

## **CHAPTER 4-18.1 MILK MARKETING BOARD**

### **4-18.1-01. Declaration of policy relating to milk.** It is hereby declared:

1. That milk is a necessary article of food for human consumption.
2. That the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare.
3. That the production, transportation, processing, storage, distribution, and sale of milk, in the state of North Dakota, is an industry affecting the public health and interest.
4. That unfair, unjust, destructive, and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk, milk products, and frozen dairy products, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk.
5. That health regulations alone are insufficient to prevent disturbances in the industry and to safeguard the consuming public from further inadequacy of a supply of this necessary commodity.
6. That it is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of milk and cream, to eliminate speculation and waste, and to make the distribution thereof between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of such commodities.
7. That investigations have revealed and experience has shown, that due to the nature of milk and the conditions surrounding the production and marketing of milk, and due to the vital importance of milk to the health and well-being of the citizens of this state, it is necessary to invoke the police powers of the state to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence and recurrence of those unfair, unjust, destructive, demoralizing, and chaotic conditions and trade practices within the industry, which have in the past affected the industry and which constantly threaten to be revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to the consuming public and to the citizens of this state.
8. That milk is a perishable commodity, which is easily contaminated with harmful bacteria, which cannot be stored for any great length of time, which must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day, but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis.
9. That the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that dairy farmers, processors, and distributors produce and carry on hand a surplus of milk in order to guarantee and ensure to the consuming public an adequate supply at all times, which surplus must of necessity be converted into byproducts of milk at great expense and at times at a loss to the dairy farmer, processor, and distributor.
10. That this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and destroy the milk industry, which causes producers to relax their

diligence in complying with the provisions of the health authorities and oftentimes to produce milk of an inferior and unsanitary quality.

11. That investigation and experience have further shown that, due to the nature of milk and the conditions surrounding its production and marketing, unless dairy farmers, processors, distributors, and others engaged in the marketing of milk are guaranteed and ensured a reasonable profit on milk, both the supply and quality of milk are affected to the detriment of, and against the best interest of the citizens of this state whose health and well-being are thereby vitally affected.
12. That, where no supervision and regulation is provided for the orderly and profitable marketing of milk, past experience has shown that the credit status of dairy farmers, processors, and distributors of milk is adversely affected to a serious degree, thereby entailing loss and hardship upon all within the community with whom these dairy farmers, processors, and distributors carry on business relations.
13. That, due to the nature of milk and the conditions surrounding its production and distribution, the natural law of supply and demand has been found inadequate to protect the industry in this and other states, and in the public interest it is necessary to provide state supervision and regulation of the milk industry in this state.

**4-18.1-02. Purpose.** The purpose of this chapter is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state.

**4-18.1-03. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Adjudicatory matter" means any proceeding which results in a "decision".
2. "Board" means the state agency created by this chapter, to be known as the North Dakota milk marketing board.
3. "Bulk milk" means milk which 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.
4. "Dairy farmer" means any person who produces grade A raw milk for sale to a processor.
5. "Dairy farmer-processor" means a person who is both a dairy farmer and a processor and who purchases no raw milk from other dairy farmers. For the purposes of this chapter, a dairy farmer-processor is a dairy farmer in any sale of raw milk produced by that person to a processor, and is a processor in any processing, manufacturing, or sale of milk products or frozen dairy products or in any receipt of bulk milk from a source other than that person's own production.
6. "Dealer" means any processor or distributor.
7. "Decision" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) by the board in any matter other than a rulemaking matter. The term "decision" includes the final disposition of any matter involving the issuance, denial, suspension, or revocation of a license. The term also includes any ruling by the board concerning the applicability of one or more provisions of a stabilization plan to a particular person, but does not include a ruling concerning the validity of any such provision.
8. "Distributor" means a person, other than a processor, who sells to consumers on one or more retail (home delivery) routes or to retailers, or to both. If such person also operates one or more retail establishments at which milk products or frozen

dairy products are sold to consumers, such person does not, thereby, lose that person's classification as a distributor.

9. "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.
10. "Frozen dairy product" means any of the following:
  - a. Ice cream, fruit ice cream, nut ice cream, frozen malt ice cream (frosted malt ice cream), frozen custard, French ice cream, ice milk, mellorine, olarine, sherine, fruit sherbets, fruit sherbines, the mix from which any such product is made, and those frozen products which contain milk solids not fat, or butterfat, and which are commonly referred to in the dairy industry as "novelties".
  - b. Any frozen product (except baked goods) containing either milk solids not fat, butterfat, or a milk derivative and which is found by the board to require regulation in order to effectuate the purposes of this chapter.
11. "Licensee" means any person who holds a license from the board which has neither been suspended nor revoked.
12. "Marketing area" means that geographical portion of the state of North Dakota within which minimum or maximum prices established by the board shall be uniform.
13. "Milk" means the lacteal secretion of a cow or cows (including such secretions when raw, cooled, pasteurized, standardized, homogenized, recombined, or concentrated) which meets applicable grade A requirements.
14. "Milk product" means any of the following:
  - a. Raw milk, regular or creamline milk, standardized milk, whole pasteurized milk, special milk, homogenized milk, fortified milk, plain or creamed buttermilk, cottage cheese, creamed cottage cheese, flavored milk, flavored skim milk, sour cream, half and half, whipping cream, whipped cream, skim milk, low fat milk, fluid cream, concentrated milk, yogurt, and eggnog.
  - b. Any product which contains milk solids not fat, butterfat, or a milk derivative, and which is manufactured in the semblance of one of the products listed in subdivision a, and which is found by the board to require regulation in order to effectuate the purposes of this chapter.
  - c. The term "milk products" does not include butter, cheese (other than cottage cheese or cream cottage cheese), nonfat dry milk, skim condensed milk, whole condensed milk, whole dry milk, dried cream, evaporated milk, sweetened condensed milk, or baked goods.
15. "Person" means any individual, partnership, corporation, limited liability company, cooperative corporation or association, governmental agency, or other business entity.
16. "Processor" means a person who processes or manufactures milk products or frozen dairy products, or a person who 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 a person who purchases bulk milk from anyone for resale to a person who processes or manufactures milk products or frozen dairy products. The term "processor" does not include a person who purchases ice cream mix, ice milk mix, or other frozen dairy products mix and whose processing activities are limited to converting such mix into a frozen dairy product, more than half the sales of

which are then made by such person to consumers at retail on the premises where such processing activities take place.

17. "Regulation" means any statement by the board of general applicability and future effect that implements, interprets, carries into effect, or makes more specific, the provisions of this chapter. However, the term does not include any such statement which is properly a part of a stabilization plan, nor does it include any such statement that deals with matters of practice or procedure.
18. "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.
19. "Retailer" means any person who is engaged in transferring title to milk products or frozen dairy products to consumers at one or more fixed places of business (retail establishments) located in this state.
20. "Rule of practice" means any statement by the board of general applicability and future effect prescribing matters relating to procedure and practice.
21. "Rulemaking matter" means any proceeding which results in the adoption, amendment, or repeal of rules of practice, regulations, or of any stabilization plan.
22. "Stabilization plan" means any plan of general applicability and future effect which contains the minimum or maximum prices, or both, that the board is authorized to establish and such ancillary requirements as are necessary and appropriate in order to make such minimums and maximums effective and meaningful. A stabilization plan may be of general applicability although effective within only one marketing area and although some provision of such plan is of immediate concern to only one person, provided the form of the stabilization plan (and of each of its provisions) is general so that others who may qualify in the future will fall within the provisions of such stabilization plan.
23. "Wholesale price" means the price at which any milk product or frozen dairy product is purchased by a retailer.

#### **4-18.1-04. Milk marketing board.**

1. There is created a milk marketing board to consist of five members appointed by the governor. The board consists of one individual who is a dairy farmer selling to a processor, who must be selected by the governor from two names submitted to the governor by the North Dakota milk producers association; one individual who is a processor, who must be selected by the governor from two names submitted to the governor by the North Dakota dairy industries association; one individual who is a retailer, who must be selected by the governor from two names submitted to the governor by the North Dakota association of food retailers; and two individuals must be selected by the governor who are consumers, and who are not otherwise engaged in the milk business. An appointee may not have held elective or appointive public office during the period of two years immediately preceding appointment and may not hold any other public office, either elective or appointive, during the term of office as a member of the board. Not more than three members of the board may, at the time of the appointment or thereafter during their respective terms of office, reside on the same side of a continuous line following the eastern boundaries of Bottineau, McHenry, Wells, Kidder, Logan, and McIntosh Counties.
2. The members of the board must be appointed within thirty days after passage and approval of this chapter. The term of office of one member expires on July 1, 1968; the term of office of one member expires on July 1, 1969; the term of office of one member expires on July 1, 1970; the term of office of one member expires on July 1, 1971; the term of office of one member expires on July 1, 1972; and each

succeeding member holds office for a term of five years and until a successor has been appointed and qualified. Any vacancy must be filled by appointment by the governor.

3. Three members of the board constitute a quorum for the regular transaction of business. The board shall choose one of its members as the chairman, who shall hold office as a chairman for one year; provided, election as chairman does not interfere with the member's right to vote on all matters before the board.
4. The board shall determine the amount of compensation payable to each member of the board. The amount payable may not exceed one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers while attending meetings or performing duties directed by the board. A member's per diem payments may not exceed fifteen hundred dollars in any one year.
5. Each member of the board shall give bond conditioned for the faithful performance of the member's duties. The board shall employ a director who serves under the direction and at the pleasure of the board and whose qualifications, duties, and compensation must be determined by the board. The director shall serve as financial officer of the board and is authorized to accept money paid to the board in accordance with this chapter.
6. The board shall employ, in addition to the director, such assistants and employees, permanent and temporary, as may be necessary to carry out the duties and responsibilities of the board under this chapter. The board shall determine the qualifications, duties, and compensation of such employees. The board may employ a licensed attorney of the state of North Dakota as its legal counsel, who shall serve on a full-time or a part-time basis, and the board may obtain the services of such additional attorneys as it deems necessary. The board may also contract for auditing, economic research, and other technical services, whenever it determines that such services are needed.
7. All expenditures under this chapter must be paid from the receipts under this chapter. Meetings of the board must be held at least every sixty days at the call of the chairman or a majority of the board.

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

1. The board is hereby declared to be the instrumentality of the state of North Dakota for the purpose of administering the provisions of this chapter and of executing the legislative intent herein expressed. The board is hereby delegated the power to supervise, investigate, and regulate every segment of the state's dairy industry. However, nothing contained in this chapter may be construed to limit, decrease, or amend in any respect the authority of the North Dakota department of agriculture, county boards of health, or municipal health officials, with respect to matters of health and sanitation; and nothing contained in this chapter may be construed as giving the board any authority to regulate the sale of raw milk that is not grade A.
2. The board may act as mediator or arbitrator in connection with any controversy or issue among or between dairy farmers, processors, distributors, retailers, or consumers if such controversy or issue pertains to the production, transportation, processing, storage, distribution, or sale of milk products or frozen dairy products.
3. The operation and effect of any provision of this chapter, conferring a general power upon the board, do not impair or limit any specific power or powers granted to the board by this chapter or by some other constitutional or statutory provisions.

**4-18.1-06. Marketing areas.** The board shall designate such marketing areas which, together, must embrace all the geographical territory of the state. The board may, from time to

time, increase or decrease the number of marketing areas, divide or combine one or more marketing areas, or alter the boundaries of such areas.

In establishing, as well as in changing the boundaries of, such marketing areas, the board shall take into consideration the various conditions affecting the production, distribution, and sale of milk products and frozen dairy products in such areas, the need for establishing area boundaries in a manner which will facilitate cooperation between the board and federal authorities engaged in regulating prices paid by processors for raw milk, and all other factors necessary to effectuate the purposes and policies of this chapter. Minimum or maximum prices established by the board pursuant to this chapter may vary from one marketing area to another.

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

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

Each stabilization plan issued by the board must provide the means for determining which such plan is applicable to the raw milk purchases of a processor engaged in selling milk products in two or more marketing areas; and the applicability of any such plan to raw milk purchased by a processor from a particular dairy farmer may in no way be dependent upon the location of the seller's dairy farm nor upon the location at which title passes.

In establishing or changing minimum prices to be paid by processors to dairy farmers for raw milk in each marketing area, the board shall take into consideration the following factors applicable to such area: the available supply of raw milk, the adequacy of the reserve supply of raw milk available to processors, the balance between production and consumption, the cost of dairy feed, farm wage rates, and such other factors as will effectuate the purposes and policies of this chapter. All such minimum prices must be those which will be beneficial to the public interest, protect the dairy farmers, and ensure an adequate supply of pure and wholesome milk to the inhabitants of the state.

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

Any stabilization plan issued by the board for a marketing area, some portion of which is included within the marketing area of a federal milk marketing order, may require licensed processors subject to both the state stabilization plan and to the federal milk marketing order to pay minimum raw milk class prices which exceed the minimum raw milk class prices established by such federal order and may require such processors to pay all of the difference between the federal and state minimums direct to dairy farmers on a handler pool basis.

Any stabilization plan issued by the board may contain a formula to be used in computing minimum prices payable to dairy farmers. Such formula may be utilized by the board to bring about such automatic changes in minimum dairy farmer prices as are justified on the basis of changes in production costs, supply conditions, and in the other factors to be considered by the board in establishing such minimum prices.

Any stabilization plan may also contain provisions establishing the prices payable by a processor for raw milk purchased from sources other than dairy farmers and may contain such other provisions as are necessary and appropriate in order to ensure that prices paid for butterfat and milk solids not fat (whether in the form of raw milk or otherwise) must be uniform for all processors whose raw milk purchases are regulated by the same stabilization plan.

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

Any stabilization plan may provide for price adjustments based upon the butterfat content of the raw milk, location where received, location of plant to which a portion of the raw milk purchased is transferred or diverted by the processor from the plant where such raw milk is normally utilized, and other such factors for which price adjustments are provided in the Agricultural Marketing Agreement Act of 1937, as amended.

2. For each marketing area, the board shall establish minimum prices for each of the following classifications of sales:
  - a. Sales of milk products by processors or distributors to retailers. Such minimum price for each item is applicable regardless of the location at which the retailer accepts delivery.
  - b. Sales of milk products by any person to consumers.
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 of milk products or frozen dairy products not otherwise provided for in subsections 2 and 3.
4. For any marketing area, the board may establish the maximum prices for which milk products are sold by a processor, a distributor, or a retailer to any person. However, in doing so the board shall take into account all of the economic factors which apply to the establishment of minimum prices for stabilization plans which factors are set out in subdivisions a, b, c, and d of subsection 6.
5. The stabilization plan for any marketing area may include a provision authorizing processors and distributors to give quantity discounts to retailers in connection with sales of milk products and frozen dairy products. In order to ensure the availability of a sufficient variety of brands to consumers purchasing from retailers having sufficient display space, and in order to avoid injury to small independent processors and distributors, the board shall, if quantity discounts are authorized, establish for each eligible retailer a quantity discount rate for purchases of milk products and a quantity discount rate for purchases of frozen dairy products, which discount rates must be based upon such retailer's total purchases of milk products from all suppliers and upon such retailer's total purchases of frozen dairy products from all suppliers. All processors and distributors delivering milk products and frozen dairy products to such retailer are authorized to give quantity discounts in accordance with such rates regardless of the quantities of such products actually purchased by such retailer from each individual processor or distributor. The schedules of quantity discount rates established by the board must be based upon a graduated scale of discounts proportionate to purchases made by retailers during a base period (one month, one quarter, six months, or one year) to be designated by the board.

When a retailer operates two or more separate places of business, the board shall base the quantity discount rate for each place of business upon the quantity of milk products or frozen dairy products purchased for resale at that place of business alone.

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

In establishing minimum prices (other than dairy farmer prices) for a marketing area, the board shall take into consideration all of the following economic factors that are operative in such marketing area:

- a. The prevailing raw milk prices in the marketing area regardless of whether such prices are state established, federally established, or negotiated.
  - b. All reasonably necessary costs of processing and distribution incurred by representative processors, distributors, and retailers, including a reasonable return upon necessary investment.
  - c. Quantities of milk products and frozen dairy products consumed in such area.
  - d. All other economic factors which substantially and directly affect market supply and demand for milk products and frozen dairy products in such area.
7. In exercising the authority contained in subsection 3, the board may establish minimum prices for some items in a category without the necessity for establishing minimum prices for the other items in such category and may establish one type of minimum price without establishing the other types of minimum prices applicable to a product. For example, the board may establish minimum prices for minimum standard ice cream, but may refrain from establishing minimum prices for ice cream which exceeds minimum standards; the board may establish minimum prices for half-gallons and gallons of ice cream, but may refrain from establishing minimum prices for ice cream packaged in containers of other sizes; and the board may establish minimum wholesale prices for frozen dairy products without establishing minimum retail prices for such products.
  8. In lieu of establishing minimum wholesale prices for one or more frozen dairy products items, the board may require dealers to file with the board the uniform wholesale price at which each such item will be sold by each such dealer within each marketing area.

If the board elects to require such price filings, the board:

- a. Shall prescribe the manner in which and the date on which initial price filings must be made.
- b. Shall prescribe the procedure to be followed by dealers in amending and supplementing their initial price filings. The board's authority in this connection includes the power to prescribe how much time shall elapse between the filing of any supplemental price or any amended price and the date on which such



filing becomes effective, provided that the board may not prohibit dealers from meeting lawful competition without delay in connection with the sale of any such frozen dairy product, but may require the dealer to file an amended price for the purpose of meeting competition before actually meeting such competition.

- c. Shall permit a dealer desiring to meet the lower prices of a competitor to do so in such portions of the marketing area as are specified in such dealer's amended price filing.
  - d. May require that the wholesale prices filed by a processor for a marketing area are automatically applicable to sales by distributors of that processor's products within such area.
  - e. May prescribe such other requirements relative to price filing as will tend to effectuate the purposes of this chapter.
9. The minimum and maximum prices established by the board for products other than raw milk may reflect packaging cost differences; and minimum and maximum prices for home-delivered products may vary from minimum and maximum prices applicable to products sold to consumers by retailers.
  10. The board shall take appropriate steps to ensure that changes in minimum dairy farmer prices are accompanied by simultaneous changes in the other minimum and maximum prices as established by the board.

#### **4-18.1-08. Licenses.**

1. It is unlawful for a dairy farmer to sell milk without being licensed as a "dairy farmer" by the board if such milk is purchased by a processor who is required by this chapter to be licensed and who processes such milk at a plant located in the state of North Dakota. This provision is equally applicable to dairy farmers whose dairy farms are located outside the state of North Dakota as to dairy farmers whose dairy farms are located in the state.
2. It is unlawful for a processor to buy milk or to sell milk products or frozen dairy products without being licensed as a "processor" by the board if such processor:
  - a. Operates a processing plant located within the state of North Dakota;
  - b. Sells milk products or frozen dairy products to a retailer for resale at a retail establishment that is located in North Dakota regardless of whether such processor's plant is located inside or outside the state of North Dakota and regardless of whether such retailer takes title to or possession of such products inside or outside the state of North Dakota; or
  - c. Sells milk products or frozen dairy products to a distributor for resale to North Dakota consumers on home delivery or for resale to a retail establishment that is required by this chapter to have a "retailer" license.
3. It is unlawful for a distributor to sell milk products or frozen dairy products without being licensed as a "distributor" by the board if such distributor sells milk products or frozen dairy products to North Dakota consumers on one or more retail (home delivery) routes or to a retailer for resale at a retail establishment that is required by this chapter to have a "retailer" license.
4. It is unlawful for a retailer to purchase or transfer title to milk products or frozen dairy products without being licensed as a "retailer" by the board. It is unlawful for a dairy farmer, a processor, or a distributor to transfer title to milk products or frozen dairy

products to consumers at a fixed place of business located within this state without obtaining for each such place of business a "retailer" license issued by the board.

5. The licensing of persons engaged in supplying milk products or frozen dairy products to consumers through the use of vending machines must be in accordance with requirements prescribed by the board.
6. No charge may be made by the board for any license. All licenses hereafter issued by the board remain in effect unless and until:
  - a. There is a change of ownership or of location;
  - b. The license is suspended or revoked; or
  - c. The business is discontinued or is inactive for a period of more than thirty days.
7. A license is required for each separate place of business.
8. No processor or distributor may be licensed by the board without first having obtained a license from the North Dakota department of agriculture. No dairy farmer may be licensed without furnishing proof of proper inspection by the department of agriculture or the state department of health as provided by law.
9. A dairy farmer-processor shall obtain a dairy farmer license and a processor license from the board.
10. All licenses issued by the board prior to April 1, 1969, expire automatically on April 1, 1969.
11. The board may decline to issue a "processor" license or a "distributor" license to an applicant for any such license if the board finds that persons licensed by the board prior to receipt of the application in question are supplying an adequate variety and quantity of high-quality milk products and frozen dairy products to the state's retailers and consumers, that deliveries are being made with sufficient regularity and frequency, and that the issuance of additional licenses of the type sought:
  - a. Will result in an excess of processing plant capacity;
  - b. Will tend to increase to unsatisfactory levels the average unit processing or average unit distribution costs for persons already licensed by the board; or
  - c. Will otherwise tend to prevent achievement of the objectives of this chapter.
12. Schools, hospitals, state institutions, and charitable institutions may obtain "retailer" licenses from the board regardless of whether they fall within the definition of "retailer" set forth hereinabove.

**4-18.1-09. License applications.** Applications for licenses must be made on forms prepared and furnished by the board. The board shall require the license applicant to set out in the application such facts concerning the applicant and the nature of the business that the applicant proposes to conduct as the board deems necessary for the administration of this chapter. The board shall also require applicants for processor and distributor licenses to state in the application that such applicant will make no sales of milk products or frozen dairy products to persons required by this chapter to be licensed unless such persons have obtained the license required by this chapter.

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

The board shall require applicants for processor or distributor licenses to state in the application that each such applicant will sell such milk products or frozen dairy products as are customarily handled by such person to any retailer who desires to purchase any of such products from such dealer and who has a place of business in any community in which such dealer processes, distributes, or sells milk products or frozen dairy products; and each such applicant shall also be required to state in the application that the applicant will offer to any such retailer the same frequency of delivery and the same in-store services as are customary in such community, and that the applicant will provide home-delivery services to any consumer residing in such community upon request.

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

1. No licensee may buy or sell any milk product or any frozen dairy product at less than the applicable minimum price established by the board nor more than the applicable maximum price established by the board.
2. If price filing is required by the board, no dealer may sell, and no retailer may purchase, a frozen dairy product at a price which varies from the filed price which is in effect on the date of such sale.
3. No licensee may take any action which is contrary to commitments made by such licensee in the license application filed with the board.
4. It is unlawful for any licensee to use or attempt to use 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.
5. The following arrangement, now in effect among a limited number of licensees in this state, is found to be discriminatory, unfair, and disruptive and is hereby prohibited: The purchasing by a distributor of milk products or frozen dairy products at prices which are less than minimum wholesale prices when such products are resold to consumers at a fixed place of business owned by such distributor. This subsection may not be interpreted as prohibiting an arrangement in which a distributor purchases at wholesale prices those milk products or frozen dairy products that are to be resold at a fixed place of business owned by such distributor and purchases at distributor prices all of the other milk products and frozen dairy products that are to be resold by such distributor.
6. No retailer may sell or offer to sell any milk products or frozen dairy products of one brand at a price which is different from the price charged by such retailer for an equal quantity of a product which is of the same type, quality, or grade, but of a different brand, unless such price differential is equal to the difference in the prices paid by the retailer for the products in question.

**4-18.1-11. Authority of the board to regulate disruptive trade practices.** In order to implement subsection 4 of section 4-18.1-10, the board shall by regulation prohibit or regulate each of the following practices, which said practices are listed herein solely for the purpose of illustrating the broad scope of the board's authority under the said subsection. Such 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:

1. The giving of discounts, rebates, or allowances in connection with the sale of milk products or frozen dairy products unless such discounts, rebates, or allowances are authorized by the board in accordance with subsection 5 of section 4-18.1-07.
2. The furnishing by a dealer of free equipment or services to a retailer. This provision may not be interpreted as authorizing the board to prohibit the stocking by a dealer of the dairy case or frozen products cabinet of a retailer nor the stamping on each milk product or frozen dairy product by the dealer of the retail price at which the retailer desires to sell any such product.
3. The giving of advertising or display allowances.
4. The giving of a free milk product or a free frozen dairy product to a customer.
5. The making or renewal of loans, or the giving of financial assistance in any other form, by a dealer to a retailer.
6. The furnishing of signs by a dealer to a retailer.
7. Selling, offering to sell, or advertising any milk product or frozen dairy product in combination with any other product or service.
8. Selling, offering to sell, or advertising any product or service at a price which is available only to purchasers of a milk product or a frozen dairy product.
9. The giving of gifts by dealers to retailers.
10. The selling, leasing, renting, or lending of equipment by a dealer to a retailer. In connection with the sale of equipment by a dealer to a retailer, the board may prescribe the minimum markup based upon the seller's invoice cost or depreciated value in the case of used equipment. This subsection may not be interpreted as authorizing the board to prohibit the sale of equipment by dealers to retailers, but the board may prescribe a minimum markup based upon the seller's invoice cost (or depreciated value in the case of used equipment).
11. The requiring of deposits where milk products or frozen dairy products are purchased in returnable containers and the giving of allowances or credits in connection with the return of such containers.
12. Payments by dealers to franchisors, wholesale grocers, or any other person closely connected with a retailer for central billing, customer solicitation, or other services if the purpose or effect of such payment is to induce the recipient of any such payment to influence or attempt to influence the decision of one or more retailers relative to the brands of milk products or frozen dairy products to be purchased and resold by such retailer or relative to the amount of space to be allocated to any brand of milk products or frozen dairy products.

**4-18.1-12. Assessments by the board - Continuing appropriation.** In order to obtain funds for the administration and enforcement of the provisions of this chapter, the board shall levy an assessment upon all licensed processors of not more than twelve cents per hundredweight [45.36 kilograms] after June 30, 1995, and before July 1, 1997, on milk or milk equivalents used for the manufacture of milk products and frozen dairy products processed by such processors. The board shall levy an assessment of not more than thirteen cents per hundredweight [45.36 kilograms] after June 30, 1997, and before July 1, 1999, and not more than fourteen cents per hundredweight [45.36 kilograms] after June 30, 1999. However, this assessment is not applicable to milk products or frozen dairy products sold in other states.

This assessment must be paid quarterly on or before the fifteenth of July, October, January, and April of each year. Each such payment must be equal to the assessment due in

connection with milk products and frozen dairy products processed during the calendar quarter which ends on the last day of the preceding month.

All such assessments must be deposited by the board in the state treasury in a special revolving fund to be known as the "milk marketing fund". All expenses incurred in connection with the enforcement and administration of this chapter, including the salaries of employees and assistants must be paid out of the said "milk marketing fund". All money in the milk marketing fund is appropriated on a continuing basis to the board for carrying out the purposes of this chapter. Regular audits of the board's accounts must be conducted in accordance with chapter 54-10.

**4-18.1-13. Construction.** This chapter does not prohibit the issuing of trading stamps by retailers in connection with the sale of milk products or frozen dairy products except in those instances where a retailer offers trading stamp bonuses to purchasers of milk products or frozen dairy products.

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

**4-18.1-14. Entry, inspection, and investigation.** Authorized representatives of the board have access to, and may enter at all reasonable hours, all places of business operated by licensees where raw milk, milk products, or frozen dairy products are produced, stored, processed, manufactured, or sold, or where the licensee maintains books, papers, accounts, records, or other documents related to such activities. The board may subpoena, and any of its authorized representatives may inspect and make copies of, any of such books, papers, records, accounts, or documents and audit the same, all for the purpose of determining whether or not the provisions of this chapter and of any rules and stabilization plans issued by the board are being complied with.

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

Any information gained by the board or its representatives through such entry, inspection, or investigation must be treated as confidential by the board and its representatives and must be used only for the administration of this chapter; provided, that such persons may divulge such information when called upon to testify in any duly noticed proceeding before the board or in any court proceeding wherein the board is a party or to the agriculture commissioner or the dairy commissioner for the purpose of determining whether a licensee's financial condition is such as to reasonably assure prompt payment to the dairy farmers from whom milk or cream is purchased. Nothing contained in this chapter prevents the use of any information procured by the board or its representatives in the compiling and dissemination of general statistical data, containing information procured from a number of licensees, and compiled in such manner as not to reveal individual information for any licensee. Any person who divulges confidential information in violation of this section to any person, other than members and employees of the board, is guilty of a class A misdemeanor.

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

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

1. The board shall require licensees to maintain such records as the board deems necessary to effectuate the provisions of this chapter. The board may, by regulation, specify what records must be maintained by each type of licensee. The board shall require licensees to maintain, among other records, the following:

- a. A record of all raw milk received or purchased by the licensee, showing the names and addresses of the dairy farmers and others from whom such raw milk was purchased, the quantity, price paid, butterfat test, and any deductions made.
  - b. A record of all milk products and frozen dairy products sold or used, classified as to grade, use, location, market outlet, size and type of container, the composition of said product in terms of butterfat and solids, the quantity sold, and the prices received therefor. Such records must also show the quantity of each milk product or frozen dairy product manufactured by a licensee, together with the composition of such product, the quantity sold, and the prices received therefor.
2. The board may require licensees to maintain, among other records, the following:
    - a. A record of the shrinkage, wastage, or loss of raw milk and butterfat, and of skim milk and butterfat destroyed or used for special purposes such as livestock feed.
    - b. A record of the inventory of raw milk, other milk products, and frozen dairy products on hand at the end of a designated accounting period.
    - c. A record of all items of expense incurred by the licensee in procuring raw milk and other ingredients, and in processing, manufacturing, storing, distributing, and selling milk products and frozen dairy products, including overhead and general and administrative costs, and all other items of cost incurred by each licensee in the conduct of its business. A licensee may not be required to reveal that licensee's profit or loss. Such records must be of a nature to permit the board to make statistical studies as it may deem necessary for the proper exercise of its authority under this chapter.
  3. Records required to be kept by licensees must be preserved by the licensee for a period of not less than three years.

**4-18.1-16. Cooperation with other governmental agencies.** The board may, in compliance with section 4-18.1-18, cooperate with stabilization agencies in other states and with the secretary of agriculture of the United States in the manner provided in the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 610(i)].

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

1. The board may refuse to license or may suspend or revoke the license of any person, except a dairy farmer, who violates any provision of this chapter, any provision of a stabilization plan issued by the board, or any rule issued by the board. In lieu of a suspension or revocation the board may assess a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation, and may collect such civil penalty by a civil proceeding in any appropriate court. Any moneys received by the board as the result of an election by a licensee to pay a penalty in lieu of a license suspension must be placed in the milk marketing fund. Such penalties must be construed as civil and not criminal in nature.
2. The board or its authorized agent may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this chapter or to enforce compliance with any stabilization plan or regulation of the board or to obtain a judicial interpretation of any of the foregoing; and, in addition to any other remedy, the board, upon approval by a majority of its members, may apply to the district court for relief by injunction, mandamus, or any other appropriate remedy in equity. In such actions the board is not required to give or post bond in any action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or

against the board in the name of the North Dakota milk marketing board, a state agency.

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

1. Within thirty days after receipt by the board of an application for license, the board shall either issue the license or notify the applicant of the date on which a hearing will be held for the purpose of receiving evidence relative to the eligibility of the applicant for the license sought. Such hearings should be held on a date which is not less than twenty days after the date on which such notice is given, unless the hearing is fixed for an earlier date by mutual agreement of the board and the applicant. Within a reasonable time after the close of such a hearing, the board shall notify the applicant of its decision in the matter. The board may deny the issuance of a license if it finds that the applicant has violated this chapter or a regulation or stabilization plan promulgated by the board.
2. Whenever the director has reason to believe that a licensee has violated this chapter or any rule or stabilization plan issued by the board, the director may file a complaint against such licensee with the board and shall serve a copy of the complaint on the licensee in which the director shall set forth the nature of the alleged violation. The board after a hearing and after finding that the licensee has violated any provisions of this chapter, a provision of a stabilization plan or a rule issued by the board may suspend or revoke the licensee's license.
3. The proceedings authorized or required by subsections 1 and 2 must be in strict conformity with chapter 28-32, any rules adopted under chapter 28-32, and any other rules of administrative practice or procedure adopted by the board.

**4-18.1-19. Judicial review of adjudicatory action by the board.** Judicial review of any decision rendered by the board in any proceedings authorized or required by section 4-18.1-18 must be in accordance with sections 28-32-42 through 28-32-49.

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

1. The rules of practice, regulations, and stabilization plans issued by the board are declared to be "rules" as that word is defined in chapter 28-32. The requirements of sections 28-32-02 through 28-32-20 are applicable to any board proceeding which results in the adoption, amendment, or repeal of any rule of practice, regulation, or stabilization plan.
2. The board may, at any time, on its own motion, initiate a proceeding in connection with the adoption, amendment, or repeal of rules of practice, regulations, or stabilization plans. In addition, any person desiring to initiate such a proceeding shall file with the board a written petition which must state clearly and concisely the substance or nature of the action requested and the reasons which prompted the request. Upon receipt of such petition, the board shall, within thirty days thereafter, deny the petition in writing or schedule the matter for public hearing pursuant to the requirements of this section.
3. Prior to the adoption, amendment, or repeal of any rule of practice, regulation, or stabilization plan, the board shall:
  - a. Give at least ten days' notice of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved and the time when, the place where, and the manner in which interested persons may make presentations in connection therewith. The notice must be mailed to all persons who have made timely requests for advance notice of any such proceeding, and notice

must also be given by publication in accordance with the requirements set forth in the board's rules of practice.

- b. Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In any proceeding involving regulations or stabilization plans, opportunity for oral presentation (a public hearing) must be granted. The board shall consider fully all such written and oral submissions.
4. The board may designate a hearing officer to conduct any public hearing required by this section.
5. The record of each rulemaking proceeding, including the transcript of any public hearing held as a part thereof, must be filed in the principal office of the board. Such record must be available at all times for inspection by any interested person.
6. Any rule of practice, regulation, or stabilization plan adopted by the board, or the amendment or repeal thereof, is effective on the date on which notice of such action is given by the board, or such later date as may be specified in the notice. Notice of any such action must be given by the board to all persons who have made timely requests for such a notice, and all persons who entered an appearance at the public hearing.

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

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

**4-18.1-22. Local advisory boards.** Whenever a public hearing is scheduled by the board in any marketing area for the purpose of establishing prices, the board may, at least ten days prior to the date set for such hearing, appoint a local advisory board, the function of which is to assist and advise the board in matters pertaining to the production and marketing of milk in said marketing area. If a local advisory board is appointed, the local advisory board shall consist of two producers, two processors, and two retailers who are actively engaged in milk production, processing, and marketing in the area. Such local advisory board shall meet with the board at the call of the board before, during, or after such public hearing to establish prices. The members of such local advisory board shall receive twenty-five dollars per diem for each day actually spent in the performance of such duties, plus mileage and expenses in an amount equal to that received by state officers. In no event may there be more than three meetings or conferences between the board and such local advisory board and in all events such local advisory board shall cease to exist when the board promulgates its stabilization plan established prices following the public hearing heretofore mentioned.

**4-18.1-23. Referendum on continuance of program - Petitions - Contents.** Whenever a petition is presented to the agriculture commissioner containing at least twenty-five percent of the total grade A dairy farmers in North Dakota covered by the provisions of this chapter, with the signature of at least one such dairy farmer in each of twenty-seven different counties, the agriculture commissioner shall conduct a referendum by secret ballot by mail, in



accordance with rules established by the agriculture commissioner, and shall report the results of the referendum to the next legislative assembly that meets thereafter.