Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1027
(Legislative Management)
(Agriculture Committee)

AN ACT to create and enact chapter 4.1-26 of the North Dakota Century Code, relating to the milk marketing board; to amend and reenact section 54-07-01.2 of the North Dakota Century Code, relating to boards and commissions; and to repeal chapter 4-18.1 of the North Dakota Century Code, relating to the milk marketing board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 4.1-26 of the North Dakota Century Code is created and enacted as follows:

4.1-26-01. Definitions.

Unless the context otherwise requires, the definitions in this section apply to this chapter.

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

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

3. "Dairy farmer-processor" means a person who is both a dairy farmer and a processor and who does not purchase raw milk from other dairy farmers, provided:

   a. A dairy farmer-processor is a dairy farmer with respect to the sale of raw milk produced by that person to a processor; and

   b. A dairy farmer-processor is a processor with respect to any processing, manufacturing, or sale of milk products or frozen dairy products or with respect to the receipt of bulk milk from a source other than that person's own production.

4. "Dealer" means any processor or distributor.

5. "Distributor" means a person, other than a processor, that sells to consumers on one or more home delivery routes, that sells to retailers, or that sells to both.

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

7. "Frozen dairy product" means:

   a. Ice cream;

   b. Ice milk;

   c. Frozen custard;

   d. Fruit sherbet;

   e. The mix from which any such product listed in subdivisions a through d is made; and

   f. Any frozen product that contains milk solids not fat, or butterfat, and which is commonly referred to in the dairy industry as a novelty.

8. "Marketing area" means a geographical portion of this state, within which minimum or maximum prices established by the board must be uniform.

9. "Milk" means the lacteal secretion of a cow, including when the secretion is raw, cooled, pasteurized, standardized, homogenized, recombined, or concentrated, provided the secretion meets applicable grade A requirements.

10. "Milk product" means:

a. (1) Buttermilk, including plain and creamed;

(2) Concentrated milk;

(3) Creamline milk;

(4) Flavored milk;

(5) Flavored skim milk;

(6) Fortified milk;

(7) Homogenized milk;

(8) Low fat milk;

(9) Raw milk;

(10) Regular milk;

(11) Skim milk;

(12) Special milk;

(13) Standardized milk; and

(14) Whole pasteurized milk;

b. (1) Cottage cheese; and

(2) Creamed cottage cheese;

c. Eggnog;

d. (1) Fluid cream;

(2) Half and half;

(3) Sour cream;

(4) Whipped cream; and

(5) Whipping cream; and

e. Yogurt.

11. a. "Processor" means a person who:

(1) Processes or manufactures milk products or frozen dairy products;

(2) Purchases raw milk from a grade A dairy farmer for resale to a person who processes or manufactures milk products or frozen dairy products; or

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

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

(1) The person's processing activities are limited to converting the mix into a frozen dairy product; and

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

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

13. "Retailer" means any person who is engaged in transferring title to milk products or frozen dairy products to consumers at one or more retail establishments located in this state.

14. "Stabilization plan" means a plan that contains minimum prices, maximum prices, or both, and enforcement mechanisms.

15. "Wholesale price" means the price at which any milk product or frozen dairy product is purchased by a retailer.

4.1-26-02. Milk marketing board - Membership.

1. The milk marketing board consists of:

a. A dairy farmer appointed by the governor from a list of two names submitted by the milk producers association of North Dakota;

b. A processor appointed by the governor from a list of two names submitted by the North Dakota dairy industries association;

c. A retailer appointed by the governor from a list of two names submitted by the North Dakota grocers association; and

d. Two consumer representatives appointed by the governor, provided that neither consumer representative may have a financial interest in a dairy farm nor in an entity that processes, distributes, or sells milk products.

2. An individual is not qualified to serve on the board if the individual held any other public office, in an elected or an appointed capacity, during the two-year period preceding appointment to the board.

3. A member of the board may not hold any other public office, in an elected or an appointed capacity, during the member's term of office.

4. In considering individuals for appointment to the board, the governor shall ensure that a geographic balance is maintained.

4.1-26-03. Terms of office.

1. The term of office for each member is five years and begins on July first.

2. Terms of office must be staggered so that no more than one term expires each year.

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

4.1-26-04. Compensation.

Each member of the board is entitled to receive compensation in the amount established by the board, but not exceeding one hundred thirty-five dollars per day, plus reimbursement for expenses as provided by law for state officers, if the member is attending meetings or performing duties directed by the board.

4.1-26-05. Chairman - Meetings.

1. Annually, the board shall elect one member to serve as the chairman.

2. The chairman shall call all meetings of the board and shall call a special meeting of the board within seven days when petitioned to do so by three board members.

4.1-26-06. Board powers.

The board may:

1. Do all things necessary and proper to enforce and administer this chapter;

2. Employ and compensate necessary personnel;

3. Employ an attorney licensed in this state;

4. Serve as a mediator or an arbitrator in any dispute among or between dairy farmers, processors, distributors, retailers, or consumers, provided:

   a. All parties to the dispute request the board to provide such services; and

   b. The dispute pertains to the production, transportation, processing, storage, distribution, or sale of milk products or frozen dairy products; and

5. Contract with any person for any purpose related to this chapter.

4.1-26-07. Director.

The board shall employ and compensate a director and annually review the appointment of the director. The director serves at the pleasure of the board.

4.1-26-08. Authority of governmental entities.

1. This chapter does not limit, decrease, or amend the authority of the agriculture commissioner, any public board of health, or any public health official, with respect to matters of health and sanitation.

2. This chapter does not authorize the milk marketing board to regulate the sale of raw milk that is not grade A.

4.1-26-09. Milk marketing areas - Boundaries.

1. The milk marketing board shall divide the state into milk marketing areas.

2. All real property in the state must belong to a milk marketing area.

3. The board may increase the number of marketing areas in the state, decrease the number of marketing areas in the state, or alter the boundaries of marketing areas, provided the board holds a hearing in accordance with chapter 28-32 and considers:

   a. Testimony and documentary evidence regarding the production, distribution, and sale of milk products and frozen dairy products in the areas;

b. The regulation of prices paid by processors for raw milk in accordance with federal milk marketing orders; and

c. Any other factors affecting implementation of this chapter.

4.1-26-10. Milk stabilization plans - Required provisions.

The milk marketing board shall establish a milk stabilization plan for each milk marketing area.

1. a. Each milk stabilization plan must include the minimum price that processors located within the particular milk marketing area must pay to dairy farmers for raw milk.

   b. In establishing the minimum price, as required by this subsection, the board shall consider various factors pertinent to the milk marketing area, including:

      (1) Supplies of raw milk;

      (2) Reserve supplies of raw milk;

      (3) Production and retail sales data;

      (4) Feed prices; and

      (5) Wage rates.

2. a. Each milk stabilization plan must include the minimum price that a processor must charge a retailer for milk products, provided the minimum price for each item is applicable, regardless of the location at which the retailer accepts delivery.

   b. Each milk stabilization plan must include the minimum price that a distributor must charge a retailer for milk products, provided the minimum price for each item is applicable, regardless of the location at which the retailer accepts delivery.

   c. Each milk stabilization plan must include the minimum price that any person must charge a consumer for milk products.

   d. In establishing the minimum price, as required by this subsection, the board shall consider various factors pertinent to the milk marketing area, including:

      (1) Raw milk prices;

      (2) Processing and distribution costs;

      (3) Returns upon investment; and

      (4) Retail sales volumes.

4.1-26-11. Milk stabilization plans - Optional provisions.

1. a. A milk stabilization plan established in accordance with section 4.1-26-10 may include the minimum price that must be charged for milk products and frozen dairy products by any person other than those referenced in subsection 2 of section 4.1-26-10.

   b. (1) Nothing in this subsection requires the establishment of minimum prices for all items in a category.

      (2) Nothing in this subsection requires the establishment of both minimum wholesale and retail prices for a particular item.

2. A milk stabilization plan established in accordance with section 4.1-26-10 may provide for a classified pricing system predicated upon utilization and may provide for a marketwide pooling arrangement or a handler pooling arrangement, as defined in the Agricultural Marketing Agreement Act of 1937 [7 U.S.C. 601 et seq.], as amended.

3. If some portion of a milk marketing area falls under the jurisdiction of a federal milk marketing order, a milk stabilization plan established in accordance with section 4.1-26-10 for the marketing area may require that licensed processors subject to both the milk stabilization plan and the federal milk marketing order:

   a. Pay minimum raw milk class prices that exceed the minimum raw milk class prices established by the federal milk marketing order; and

   b. Pay the difference between the federal and state minimums directly to dairy farmers, on a handler pool basis.

4. A milk stabilization plan established in accordance with section 4.1-26-10 may contain a formula that automatically changes the minimum price payable to dairy farmers, provided the formula is based on changes in the factors set forth in subdivision b of subsection 1 of section 4.1-26-10.

5. A milk stabilization plan established in accordance with section 4.1-26-10 may:

   a. Establish the prices payable by a processor for raw milk purchased from sources other than dairy farmers; and

   b. Contain provisions necessary to ensure that the prices paid for butterfat and milk solids not fat, whether in the form of raw milk or otherwise, are uniform for all processors whose raw milk purchases are regulated under the plan.

6. If a milk stabilization plan established in accordance with section 4.1-26-10 contains a marketwide pooling arrangement, the plan may require that raw milk produced by dairy farmer-processors be included in the pooling arrangement.

7. A milk stabilization plan established in accordance with section 4.1-26-10 may provide for price adjustments based upon:

   a. The butterfat content of the raw milk;

   b. The location at which the raw milk is received;

   c. The location of a plant receiving raw milk that the processor purchased and thereafter transferred or diverted from the plant at which such raw milk is normally utilized; and

   d. Any other factors for which price adjustments are permitted in the Agricultural Marketing Agreement Act of 1937, [7 U.S.C. 601 et seq.], as amended.

4.1-26-12. Milk stabilization plans - Optional provisions - Maximum prices.

1. A milk stabilization plan established in accordance with section 4.1-26-10 may include maximum prices for sales of milk products by a:

   a. Processor;

   b. Distributor; or

   c. Retailer.

2. In establishing the maximum prices as permitted by this section, the board must consider various factors pertinent to the milk marketing area, including:

a. Supplies of raw milk;

b. Reserve supplies of raw milk;

c. Production and retail sales data;

d. Feed prices; and

e. Wage rates.

4.1-26-13. Milk stabilization plans - Optional provisions - Quantity discounts to retailers.

A milk stabilization plan established in accordance with section 4.1-26-10 may permit processors and distributors to provide quantity discounts to retailers, in connection with the sales of milk products and frozen dairy products.

1. If quantity discounts are permitted, the milk stabilization plan must include for each retailer:

   a. A quantity discount rate for purchases of milk products that is based upon the retailer's total purchases of milk products from all suppliers, during an established base period of one, three, six, or twelve months; and

   b. A quantity discount rate for purchases of frozen dairy products that is based upon the retailer's total purchases of frozen dairy products from all suppliers, during an established base period of one, three, six, or twelve months.

2. Any processor or distributor delivering milk products or frozen dairy products to an eligible retailer may provide the quantity discounts regardless of the product quantities actually purchased by the eligible retailer from a processor or distributor.

3. If a retailer operates two or more separate places of business, the quantity discount rate must be applied to each place of business and based upon the quantity of milk products or frozen dairy products that the retailer purchased for resale at each place of business.

4.1-26-14. Milk stabilization plans - Optional provisions - Frozen dairy products - Wholesale price - Filing.

1. A milk stabilization plan established in accordance with this chapter may require that processors and distributors file with the board the uniform wholesale price at which a frozen dairy product will be sold within the marketing area.

2. If price filings are required, as permitted by this section, the board:

   a. (1) Shall prescribe the time at which and the manner in which the initial price filings must be submitted; and

      (2) Shall permit a processor or distributor desiring to meet the lower prices of a competitor to do so in such portions of the marketing area as specified in the amended price filing;

   b. May not prohibit a processor or distributor from meeting lawful competition without delay in connection with the sale of a frozen dairy product; and

   c. May establish other requirements as necessary to implement this section.

4.1-26-15. Cost variances - Recognition.

1. Minimum and maximum prices established in accordance with this chapter for products other than raw milk may reflect packaging cost differences.

2. Minimum and maximum prices established in accordance with this chapter for home-delivered products may vary from the prices established for products sold to consumers by retailers.

4.1-26-16. Minimum prices payable to dairy farmers - Effect of change.

Whenever a milk stabilization plan is changed with respect to the minimum price that processors located within a particular milk marketing area must pay to dairy farmers for raw milk, the milk marketing board shall ensure that simultaneous changes occur in all other minimum and maximum prices established in accordance with this chapter.

4.1-26-17. Licenses.

1. a. A person must be licensed by the milk marketing board as a dairy farmer if the person sells grade A raw milk that the person has produced to a processor that:

   (1) Must be licensed in accordance with this chapter; and

   (2) Processes the milk at a plant located in this state.

   b. This subsection is applicable regardless of whether the person's dairy farm is located within or outside of this state.

2. A person must be licensed as a processor by the milk marketing board if the person:

   a. Operates a processing plant located in this state;

   b. Sells milk products or frozen dairy products to a retailer for resale at a retail establishment in this state, regardless of whether:

      (1) The processor's plant is located in this state or outside of this state; or

      (2) The retailer takes title to or possession of the products in this state or outside of this state; or

   c. Sells milk products or frozen dairy products to a distributor for resale to:

      (1) North Dakota consumers on home delivery; or

      (2) A retailer.

3. A person must be licensed as a distributor by the milk marketing board if the person sells milk products or frozen dairy products to:

   a. North Dakota consumers on one or more home delivery routes; or

   b. A retailer.

4. a. A person must be licensed as a retailer by the milk marketing board if the person:

      (1) Purchases milk products or frozen dairy products for purposes of resale to consumers; or

      (2) Sells milk products or frozen dairy products to consumers.

   b. (1) A person licensed as a dairy farmer, a processor, or a distributor shall also be licensed as a retailer, if the person sells milk products or frozen dairy products to consumers at a fixed place of business located in this state.

      (2) Each fixed placed of business referenced in this subdivision requires separate licensure.

5. In order to effectuate the purchase of milk products and frozen dairy products at wholesale prices, the following entities may be licensed as retailers:

   a. School districts;

   b. Nonpublic schools;

   c. Hospitals;

   d. State institutions; and

   e. Not-for-profit entities.

6. This section requires separate licensure for each place of business.

4.1-26-18. Vending machine suppliers - Authorization to license.

The milk marketing board, by rule, may provide for the licensing of persons engaged in supplying milk products or frozen dairy products to consumers through the use of vending machines.

4.1-26-19. License - Application.

To obtain a license required by this chapter, a person must complete an application form and submit it to the milk marketing board.

4.1-26-20. Licenses - Additional requirements.

1. Before a processor may be licensed by the milk marketing board, as required by this chapter, the processor shall obtain a license from the agriculture commissioner, in accordance with chapter 4-30.

2. Before a distributor may be licensed by the board, as required by this chapter, the distributor shall obtain a license from the agriculture commissioner, in accordance with chapter 4-30.

3. Before a dairy farmer may be licensed by the board, as required by this chapter, the dairy farmer shall provide proof of inspection by the agriculture commissioner or the state department of health, as provided for in accordance with section 23-01-16.

4. A person who is a dairy farmer-processor shall obtain both a dairy farmer's license and a processor's license.

4.1-26-21. License application - Hearing.

1. Within thirty days after receiving an application for a license under this chapter, the milk marketing board shall:

   a. Issue the license; or

   b. Notify the applicant of the date on which a hearing will be held to receive evidence relative to the application.

2. A hearing under this section may not be held less than twenty days after the date on which notice is given, unless the board and the applicant agree to an earlier date.

3. Within thirty days after the hearing is closed, or as soon thereafter as practicable, the board shall notify the applicant of its decision in the matter.

4.1-26-22. Refusal to license.

The milk marketing board may refuse to license any person, except a dairy farmer.

4.1-26-23. Processor's license - Distributor's license - Grounds for denial.

The milk marketing board may deny an application for a processor's license or a distributor's license if the board determines that:

1. Persons currently licensed by the board in that capacity are supplying an adequate variety and quantity of high-quality milk products and frozen dairy products to retailers and consumers in this state;

2. Deliveries are being made with sufficient regularity and frequency; and

3. The issuance of additional licenses of the type sought will:

   a. Result in an excess of processing plant capacity;

   b. Tend to increase to unsatisfactory levels the average unit processing or average unit distribution costs for persons already licensed by the board; or

   c. Otherwise tend to prevent achievement of the objectives of this chapter.

4.1-26-24. License application - Required declaration.

1. As a condition of licensure, an applicant for a processor's license shall declare in the application that the applicant:

   a. Will not sell milk products or frozen dairy products to any person who is not properly licensed in accordance with this chapter;

   b. Will sell such milk products or frozen dairy products as are customarily handled by a processor to any retailer who:

      (1) Desires to purchase such products from the processor; and

      (2) Has a place of business in any community in which the processor processes, distributes, or sells milk products or frozen dairy products; and

   c. Will offer to any retailer the same frequency of delivery and the same in-store services as are customary in the community.

2. As a condition of licensure, an applicant for a distributor's license shall declare in the application that the applicant:

   a. Will not sell milk products or frozen dairy products to any person who is not licensed in accordance with this chapter;

   b. Will not purchase milk products or frozen dairy products from any person who is not licensed in accordance with this chapter;

   c. Will sell such milk products or frozen dairy products as are customarily handled by a distributor to any retailer who:

      (1) Desires to purchase such products from the distributor; and

      (2) Has a place of business in any community in which the distributor distributes or sells milk products or frozen dairy products; and

   d. Will offer to any retailer the same frequency of delivery and the same in-store services as are customary in the community.

3. As a condition of licensure, an applicant for a retailer's license shall declare in the application that the applicant will not purchase milk products or frozen dairy products from any person who is not licensed in accordance with this chapter.

4. For purposes of this section, "community" means a city, together with any commonly recognized residential or business area adjacent to the city.

4.1-26-25. License - Expiration.

A license issued under this chapter is effective until:

1. There is a change of ownership or of location;

2. The license is suspended or revoked; or

3. The business that is licensed is discontinued or is inactive for more than thirty days.

4.1-26-26. License - Fees prohibited.

The milk marketing board may not charge a fee for the issuance or maintenance of any license required by this chapter.

4.1-26-27. Assessments - Continuing appropriation.

1. a. Each licensed processor shall pay to the milk marketing board an amount determined by the board but not exceeding eighteen cents per hundredweight [45.36 kilograms], on all milk and milk equivalents used by the processor in manufacturing milk products and frozen dairy products.

   b. The assessment required in accordance with this section is not imposed on milk products or frozen dairy products sold outside this state.

2. The assessment required by this section must be calculated quarterly and paid within fourteen days after the end of each calendar quarter.

3. The board shall forward all moneys received under this chapter to the state treasurer for deposit in the milk marketing fund. All moneys in the milk marketing fund are appropriated on a continuing basis to the board to carry out this chapter.

4.1-26-28. Records - Retention.

1. The milk marketing board shall specify by rule all records that each licensee must maintain.

2. Each licensee shall retain the records required in accordance with this section for a period of three years.

4.1-26-29. Records - Confidential - Penalty.

1. Any information created, collected, or maintained by the milk marketing board under this chapter is confidential and not subject to the open records requirements of section 44-04-18, except that the board may:

   a. Utilize the information in the administration of this chapter;

   b. Provide testimony regarding the information in a judicial proceeding or an administrative proceeding conducted in accordance with chapter 28-32;

   c. Provide the information to the agriculture commissioner for the purpose of determining a licensee's financial condition, as required by chapter 4-30; and

d. Utilize the information in compiling and disseminating general statistical data.

2. Any person divulging confidential information in violation of this section is guilty of a class A misdemeanor.

4.1-26-30. Prohibitions.

1. A licensee may not buy or sell any milk product or any frozen dairy product at a price that is less than the minimum price nor more than the maximum price set forth in the applicable milk stabilization plan.

2. If price filings are required, as permitted by section 4.1-26-14:

   a. A dealer may not sell a frozen dairy product at a price that varies from the filed price in effect on the date of the sale; and

   b. A retailer may not purchase a frozen dairy product at a price that varies from the filed price in effect on the date of the sale.

3. A licensee may not engage in any act or omission that is contrary to a declaration made in the person's application for a license, as submitted to the milk marketing board.

4. a. A licensee may not use or attempt to use any method, device, or transaction that:

      (1) Is intended to accomplish or has the effect of accomplishing, the sale or attempted sale of milk products or frozen dairy products at less than the minimum prices set forth in the applicable milk stabilization plan;

      (2) Is intended to accomplish or has the effect of accomplishing the purchase or attempted purchase of milk products or frozen dairy products at less than the minimum prices set forth in the applicable milk stabilization plan;

      (3) Is designed to circumvent any price requirements provided for in this chapter; or

      (4) Has the effect of substantially undermining the effectiveness of any price requirements provided for in this chapter.

   b. The provisions of subdivision a are applicable regardless of whether the method, device, or transaction:

      (1) Is applied directly to the milk product or frozen dairy product sold or purchased; or

      (2) Is used in connection with the sale or handling of any other product, commodity, article, or service.

5. a. A distributor may not purchase milk products or frozen dairy products at prices that are less than minimum wholesale prices if the products are resold to consumers at a fixed place of business owned by the distributor.

   b. This subdivision does not prohibit a distributor from purchasing at wholesale prices those milk products or frozen dairy products that are to be resold at a fixed place of business owned by the distributor, provided the distributor purchases at distributor prices all other milk products and frozen dairy products that are to be resold by the distributor.

6. A retailer may not sell or offer to sell milk products or frozen dairy products of a particular brand at a price that is different from that charged by the retailer for the same quantity, type, quality, or grade of a different brand, unless the price differential equals the difference in the price paid by the retailer for the referenced products.

SOURCE: Section 4-18.1-10.

4.1-26-31. Disruptive trade practices.

1. A person may not provide discounts, rebates, or allowances in connection with the sale of milk products or frozen dairy products, unless the discounts, rebates, or allowances are permitted in accordance with section 4.1-26-13.

2. A dealer may not provide free equipment or services to a retailer. This subsection does not prohibit a dealer from:

   a. Stocking the dairy case or frozen products cabinet of a retailer; or

   b. Stamping on each milk product or frozen dairy product the retail price at which the retailer desires to sell the product.

3. A person may not provide advertising or display allowances.

4. a. A person may not give a free milk product or a free frozen dairy product to a customer.

   b. This subsection does not prohibit a person from:

      (1) Providing tasting samples to an individual; or

      (2) Donating products for charitable purposes.

5. A dealer may not make loans to a retailer, renew loans to a retailer, or provide financial assistance in any other form to a retailer.

6. A dealer may not furnish signs to a retailer.

7. A person may not sell, offer to sell, or advertise any milk product or frozen dairy product in combination with any other product or service.

8. A person may not sell, offer to sell, or advertise any product or service at a price that is available only to purchasers of a milk product or a frozen dairy product.

9. A dealer may not provide a gift to a retailer.

10. a. A dealer may not lease, lend, or rent equipment to a retailer.

    b. If a dealer sells equipment to a retailer, the board shall prescribe the minimum markup, based upon the seller's invoice cost or the depreciated value in the case of used equipment.

11. a. (1) Except as otherwise provided in this subdivision, a person may not require a deposit if milk products or frozen dairy products are purchased in returnable containers.

    (2) A person may require a deposit on a milk case, provided the deposit does not exceed the replacement value of the milk case.

    b. A person may not provide an allowance or a credit in connection with the return of a container.

12. a. Except as otherwise provided, a dealer may not provide payment to a franchisor, a wholesale grocer, or any other person closely connected with a retailer for central billing, customer solicitation, or other services, if the purpose or effect of the payment is to induce the recipient to influence or attempt to influence a retailer's decision regarding:

    (1) The brand of milk products or frozen dairy products to be purchased and resold by the retailer; or

(2) The amount of space to be allocated to any brand of milk products or frozen dairy products.

b. If a wholesale grocer establishes a central billing service to guarantee the collection of dealer accounts:

(1) All dealers that supply member or corporate stores must be afforded the same service; and

(2) The central billing service fee may not exceed two percent of the invoice cost.

4.1-26-32. Inspections and investigations.

1. A representative of the milk marketing board may enter upon real property and access any structure and personal property, at any time, for the purpose of:

a. Inspecting or pursuing an investigation pertaining to the production, storage, processing, manufacturing, or sale of raw milk, milk products, or frozen dairy products; or

b. Inspecting records to determine statutory and regulatory compliance.

2. The milk marketing board may subpoena records, copy records, and audit records of any person doing business with an individual licensed under this chapter.

4.1-26-33. License - Suspension and revocation.

1. The board may suspend or revoke a license granted to any person under this chapter if the person violates:

a. This chapter;

b. A milk stabilization plan issued in accordance with this chapter; or

c. Any rule that implements this chapter.

2. The provisions of this subsection do not apply to a dairy farmer.

4.1-26-34. Violation of chapter - Civil penalty.

A person violating this chapter, a milk stabilization plan issued in accordance with this chapter, or any rule that implements this chapter, is subject to a civil penalty in an amount not exceeding five hundred dollars per day for each violation. The civil penalty may be adjudicated by a court or by the milk marketing board through an administrative hearing.

4.1-26-35. Administrative and regulatory functions.

All administrative and regulatory functions of the board must be exercised in accordance with chapter 28-32.

4.1-26-36. Legal actions.

All legal actions may be brought by or against the board in the name of the North Dakota milk marketing board.

SECTION 2. AMENDMENT. Section 54-07-01.2 of the North Dakota Century Code is amended and reenacted as follows:

54-07-01.2. Governor to have power to appoint majority of members of certain boards and commissions - Limitations.

1. Notwithstanding sections 2-05-01, ~~4-18.1-04,~~ 4.1-05-02, 4.1-26-02, 6-01-03, 6-09-02.1, 12-55.1-02, 12-59-01, 15-39.1-05.1, 15.1-01-01, 15.1-13-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:

   a. The aeronautics commission.

   b. The milk marketing board.

   c. The dairy promotion commission.

   d. The state banking board.

   e. The state credit union board.

   f. The advisory board of directors to the Bank of North Dakota.

   g. The pardon advisory board.

   h. The state parole board.

   i. The state board of public school education.

   j. The education standards and practices board.

   k. The board of trustees of the teachers' fund for retirement.

   l. The state game and fish advisory board.

   m. The health council.

   n. The air pollution control advisory council.

   o. The board of animal health.

   p. The administrative committee on veterans' affairs.

   q. The committee on aging.

   r. The committee on employment of people with disabilities.

   s. The commission on the status of women.

   t. The North Dakota council on the arts.

   u. The state historical board.

   v. The Yellowstone-Missouri Rivers confluence commission.

   w. The state water commission.

   x. The state water pollution control board.

2. The governor shall have the option of reappointing any member to any board or commission to complete the term to which the member was appointed, or the governor may appoint a simple majority of any board or commission to complete the terms of those resigned members

who do not receive reappointments. In order to assure continuity, the governor shall reappoint for the completion of their original terms no fewer than one less than a simple majority of the former members of each board or commission.

3. If the governor has not acknowledged in writing the resignation of any members of any board or commission prior to July first of the first year of the governor's term, the board or commission member must be considered to have been reappointed to complete the term to which the member was originally appointed. All members of boards and commissions shall continue to serve until the time they are notified of the acceptance of their resignation by the governor, and in all cases the members of boards and commissions shall continue to serve until their successors have been named and qualified.

4. In those instances where nominations for the filling of vacancies on boards and commissions are submitted to the governor pursuant to state law, the governor shall notify such persons and organizations of acceptance of the resignation of any board or commission member. Such persons and organizations shall furnish the governor with the number of required nominations to fill the vacancies within sixty days after the notice or the governor may nominate and appoint such members as are otherwise qualified.

5. The provisions of this section do not apply to those constitutional officers who serve on boards and commissions, except insofar as a governor may count such constitutional officers among those the governor reappoints in order to conform to the continuity requirements of this section.

6. All vacancies created by resignation after July first of the first year of each term of a governor must be filled as provided by law. If any person refuses an appointment, the governor shall fill such position as otherwise provided by law.

SECTION 3. REPEAL. Chapter 4-18.1 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1027.

House Vote:	Yeas 70	Nays 23	Absent 1
Senate Vote:	Yeas 47	Nays 0	Absent 0

Chief Clerk of the House

Received by the Governor at 10:30 A M. on March 13, 2015.

Approved at 2:39 P M. on March 16, 2015.

Governor

Filed in this office this 16th day of March, 2015,

at 3:27 o'clock P M.

Secretary of State