by the board for home-delivered
26 products may vary from the minimum and maximum prices ~~applicable~~
27 ~~to~~ established by the board for products sold to consumers by retailers.

1 ~~40-20.~~ The board shall ~~take appropriate steps to~~ ensure that any changes in minimum dairy
2 farmer prices are accompanied by simultaneous changes in the other minimum and
3 maximum prices as established by the board.

4 **SECTION 8. AMENDMENT.** Section 4-18.1-08 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **4-18.1-08. Licenses.**

7 1. a. ~~It is unlawful for~~A person must be licensed as a dairy farmer ~~to sell milk without~~
8 ~~being licensed as a "dairy farmer" by the board if such milk is purchased by~~if the
9 ~~person sells grade A raw milk that the person has produced to a processor who~~
10 ~~is that:~~

11 (1) Is required by this chapter to be licensed; ~~and who processes such~~

12 (2) Processes the milk at a plant ~~located in the~~in this state of North Dakota.

13 b. This provision is ~~equally~~ applicable to dairy farmers whose dairy farms are
14 located outside ~~the~~this state of North Dakota ~~as and~~ to dairy farmers whose dairy
15 farms are located in ~~the~~this state.

NOTE: Is subdivision b directed at individuals who reside in this state but actually run dairy operations in a bordering state or is it literally requiring dairy farmers in other states to obtain licensure in this state? If the latter is the case, what is the legal foundation for doing such?

16 2. It is unlawful for a processor to buy milk or to sell milk products or frozen dairy
17 products without being licensed as a "processor" by the milk marketing board if
18 ~~such~~the processor:

19 a. Operates a processing plant ~~located within the~~in this state of North Dakota;

20 b. Sells milk products or frozen dairy products to a retailer for resale
21 at a retail establishment ~~that is located in North Dakota~~in this state, regardless of
22 whether ~~such~~;

23 (1) The processor's plant is located ~~inside~~in this state or outside ~~the~~of this state
24 ~~of North Dakota and regardless of whether such; or~~

25 (2) The retailer takes title to or possession of ~~such~~the products ~~inside~~in this
26 state or outside ~~the~~of this state of North Dakota; or

NOTE: It would appear that a processor located in Minnesota must be licensed as a processor by the North Dakota Milk Marketing Board, before that processor may sell milk products or frozen dairy products to a North Dakota retailer who travels to Minnesota and purchases the products in Minnesota. If this is accurate, what is the legal foundation for requiring the licensure?

- 1 c. Sells milk products or frozen dairy products to a distributor for resale to:
- 2 (1) North Dakota consumers on home delivery; ~~or for resale to a retail-~~
- 3 ~~establishment that is required by this chapter to have a "retailer" license~~
- 4 (2) A retailer.
- 5 3. It is unlawful for a distributor to sell milk products or frozen dairy products without
- 6 being licensed as a "distributor" by the board if ~~such~~the distributor sells milk products
- 7 or frozen dairy products to:
- 8 a. North Dakota consumers on ~~one or more retail (home delivery) routes;~~ or to a
- 9 b. A retailer for resale at a retail establishment that is required by this chapter to
- 10 ~~have a "retailer" license.~~
- 11 4. It is unlawful for a retailer to ~~purchase or transfer title to:~~
- 12 a. Purchase milk products or frozen dairy products without being licensed as a
- 13 "retailer" by the board; or
- 14 b. Sell milk products or frozen dairy products to consumers without being licensed
- 15 as a "retailer" by the board.

NOTE: Both this subsection and the current definition of a retailer reference the act of transferring title to milk products or frozen dairy products. (See, subsection 2(b)(2).) For purposes of this chapter, does the act of transferring title mean the "sale" of such products or is it intended to have a different meaning? (i.e., Why does the law not simply reference the sale of a product?)

- 16 5. It is unlawful for a dairy farmer, a processor, or a distributor to transfer title to milk
- 17 products or frozen dairy products to consumers at a fixed place of business located
- 18 ~~within~~in this state without obtaining for each such place of business a "retailer" license
- 19 issued by the board.

NOTE: See previous note regarding the phrase "transfer of title."

- This subsection is literally stating that a retailer, as defined in current section 4.1-18-03(19) must be licensed as a retailer.

- 20 ~~5.6.~~ The licensing of persons engaged in supplying milk products or frozen dairy products
- 21 to consumers through the use of vending machines must be in accordance with
- 22 requirements prescribed by the board.

NOTE: Is this a separate category of licensure?

- 23 ~~6.7.~~ No charge may be made by the board for any license. ~~All licenses hereafter~~Any
- 24 license issued by the board remain in effect unless and is effective until:
- 25 a. There is a change of ownership or of location;

- 1 b. The license is suspended or revoked; or
- 2 c. The business is discontinued or is inactive for a period of more than thirty days.
- 3 7. A license is required for each separate place of business.
- 4 8. ~~a. No~~Before a processor or distributor may be licensed by the board ~~without first~~
5 ~~having obtained a license from the North Dakota department of, the processor~~
6 ~~must be licensed by the agriculture. No commissioner.~~
- 7 b. Before a distributor may be licensed by the board, the distributor must be
8 licensed by the agriculture commissioner.
- 9 c. Before a dairy farmer may be licensed without furnishing proof of proper
10 board, the dairy farmer must provide proof of inspection by the department of
11 agriculture or the state department of health as provided by law.

NOTE: Section 23-01-16 calls for the State Department of Health and the Agriculture Commissioner to jointly adopt a set of uniform standards in relation to "all matters falling within their joint jurisdiction regarding dairy products." It goes on to provide that the "state department of health, district health units, municipal health departments or units, and the dairy department shall each be permitted to accept any inspection report of the other department or unit regarding the inspection of dairy products and the producers and processors of such products, when such report is based substantially upon standards conforming with the milk ordinance and code recommended by the United States public health service."

It would be helpful for the sake of clarity to reference the law under which an inspection is required.

- 12 9. A dairy farmer-processor shall obtain a dairy farmer license and a processor license
13 from the board.
- 14 10. ~~All licenses issued by the board prior to April 1, 1969, expire automatically on April 1,~~
15 ~~1969.~~
- 16 11. The board may¹ decline to issue a "processor" license or a "distributor" license to an
17 applicant for any such license if the board finds that ~~persons~~:
- 18 a. Persons currently licensed by the board ~~prior to receipt of the application in~~
19 ~~question~~in that capacity are supplying an adequate² variety and quantity of
20 high-quality milk products and frozen dairy products to the state's retailers and
21 consumers³, ~~that deliveries~~;
- 22 b. Deliveries are being made with sufficient regularity and frequency⁴; ~~and that the~~
- 23 c. The issuance of additional licenses of the type sought will:
- 24 a. (1) Will resultResult in an excess of processing plant capacity⁵;

- 1 b. ~~(2) Will tend~~Tend to⁶ increase to unsatisfactory⁷ levels the average unit
2 processing or average unit distribution costs for persons already licensed by
3 the board; or
- 4 e. ~~(3) Will otherwise~~Otherwise tend to prevent achievement of the objectives of
5 this chapter.⁸

NOTE:

¹The committee may wish to discuss the appropriateness of the word "may" versus "shall."

If the board determines that any of the listed factors would result from the issuance of a license, is there a circumstance under which the board might still issue the license?

²What constitutes an "adequate" variety and quantity of "high-quality" milk products and frozen dairy products? Might reasonable minds differ regarding that determination?

³Even if persons currently licensed by the board are supplying an adequate variety and quantity of high-quality milk products and frozen dairy products to the state's retailers and consumers, is any consideration given to the price at which such supply is achieved?

⁴What constitutes "sufficient" regularity and frequency?

⁵What constitutes an "excess" of processing plant capacity?

⁶This section does not require the board to determine whether the issuance of a license would "increase" various processing and distribution costs for those already licensed, but rather whether the issuance of a license would "tend to" increase such costs.

⁷What constitutes an "unsatisfactory" level of costs?

⁸Because it was suggested that the declaration of policies relating to milk (Section 4-18.1-01) and the statement of purpose (Section 4-18.1-02) be removed, the verbiage of this paragraph, if retained, will have to be changed so as to articulate a specific objective.

- 6 ~~42-11.~~ Schools¹, hospitals, state institutions, and charitable institutions may obtain "retailer"
7 licenses from the board regardless of whether they fall within the definition of "retailer"
8 set forth hereinabove.

NOTE: This subsection requires an explanation regarding its purpose and intent.

¹Clarify whether a public school can be a retailer in its own right or only as part of a public school district?

²Do these institutions have to be licensed?

- 9 **SECTION 9. AMENDMENT.** Section 4-18.1-09 of the North Dakota Century Code is

- 10 amended and reenacted as follows:

- 11 **4-18.1-09. License applications.**

- 12 ~~Applications for licenses must be made on forms prepared and furnished by the~~To obtain a
13 license required by this chapter, a person must complete an application form and submit it to
14 milk marketing board. ~~The board shall require the license applicant to set out in the application~~
15 ~~such facts concerning the applicant and the nature of the business that the applicant proposes~~

1 to conduct as the board deems necessary for the administration of this chapter. The board shall
2 also require applicants for processor and distributor licenses to state in the application that such
3 applicant will make no sales of milk products or frozen dairy products to persons required by
4 this chapter to be licensed unless such persons have obtained the license required by this
5 chapter.

6 Similarly, the board shall require applicants for distributor and retailer licenses to state in the
7 application that the applicant will make no purchases of milk products or frozen dairy products
8 from persons not licensed by the board.

- 9 1. As a condition of licensure, an applicant for a processor's license must state in the
10 application that the applicant will not sell milk products or frozen dairy products to any
11 person who is not properly licensed in accordance with this chapter.
- 12 2. As a condition of licensure, an applicant for a distributor's license must state in the
13 application that the applicant:
 - 14 a. Will not sell milk products or frozen dairy products to any person who is not
15 properly licensed in accordance with this chapter; and
 - 16 b. Will not purchase milk products or frozen dairy products from any person who is
17 not properly licensed in accordance with this chapter.
- 18 3. The board shall require applicants for processor or distributor licenses to
19 As a condition of licensure, an applicant for a processor's license and an applicant for a distributor's
20 license shall state in the application that each such applicant will sell:
 - 21 a. Sell such milk products or frozen dairy products as are customarily handled by
22 such person to any retailer who desires;
 - 23 (1) Desires to purchase any of such products from such dealer; and who has
 - 24 (2) Has a place of business in any community¹ in which such the dealer
25 processes, distributes, or sells milk products or frozen dairy products; and
26 each such applicant shall also be required to state in the application that the
27 applicant will offer
 - 28 b. Offer to any such retailer the same frequency of delivery and the same in-store
29 services as are customary² in such community; and that the applicant will provide
 - 30 c. Provide home-delivery services to any consumer residing in such community
31 upon request.³

NOTE:

¹The word "community" is not defined. In accordance with Chapter 40-01, an incorporated municipality is referred to as a "city." If other political subdivisions or geographic demarcations are intended to be included, alternate or additional verbiage is necessary.

²How is "customary" determined in the event that a "new community" is established?

If prior deliveries were not sufficiently frequent, can the frequency be increased under language that requires the "same" frequency?

³Is home delivery limited to urban areas or must it also be provided to rural consumers?

1 **SECTION 10. AMENDMENT.** Section 4-18.1-10 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-18.1-10. Prohibited acts.**

- 4 1. ~~No~~A licensee may not buy or sell any milk product or any frozen dairy product at a
5 price that is less than the applicable minimum price established by the milk marketing
6 board nor more than the applicable maximum price established by the board.
- 7 2. ~~If the board requires price filing is required by the board, no:~~
- 8 a. ~~A dealer may not sell, and no retailer may purchase,~~ a frozen dairy product at a
9 price which that varies from the filed price which is in effect on the date of such the
10 sale; and
- 11 b. ~~A retailer may not purchase a frozen dairy product at a price that varies from the~~
12 filed price in effect on the date of the sale.
- 13 3. ~~No~~A licensee may not take any action ~~which that~~ is contrary to commitments made by
14 such the licensee in the license application filed with the board.
- 15 4. ~~It is unlawful for any~~A licensee ~~to~~may not use or attempt to use any method,
16 device, or transaction that:
- 17 (1) ~~Is intended to accomplish, or having or has the effect of accomplishing,~~ the
18 sale or attempted sale or the purchase or attempted purchase of milk
19 products or frozen dairy products at less than the minimum prices
20 established by the board pursuant to in accordance with this chapter, or
21 which is;
- 22 (2) Is intended to accomplish or has the effect of accomplishing the purchase or
23 attempted purchase of milk products or frozen dairy products at less than
24 the minimum prices established by the board in accordance with this
25 chapter;
- 26 (3) Is designed to circumvent the price requirements of the board; or which

- 1 (4) That has the effect of substantially undermining the effectiveness of such
2 pricing requirements, ~~whether such.~~
- 3 b. The provisions of subdivision a are applicable regardless of whether the method,
4 device, or transaction applies:
- 5 (1) Is applied directly to the milk product or frozen dairy product sold or
6 purchased; or is
- 7 (2) Is used in connection with the sale or handling of any other product,
8 commodity, article, or service.
- 9 5. ~~The following arrangement, now in effect among a limited number of licensees in this~~
10 ~~state, is found to be discriminatory, unfair, and disruptive and is hereby prohibited: The~~
11 ~~purchasing by a~~ distributor ~~of~~ may not purchase milk products or frozen dairy
12 products at prices ~~which~~ that are less than minimum wholesale prices ~~when such~~ if the
13 products are resold to consumers at a fixed place of business owned by ~~such~~ the
14 distributor. This subsection ~~may not be interpreted as prohibiting an arrangement in~~
15 ~~which a distributor purchases~~ does not prohibit a distributor from purchasing at
16 wholesale prices those milk products or frozen dairy products that are to be resold at a
17 fixed place of business owned by ~~such~~ the distributor ~~and, provided the distributor~~
18 purchases at distributor prices all ~~of the~~ other milk products and frozen dairy products
19 that are to be resold by ~~such~~ the distributor.
- 20 6. ~~No~~ A retailer may not sell or offer to sell any milk products or frozen dairy products of
21 one a particular brand at a price ~~which~~ that is different from the price ~~that~~ charged by
22 ~~such~~ the retailer for an equal quantity of a product ~~which is of the same quantity, type,~~
23 quality, or grade, ~~but of a different brand, unless such~~ the price differential is equal
24 to ~~the~~ equals the difference in the prices price paid by the retailer for the referenced
25 products in question.

26 **SECTION 11. AMENDMENT.** Section 4-18.1-11 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **4-18.1-11. Authority of the board to regulate disruptive trade practices.**

29 In order to implement subsection 4 of section 4-18.1-10, the board shall by regulation
30 prohibit or regulate¹ each of the following practices, which said practices are listed herein solely
31 for the purpose of illustrating the broad scope of the board's authority under the said subsection.

1 Such listing is not intended to be an exclusive enumeration of those practices, methods,
2 devices, schemes, arrangements, and activities which the board is authorized to prohibit or
3 regulate:²

4 1. The giving of discounts, rebates, or allowances in connection with the sale of milk
5 products or frozen dairy products unless such discounts, rebates, or allowances are
6 authorized by the board in accordance with subsection 5 of section 4-18.1-07.

7 2. The furnishing by a dealer of free equipment or services to a retailer. This provision
8 may not be interpreted as authorizing the board to prohibit the stocking by a dealer of
9 the dairy case or frozen products cabinet of a retailer nor the stamping on each milk
10 product or frozen dairy product by the dealer of the retail price at which the retailer
11 desires to sell any such product.

12 3. The giving of advertising or display allowances.

13 4. The giving of a free milk product or a free frozen dairy product to a customer.

14 5. The making or renewal of loans, or the giving of financial assistance in any other form,
15 by a dealer to a retailer.

16 6. The furnishing of signs by a dealer to a retailer.

17 7. Selling, offering to sell, or advertising any milk product or frozen dairy product in
18 combination with any other product or service.

19 8. Selling, offering to sell, or advertising any product or service at a price which is
20 available only to purchasers of a milk product or a frozen dairy product.

21 9. The giving of gifts by dealers to retailers.

22 10. The selling, leasing, renting, or lending of equipment by a dealer to a retailer. In
23 connection with the sale of equipment by a dealer to a retailer, the board may
24 prescribe the minimum markup based upon the seller's invoice cost or depreciated
25 value in the case of used equipment. This subsection may not be interpreted as
26 authorizing the board to prohibit the sale of equipment by dealers to retailers, but the
27 board may prescribe a minimum markup based upon the seller's invoice cost (or
28 depreciated value in the case of used equipment).

29 11. The requiring of deposits where milk products or frozen dairy products are purchased
30 in returnable containers and the giving of allowances or credits in connection with the
31 return of such containers.

- 1 12. Payments by dealers to franchisors, wholesale grocers, or any other person closely
2 connected with a retailer for central billing, customer solicitation, or other services if
3 the purpose or effect of such payment is to induce the recipient of any such payment
4 to influence or attempt to influence the decision of one or more retailers relative to the
5 brands of milk products or frozen dairy products to be purchased and resold by such
6 retailer or relative to the amount of space to be allocated to any brand of milk products
7 or frozen dairy products.

NOTE:

¹Current law provides that the board "shall by regulation prohibit or regulate each of the following practices" The committee may wish to consider whether the prohibition of certain acts is a legislative rather than a regulatory function.

²Current law provides that the practices "are listed herein solely for the purpose of illustrating the broad scope of the board's authority under the said subsection." It goes on to state that the "listing is not intended to be an exclusive enumeration of those practices, methods, devices, schemes, arrangements, and activities which the board is authorized to prohibit or regulate."

In other words, the board is authorized to prohibit or regulate any method, device, or transaction "intended to accomplish, or having the effect of accomplishing, the sale or attempted sale or the purchase or attempted purchase of milk products or frozen dairy products at less than the minimum prices established by the board pursuant to this chapter, or which is designed to circumvent the price requirements of the board, or which has the effect of substantially undermining the effectiveness of such pricing requirements, whether such method, device, or transaction applies directly to the milk product or frozen dairy product sold or purchased, or is used in connection with the sale or handling of any other product, commodity, article, or service." The committee may wish to determine whether this section provides the public with due notice of the law, and in particular, with due notice of prohibited acts. (Violations of this chapter can result in the suspension or revocation of one's license, as well as the payment of fines.)

- 8 **SECTION 12. AMENDMENT.** Section 4-18.1-12 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **4-18.1-12. Assessments by the board - Continuing appropriation.**

- 11 1. a. ~~In order to obtain funds for the administration and enforcement of the provisions~~
12 ~~of this chapter, the board shall levy an assessment upon all licensed processors~~
13 ~~of not more than twelve cents per hundredweight [45.36 kilograms] after June 30,~~
14 ~~1995, and before July 1, 1997, on milk or milk equivalents used for the~~
15 ~~manufacture of milk products and frozen dairy products processed by such~~
16 ~~processors. The board shall levy an assessment of not more than thirteen cents~~
17 ~~per hundredweight [45.36 kilograms] after June 30, 1997, and before July 1,~~
18 ~~1999, and not more than~~ Each licensed processor shall pay to the milk marketing

1 board an amount determined by the board but not exceeding fourteen cents¹ per
2 hundredweight [45.36 kilograms] after June 30, 1999 on all milk and milk
3 equivalents² used by the processor in manufacturing milk products and frozen
4 dairy products.

5 b. ~~However, this~~The assessment required in accordance with this section is not
6 applicable to imposed on milk products or frozen dairy products sold in ~~other~~
7 states outside this state.

NOTE:

¹The committee may wish to consider whether the actual amount of the assessment or only the maximum amount of the assessment should be referenced in the North Dakota Century Code.

²What is a "milk equivalent"? (The term is used in current law)

8 2. This assessment must be paid required by this section must be calculated quarterly ~~on~~
9 ~~or before the fifteenth of July, October, January, and April of each year. Each such~~
10 ~~payment must be equal to the assessment due in connection with milk products and~~
11 ~~frozen dairy products processed during the calendar quarter which ends on the last~~
12 ~~day of the preceding month and paid within fourteen days after the end of each~~
13 ~~calendar quarter.~~

14 3. All such assessments must be deposited by the board in the state treasury in a special
15 ~~revolving fund to be known as~~The board shall forward all moneys received under this
16 ~~chapter to the state treasurer for deposit in the "milk marketing fund". All expenses~~
17 ~~incurred in connection with the enforcement and administration of this chapter,~~
18 ~~including the salaries of employees and assistants must be paid out of the said "milk~~
19 ~~marketing fund". All money~~All moneys in the milk marketing fund ~~is~~are appropriated on
20 a continuing basis to the board ~~for carrying out the purposes of~~to carry out this
21 chapter. ~~Regular audits of the board's accounts must be conducted in accordance with~~
22 ~~chapter 54-10.~~

NOTE: Because Chapter 54-10 sets forth the functions and responsibilities of the State Auditor, it is not necessary to reference those in this chapter.

23 **SECTION 13. AMENDMENT.** Section 4-18.1-13 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **4-18.1-13. Construction.**

2 This chapter does not prohibit the issuing of trading stamps by retailers in connection with
3 the sale of milk products or frozen dairy products, except in those instances where a retailer
4 offers trading stamp bonuses to purchasers of milk products or frozen dairy products.

NOTE: Are "trading stamps" still in use? If not, it is suggested that the sentence
referencing such stamps be deleted.

5 ~~The authority of the board to regulate milk products or frozen dairy products moving in-~~
6 ~~interstate commerce must be construed to be as great as, but not to exceed, the limits imposed-~~
7 ~~by the Constitution of the United States.~~

NOTE: It is not necessary to statutorily articulate that the board's power is limited by the
United States Constitution.

8 **SECTION 14. AMENDMENT.** Section 4-18.1-14 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **4-18.1-14. Entry, inspection, and investigation - Penalty.**

11 ~~1. Authorized representatives~~A representative of the milk marketing board ~~have access-~~
12 ~~to, and may enter, at all reasonable hours¹, all places~~any place of business² operated
13 by licensees ~~where~~a person licensed under this chapter if raw milk, milk products, or
14 frozen dairy products are produced, stored, processed, manufactured, or sold, ~~or~~
15 ~~where the licensee at that location.~~

16 2. a. A representative of the board may enter, at all reasonable hours³, any location⁴ at
17 which a person licensed under this chapter maintains books, papers, accounts,
18 records, or other documents related to such activities identified in subsection 1.

19 b. The board may subpoena, and any of its authorized representatives
20 representative may inspect and make copies of, any of such books, papers,
21 records, accounts, or, copy, and audit the documents and audit the same, all, for
22 the purpose of determining whether or not the provisions of this compliance with:

23 (1) This chapter and of any rules and stabilization;

24 (2) Rules that implement this chapter; and

25 (3) Stabilization plans issued by the board are being complied with.

NOTE:

¹The reference to "all reasonable hours" is rather subjective.

²Current law authorizes access to any place of business at which raw milk is produced. Is a milking barn a "place of business"? Is it necessary for a board representative to have access to that location?

³See comment related to footnote 1.

⁴Current law requires clarification. Is the law authorizing a board representative to enter a licensee's place of business if the licensee maintains books, papers, accounts, records, or other documents at that location or is the law authorizing a board representative to enter any location at which the licensee maintains books, papers, accounts, records, or other documents? If the intent is the latter, would this include the licensee's home? If the documents are at an accountant's office or an attorney's office, are those considered to be records maintained by the licensee?

- 1 3. The board may subpoena, and ~~any of its authorized representatives~~its representative
2 may inspect, audit, and make copies of, relevant books, papers, records, accounts, or
3 other documents of persons doing business with licensees.

NOTE: This language authorizes the board to access documents having nothing to do with the nature and scope of the current chapter.

- 4 4. Any information gained by the board or its ~~representatives~~representative through such
5 entry, inspection, or investigation ~~must be treated as~~is confidential ~~by the board and its~~
6 ~~representatives and must be used only for.~~ The board or its representative, however,
7 may:

- 8 a. Utilize the information for the administration of this chapter; ~~provided, that such~~
9 ~~persons may divulge such information when called upon to testify in any duly~~
10 ~~noticed~~
11 b. Provide testimony regarding the information in an administrative proceeding
12 ~~before the board or in any~~conducted in accordance with chapter 28-32;
13 c. Provide the information in a court proceeding wherein if the board is a party ~~or;~~
14 and
15 d. Provide the information to the agriculture commissioner or the dairy
16 ~~commissioner for the purpose of~~use in determining whether a licensee's financial
17 condition is such as to reasonably assure prompt payment to the dairy farmers
18 from whom milk or cream is purchased.

- 19 5. Nothing contained in this chapter prevents the use of any information procured by the
20 board or its representatives in the compiling and dissemination of general statistical
21 data, containing information procured from a number of licensees, and compiled in
22 such manner as not to reveal individual information for any licensee.

NOTE: Does the board utilize the authority granted by this section to obtain such "general statistical data"?

1 6. Any person who divulges confidential information in violation of this section ~~to any~~
2 ~~person, other than members and employees of the board,~~ is guilty of a class A
3 misdemeanor.

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

NOTE: This verbiage appears to grant the board subpoena power for purposes beyond those involving an administrative hearing or a criminal proceeding. The committee may wish to consider the scope of such authority.

7 8. For purposes of this section, "documents" include accounts, books, papers, and
8 records.

NOTE: Subsection 8 was added as an alternative to specifying "accounts, books, papers, records, and other documents" on several occasions within this section. However, it is suggested that the list is redundant and that a statutory reference to "records" or "documents" would be sufficient.

9 **SECTION 15. AMENDMENT.** Section 4-18.1-15 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-18.1-15. Records and reports.**

NOTE: There is no reference to "reports" in this section.

12 1. The milk marketing board shall require licensees to maintain such records as the
13 board deems necessary to effectuate the provisions of this chapter. The board may, ~~by~~
14 ~~regulation,~~ specify, by rule, what records must be maintained by each type of licensee.

NOTE: Current law directs that the board require licensees to maintain certain records. It then authorizes the board to specify those records in rule. It appears that the board does not have to specify the requisite records in rule. If that is the case, we would suggest language such as:

Each licensee shall maintain records, as designated by the board, for a period of three years.

15 2. ~~The board shall require licensees to~~Each licensee shall maintain, ~~among other~~
16 ~~records,~~ the following:

17 a. A a record of all:

18 a. All raw milk received or purchased by the licensee, ~~showing the names and~~
19 ~~addresses of the dairy farmers and others;~~

20 b. The name and address of each person from whom such raw milk was purchased,
21 ~~the;~~

NOTE: Current law requires the name and address of each person from whom raw milk was "purchased." Is there a need to include the name and address of each person from whom raw milk was "received"? Is the receipt or purchase date important?

1 c. The quantity;

NOTE: Is the information regarding "quantity" applicable to raw milk that is received as well as purchased? Does it refer to each shipment or total purchases over time? Does it need to be segregated by supplier if there is more than one?

2 d. The price paid;

NOTE: Similarly to the previous note, if the record requirement is to be in the statute, its content should be clearly articulated. If it is the intent that the board will set the parameters for the records, then language to that effect can be crafted.

3 e. The butterfat test; and any

4 f. Any deductions made.

NOTE: To which deductions is the statute referring?

5 ~~b-3.~~ a. Each licensee shall maintain a record of all milk products and frozen dairy

6 products sold or used, classified as to by the licensee. The record must show:

7 (1) The product's grade;

8 (2) The product's use;

9 (3) The product's location;

10 (4) The product's market outlet;

11 (5) The size and type of container, the;

12 (6) The product's composition of said product in terms of butterfat and solids;

13 the

14 (7) The quantity of the product sold; and the prices received therefor

15 (8) The price at which the product was sold.

NOTE: The committee may wish to examine the necessity for each of the informational components and the applicability of each component to "milk products" and "frozen dairy products."

16 b. ~~Such~~The records required by this subsection must also show the:

17 (1) The quantity of each milk product or frozen dairy product manufactured by a
18 licensee, together with the;

19 (2) The composition of such each milk product or frozen dairy product, the-
20 manufactured by the licensee;

21 (3) The quantity of each milk product or frozen dairy product that is
22 manufactured by the licensee and sold; and the prices received therefor

23 (4) The price at which the product was sold.

NOTE: The committee may wish to examine the necessity for each of the informational components and the applicability of each component to milk products and frozen dairy products "manufactured by a licensee."

1 ~~2.4.~~ The board may require licensees to maintain, ~~among other records,~~ the following:

2 a. ~~A~~ record of the:

3 a. The shrinkage, wastage, or loss of raw milk and butterfat, ~~and;~~

NOTE: How is "loss" distinguished from "wastage" and "shrinkage"?

4 b. The amount of skim milk and butterfat that has been destroyed or used for
5 special purposes such as livestock feed;:

NOTE: What other "special purposes" are there? Is this a reference to purposes other than human consumption?

6 ~~b-c.~~ ~~A record of the~~The inventory of raw milk, other milk products, and frozen dairy
7 products ~~on hand~~that the licensee has available at the end of a designated
8 accounting period;:

9 ~~e-d.~~ ~~A record of all items of expense~~All direct and indirect expenses incurred by the
10 licensee in ~~procuring~~;
11 (1) Procuring raw milk and other ingredients;: and ~~in processing~~
12 (2) Processing, manufacturing, storing, distributing, and selling milk products
13 and frozen dairy products, ~~including overhead and general and~~
14 administrative costs, ~~and all other items of cost incurred by each licensee in~~
15 ~~the conduct of its business.~~

NOTE: The items listed in this subsection are examples of records that the board may require of licensees. Section 4-18.1-15(1) states that the "board shall require licensees to maintain such records as the board deems necessary to effectuate the provisions of this chapter."

The committee may wish to determine whether the statute should contain a directive that the board collect whatever information it deems necessary or whether the statute should delineate the information that the board must collect. It is not statutorily necessary or appropriate to include examples of that which the board might choose to collect.

16 5. A licensee may not be required to reveal that licensee's profit or loss. Such records
17 must be of a nature to permit the board to make statistical studies as it may deem
18 necessary for the proper exercise of its authority under this chapter.

NOTE: In current law, the verbiage of proposed subsection 5 appears to refer only to those items set forth in proposed subsection 4. However, within the mandatory recordkeeping provisions of this section, licensees are required to provide information regarding price, quantity of product purchased and sold, etc. It would seem that a licensee is in fact being required to reveal information related to profit and loss.

1 ~~3.6.~~ Records required to be kept by licensees must be preserved by the licensee. Each
2 licensee shall retain records required by this section for a period of not less than three
3 years.

4 **SECTION 16. AMENDMENT.** Section 4-18.1-16 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **4-18.1-16. Cooperation with other governmental agencies.**

7 The milk marketing board may, in compliance with section 4-18.1-18, cooperate with
8 stabilization agencies in other states and with the secretary of agriculture of the United States in
9 the manner provided in the Agricultural Marketing Agreement Act of 1937, as amended
10 [7 U.S.C. 610(i)].

NOTE: 7 U.S.C. 610(i) provides direction to the United States Secretary of Agriculture:

7 U.S.C. 610(i) Cooperation with State authorities; imparting information

The Secretary of Agriculture upon the request of the duly constituted authorities of any State **is directed**, in order to effectuate the declared policy of this chapter and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, **to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 608c of this title) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture:** Provided, That information furnished to the Secretary of Agriculture pursuant to section 608d (1) of this title shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 608d (2) of this title.

Because nothing precludes a state agency from "cooperating" with entities in other states, it is recommended that this section be deleted.

11 **SECTION 17. AMENDMENT.** Section 4-18.1-17 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **4-18.1-17. Remedies.**

- 14 1. a. The milk marketing board may refuse to deny an application for a license or under
15 this chapter.
- 16 b. The board may suspend or revoke the license of granted to any person, except a
17 dairy farmer, who violates any provision of this under this chapter if the person
18 violates:

- 1 (1) ~~This chapter, any provision of a;~~
2 (2) ~~A stabilization plan issued by the board; or any rule issued by the board~~
3 (3) ~~Any rule that implements this chapter.~~

NOTE: It is not clear in the current law whether the board can refuse to issue a license to a person who has violated this chapter: e.g. If an individual sold milk products without first obtaining a retailer's license from the board.

- 4 c. ~~The provisions of this subsection do not apply to a dairy farmer.~~
5 2. a. In lieu of a license suspension or revocation, the board may assess a civil penalty
6 in an amount not to exceed~~exceeding~~ five hundred dollars per day for each
7 violation or continuing violation, ~~and.~~

NOTE: Current law is not clear with respect to when the board determines that there should be a suspension or revocation versus when the board determines that there should be a civil penalty.

- 8 b. ~~The board~~ may collect ~~such~~the civil penalty by a civil proceeding in any
9 appropriate court.

NOTE: It is not clear why there is a reference to collection of the administratively imposed civil penalty by a court in a civil proceeding. Generally, the statutory language would provide that a person who violated the chapter or any rules implementing the chapter is subject to a civil penalty in an amount not exceeding \$500 per day and that the civil penalty may be imposed by a court in a civil proceeding or by the board.

- 10 c. Any moneys received by the board as the result of an election by a licensee to
11 pay a penalty in lieu of a license suspension must be placed in the milk marketing
12 fund. ~~Such penalties must be construed as civil and not criminal in nature.~~

NOTE: Current law is not clear with respect to when the board determines that there should be a suspension or revocation versus when the board determines that there should be a civil penalty, or in this case, when the licensee may determine that a financial penalty is preferable to a license suspension.

The subdivision is not necessary because Section 4-18.1-12 already directs that all moneys received by the board under this chapter must be deposited in the milk marketing fund.

- 13 2. a. ~~The board or its authorized agent may institute such action at law or in equity as~~
14 ~~may appear necessary to enforce compliance with any provision of~~shall do all
15 things necessary and proper to enforce this chapter, any rule that implements
16 this chapter, ~~or to enforce compliance with any stabilization plan or regulation of~~
17 ~~the board or to obtain a judicial interpretation of any of the foregoing; and, in~~
18 ~~addition to any other remedy, the board, upon approval by a majority of its~~
19 ~~members, may apply to the district court for relief by injunction, mandamus, or~~
20 ~~any other appropriate remedy in equity. In such actions the board is not required~~

1 to give or post bond in any action to which it is a party whether upon appeal or
2 otherwise adopted by the board.

3 **b.** All legal actions may be brought by or against the board in the name of the North
4 Dakota milk marketing board, a state agency.

5 **SECTION 18. AMENDMENT.** Section 4-18.1-18 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **4-18.1-18. Adjudicatory functions of the board.**

8 1. **a.** Within thirty days after receipt by the board of receiving an application for license,
9 the milk marketing board shall either issue:

10 (1) Issue the license; or notify

11 (2) Notify the applicant of the date on which a hearing will be held for the
12 purpose of receiving to receive evidence relative to the eligibility of the
13 applicant for the license sought application.

14 **b.** ~~Such hearings should be held on a date which is not~~A hearing under this
15 subsection may not be held less than twenty days after the date on which such
16 notice is given, unless the hearing is fixed for board and the applicant agree to an
17 earlier date by mutual agreement of the board and the applicant.

18 **c.** Within a reasonable time after the ~~close of such a hearing is closed,~~ the board
19 shall notify the applicant of its decision in the matter.

NOTE: Because reasonable minds could differ with respect to what constitutes a
"reasonable time," the North Dakota Administrative Procedures Act requires a final order
within "thirty days . . . or as soon thereafter as possible."

20 **d.** The board may deny the issuance of a license if ~~the board~~ finds that the
21 applicant has violated this chapter or a regulation or stabilization plan
22 promulgated by the board.

NOTE: Presumably, the board may deny a license to an applicant for a variety of reasons.
Generally, there is a separate section in which grounds for the denial of a license are listed.

23 2. **a.** ~~Whenever~~If the director has reason to believe that a licensee has violated this
24 chapter, a rule that implements this chapter, or any rule or a stabilization plan
25 issued by the board, the director may file a complaint against such licensee with
26 the board and shall serve a copy of the complaint on the licensee in which the
27 director shall set forth, against the licensee. The complaint must state the nature
28 of the alleged violation. ~~The board~~

1 b. If after a hearing and after finding the board determines that the licensee has
2 violated ~~any provisions of this chapter, a provision of rule that implements this~~
3 chapter, or a stabilization plan ~~or a rule~~ issued by the board, the board may
4 suspend or revoke the licensee's license.

5 3. The proceedings authorized or required by ~~subsections 1 and 2~~this section must be in
6 strict conformity with chapter 28-32, any rules adopted under chapter 28-32, and any
7 other rules of administrative practice or procedure adopted by the board.

NOTE: Is there a reason why this chapter could not simply indicate that all administrative and regulatory functions of the board must be governed by Chapter 28-32?

8 **SECTION 19. AMENDMENT.** Section 4-18.1-19 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **4-18.1-19. Judicial review of adjudicatory action by the board.**

11 Judicial review of any decision rendered by the milk marketing board in any proceedings
12 authorized or required by section 4-18.1-18 must be in accordance with sections 28-32-42
13 through 28-32-49.

NOTE: See note following Section 18.

14 **SECTION 20. AMENDMENT.** Section 4-18.1-20 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **4-18.1-20. Rulemaking functions of the board.**

17 1. The rules of practice, regulations, and stabilization plans issued by the milk marketing
18 board are declared to be "rules" as that word is defined in chapter 28-32. The
19 requirements of sections 28-32-02 through 28-32-20 are applicable to any board
20 proceeding which results in the adoption, amendment, or repeal of any rule of practice,
21 regulation, or stabilization plan.

22 2. The board may, at any time, on its own motion, initiate a proceeding in connection with
23 the adoption, amendment, or repeal of rules of practice, regulations, or stabilization
24 plans. In addition, any person desiring to initiate such a proceeding shall file with the
25 board a written petition which must state clearly and concisely the substance or nature
26 of the action requested and the reasons which prompted the request. Upon receipt of
27 such petition, the board shall, within thirty days thereafter, deny the petition in writing
28 or schedule the matter for public hearing pursuant to the requirements of this section.

- 1 3. Prior to the adoption, amendment, or repeal of any rule of practice, regulation, or
2 stabilization plan, the board shall:
- 3 a. Give at least ten days' notice of its intended action. The notice must include a
4 statement of either the terms or substance of the intended action or a description
5 of the subjects and issues involved and the time when, the place where, and the
6 manner in which interested persons may make presentations in connection
7 therewith. The notice must be mailed to all persons who have made timely
8 requests for advance notice of any such proceeding, and notice must also be
9 given by publication in accordance with the requirements set forth in the board's
10 rules of practice.
- 11 b. Afford all interested persons reasonable opportunity to submit data, views, or
12 arguments, orally or in writing. In any proceeding involving regulations or
13 stabilization plans, opportunity for oral presentation (a public hearing) must be
14 granted. The board shall consider fully all such written and oral submissions.
- 15 4. The board may designate a hearing officer to conduct any public hearing required by
16 this section.
- 17 5. The record of each rulemaking proceeding, including the transcript of any public
18 hearing held as a part thereof, must be filed in the principal office of the board. Such
19 record must be available at all times for inspection by any interested person.
- 20 6. Any rule of practice, regulation, or stabilization plan adopted by the board, or the
21 amendment or repeal thereof, is effective on the date on which notice of such action is
22 given by the board, or such later date as may be specified in the notice. Notice of any
23 such action must be given by the board to all persons who have made timely requests
24 for such a notice, and all persons who entered an appearance at the public hearing.

NOTE: See note following Section 18.

25 **SECTION 21. AMENDMENT.** Section 4-18.1-21 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **4-18.1-21. Judicial review of rulemaking action by the board.**

- 28 1. The validity or applicability of any action taken by the milk marketing board in its
29 rulemaking capacity may be determined in a suit for declaratory judgment in the
30 district court.

- 1 2. Any such suit must be filed within thirty days after the date on which the action by the
2 board becomes effective pursuant to section 28-32-42.
- 3 3. The court shall declare the board action invalid if the court finds that the action in
4 question violates constitutional provisions or exceeds the statutory authority of the
5 board or was adopted without substantial compliance with rulemaking procedures. The
6 board must be made a party to the suit.
- 7 4. No stay of a board stabilization plan or regulation properly adopted may be granted
8 prior to final determination of any such matter by the court having jurisdiction thereof.

NOTE: See note following Section 18.

9 **SECTION 22. AMENDMENT.** Section 4-18.1-22 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-18.1-22. Local advisory ~~boards~~panel.**

NOTE: Because current law contains references to both the "local advisory" board and to the "milk marketing" board, it is suggested that in the interest of clarity, the statute reference a local advisory "panel" rather than an additional "board."

- 12 1. ~~Whenever~~If the milk marketing board schedules a public hearing ~~is scheduled by the~~
13 ~~board~~ in any marketing area¹ for the purpose of establishing prices², the board may, at
14 least ten days prior to the date ~~set for such~~of the hearing³, appoint a local advisory
15 board, ~~the function of which is~~panel to assist and advise the board in matters
16 pertaining to the production and marketing of milk in ~~said~~the marketing area.

NOTE:

¹Is this referring to a public hearing in a particular marketing area for the purpose of establishing prices in "that" particular marketing area?

²Current law references the establishment of prices. Is this intended to reference only the initial action or is it to include any amendments to existing prices?

³It appears that the appointment of the advisory board must take place at least 10 days prior to the hearing. However, meetings of the advisory board are not restricted. Is that the intent?

- 17 2. ~~If a local advisory board~~panel is appointed, ~~the local advisory board shall in~~
18 accordance with subsection 1, the panel must consist of ~~two producers, two~~
19 ~~processors, and two retailers;~~
- 20 a. Two individuals who are actively engaged in milk production; in the marketing
21 area;
- 22 b. Two individuals who are actively engaged in milk processing; in the marketing
23 area; and

1 c. Two individuals who are actively engaged as retailers in the marketing in-the-
2 area.

NOTE: The committee may wish to examine whether the manner in which the advisory panel is appointed provides sufficient objectivity or perspectives for the board?

Do all milk marketing areas in the state contain at least two processors?

What does the phrase "actively engaged" mean? Is it physical participation in the day-to-day operations? Is it ownership?

3 3. ~~Such~~A local advisory ~~board~~panel shall meet with the board at the call of the board
4 before, during, or after ~~such~~a public hearing to establish prices. ~~The members of such~~

5 4. Each member of a local advisory board shall panel is entitled to receive compensation
6 in the amount of twenty-five dollars per diem for each day actually spent in the-
7 performance of suchplus reimbursement for expenses as provided by law for state
8 officers, if the member is attending meetings or performing duties, plus mileage and-
9 expenses in an amount equal to that received by state officers. In no event may there-
10 be more than three meetings or conferences between the board and such directed by
11 the board.

12 5. The board may not meet or confer with the local advisory board and in all events-
13 suchpanel more than three times. The local advisory board shall cease to existpanel is
14 dissolved when the board promulgates its stabilization planthe established prices
15 following the public hearing heretofore mentioned.

16 **SECTION 23. AMENDMENT.** Section 4-18.1-23 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **4-18.1-23. Referendum on continuance of program - Petitions - Contents.**

19 ~~Whenever~~Upon receiving a petition is ~~presented to the agriculture commissioner-~~
20 ~~containing~~signed by at least twenty-five percent of the total grade A dairy farmers in ~~North-~~
21 ~~Dakota covered by the provisions of~~who are governed by this chapter, with ~~that~~ at least one
22 signature ~~of at least one such dairy farmer in~~from each of twenty-seven different counties, the
23 agriculture commissioner shall conduct a referendum, by secret ballot, by mail, ~~in accordance-~~
24 ~~with rules established by the agriculture commissioner, and shall~~to determine whether this
25 chapter should be continued. The commissioner shall report the results of the referendum to the
26 next legislative assembly that meets thereafter.

NOTE: Who determines the number of Grade A dairy farmers in this state for purposes of this section?

Sixty-fourth
Legislative Assembly

Who is considered a dairy farmer for purposes of determining the total number of required signatures? Are a husband and wife considered to be one dairy farmer or two? How are active participants and those having ownership interests in corporate entities treated?