

Article 68B.

Grade "A" Dairy Assessment Act.

**§ 106-816. Title.**

This Article shall be known as the "Grade "A" Dairy Assessment Act." (2023-63, s. 5.4(a).)

**§ 106-816.1. Purpose.**

It is in the public interest for the State to enable dairy producers to assess themselves in order to raise funds to promote the interests of the dairy industry. (2023-63, s. 5.4(a).)

**§ 106-816.2. Definitions.**

The following definitions apply in this Article:

- (1) Association. – The North Carolina Dairy Producers Association.
- (2) Dairy cooperative. – An association of dairy producers owned by its members and organized to provide services to its members, including finding markets for milk produced by its members.
- (3) Dairy producer. – A person who is a North Carolina resident, produces Grade "A" milk for commercial sale, and holds a Grade "A" milk permit from the Department.
- (4) Department. – The North Carolina Department of Agriculture and Consumer Services.
- (5) Grade "A" milk. – Fluid milk and milk products which have been produced, transported, handled, processed, and distributed in accordance with the provisions of the rules adopted by the Board of Agriculture.
- (6) Milk. – The lacteal secretion practically free from colostrum obtained by the milking of one or more cows.
- (7) Milk handler. – Any person, firm, corporation, or dairy cooperative engaged in the receiving, handling, distribution, or sale of fluid milk or milk products that are intended for bottling, manufacturing, processing, distribution, or sale in this State. (2023-63, s. 5.4(a).)

**§ 106-816.3. Referendum.**

(a) The Association may conduct among dairy producers a referendum upon the question of whether an assessment shall be levied as provided for herein.

(b) The Association shall determine all of the following:

- (1) The amount of the proposed assessment.
- (2) The time and place of the referendum.
- (3) Procedures for conducting the referendum and counting of votes.
- (4) Any other matters pertaining to the referendum.

(c) The amount of the proposed referendum shall be stated on the referendum ballot. The amount may not exceed five cents (5¢) for each hundredweight of Grade "A" milk produced by a dairy producer in this State. If the assessment is approved in the referendum, the Association may set the assessment at an amount equal to or less than the amount stated on the ballot. If the Association sets a lower amount than the amount approved by referendum, it may increase the amount annually without a referendum by no more than one cent (1¢) for each hundredweight of Grade "A" milk. The increased rate may not exceed the amount approved by referendum and may

not exceed the maximum allowable rate of five cents (5¢) for each hundredweight of Grade "A" milk.

(d) All dairy producers may vote in the referendum. Any dispute over eligibility to vote or any other matter relating to the referendum shall be determined by the Association. The Association shall make reasonable efforts to provide dairy producers with notice of the referendum and an opportunity to vote. (2023-63, s. 5.4(a).)

#### **§ 106-816.4. Payment and collection of assessment.**

(a) The assessment shall not be collected unless more than half of the votes cast in the referendum are in favor of the assessment. If more than half of the votes cast in the referendum are in favor of the assessment, then the Association shall notify the Department of the amount of the assessment and the effective date of the assessment. The Department shall notify all dairy producers of the assessment.

(b) Each dairy producer shall pay an assessment on each hundredweight of Grade "A" milk produced in this State and sold commercially.

(c) Each milk handler or dairy cooperative shall collect the assessment by deducting the amount of the assessment from the proceeds of the sale of Grade "A" milk. The milk handler or dairy cooperative shall remit to the Department no later than the twentieth day following the end of each calendar month the assessment on Grade "A" milk sold during that month. Any fluid milk producer-processor who markets Grade "A" milk of its own production directly to consumers, or any dairy producer who does not use the services of a milk handler or dairy cooperative located in this State, shall also pay the assessment under this section. Any dairy producer who fails to remit the assessment for the previous year's sales by January 20 shall pay a penalty of five percent (5%) of the unpaid assessment plus a penalty of one percent (1%) of the unpaid assessment for each month after January 20 that the assessment remains unpaid.

(d) The Association may conduct inspections or audits of the books of any dairy producer. If the inspection or audit reveals that a dairy producer has willfully failed to remit assessments when due, the dairy producer shall pay the Association the reasonable costs of the inspection or audit.

(e) The Association may bring an action to collect unpaid assessments, penalties, and reasonable costs of any inspection or audit as provided in subsection (c) of this section against any dairy producer who fails to pay the assessment, penalties, or costs. If successful, the Association shall also recover the cost of such action, including attorneys' fees. (2023-63, s. 5.4(a).)

#### **§ 106-816.5. Use of assessments; refunds.**

(a) The Department shall remit all funds collected under this Article to the Association at least quarterly. The Association shall use the funds to promote the interests of the dairy industry. The Association shall use such funds for research and marketing related to dairy products and the dairy industry, including such administrative expenses as may be reasonably necessary to carry out this function.

(b) A dairy producer may request a refund of the assessment collected under this Article by requesting in writing a refund form from the Association. The Association shall determine the contents of the refund form. The Association shall provide the dairy producer with a refund form within one week of receiving the dairy producer's request. After receiving the refund form from the Association, the dairy producer shall complete the form and provide proof of payment of the assessment to the Association no earlier than December 15 and no later than December 31 of a

calendar year. The Association shall mail a refund to the dairy producer within 120 days of receipt of a properly completed and documented refund form. (2023-63, s. 5.4(a).)

**§ 106-816.6. Termination of assessment.**

Upon receipt of a petition signed by at least fifty percent (50%) of the dairy producers in North Carolina known to the Association, the Department shall notify the Association and the Association shall, within six months, conduct a referendum upon the question of continuing the assessment. The referendum shall be conducted in the same manner as the initial referendum upon the question of whether an assessment shall be levied. If a majority of the votes cast in the referendum are against continuing the assessment, or if the Association fails to conduct a referendum within the six-month period, the assessment expires at the end of the six-month period. If a majority of the votes cast in the referendum are in favor of continuing the assessment, then no subsequent referendum shall be held for at least three years. (2023-63, s. 5.4(a).)

**§ 106-817. Reserved for future codification purposes.**

**§ 106-818.** Reserved for future codification purposes.

**§ 106-819.** Reserved for future codification purposes.