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**SUBSTITUTE SENATE BILL 5263**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Agriculture (originally sponsored by Senators M. Rasmussen, Anderson, Barr and Bauer)

Read first time 02/26/93.

1 AN ACT Relating to the marketing of milk; and amending RCW  
2 15.35.010, 15.35.030, 15.35.060, 15.35.080, 15.35.070, 15.35.100,  
3 15.35.105, 15.35.110, 15.35.115, 15.35.150, and 15.35.250.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 15.35.010 and 1971 ex.s. c 230 s 1 are each amended to  
6 read as follows:

7 This chapter may be known and cited as the Washington state milk  
8 pooling act to provide for equitable pricing and pooling among  
9 producers and processors of milk and milk products.

10 **Sec. 2.** RCW 15.35.030 and 1991 c 239 s 1 are each amended to read  
11 as follows:

12 It is hereby declared that:

13 (1) Milk is a necessary article of food for human consumption;

14 (2) The production, distribution, and maintenance of an adequate  
15 supply of healthful milk of proper chemical and physical content, free  
16 from contamination, is vital to the public health and welfare;

17 (3) It is the policy of the state to promote, foster, and encourage  
18 the intelligent production and orderly marketing of ((commodities))

1 adequate supplies of pure and wholesome milk and milk products  
2 necessary to its citizens, ((including milk)) to promote competitive  
3 prices, and to eliminate economic waste, destructive trade practices,  
4 and improper accounting for milk purchased from producers;

5 (4) Economic factors concerning the production, marketing, and sale  
6 of milk in the state may not be accurately reflected in federal  
7 programs;

8 (5) Conditions within the milk industry of this state are such that  
9 it may be necessary to establish marketing areas wherein pricing and  
10 pooling arrangements between producers are necessary, and for that  
11 purpose the director shall have the administrative authority, with such  
12 additional duties as are herein prescribed, after investigations and  
13 public hearings, to prescribe such marketing areas and modify the same  
14 when advisable or necessary.

15 **Sec. 3.** RCW 15.35.060 and 1991 c 239 s 2 are each amended to read  
16 as follows:

17 The purposes of this chapter are to:

18 (1) Authorize and enable the director to prescribe marketing areas  
19 and to establish pricing and pooling arrangements which are necessary  
20 to prevent disorderly marketing of milk due to varying factors of costs  
21 of production, health regulations, transportation, and other factors in  
22 said marketing areas of this state;

23 (2) Authorize and enable the director to formulate marketing plans  
24 subject to the provisions of this chapter, in accordance with chapter  
25 34.05 RCW, which provide for pricing and pooling arrangements and  
26 declare such plans in effect for any marketing area;

27 (3) Provide funds for administration and enforcement of this  
28 chapter by assessments to be paid by producers.

29 **Sec. 4.** RCW 15.35.080 and 1992 c 58 s 1 are each amended to read  
30 as follows:

31 For the purposes of this chapter:

32 (1) "Department" means the department of agriculture of the state  
33 of Washington;

34 (2) "Director" means the director of the department or the  
35 director's duly appointed representative;

36 (3) "Person" means a natural person, individual, firm, partnership,  
37 corporation, company, society, and association, and every officer,

1 agent, or employee thereof. This term shall import either the singular  
2 or plural as the case may be;

3 (4) "Market" or "marketing area" means any geographical area within  
4 the state or another state comprising one or more counties or parts  
5 thereof, (~~or one or more cities or towns or parts thereof~~) where  
6 marketing conditions are substantially similar and which may be  
7 designated by the director as one marketing area;

8 (5) "Milk" means all fluid milk from cows as defined in RCW  
9 15.36.011 (~~as enacted or hereafter amended~~) and rules adopted  
10 thereunder;

11 (6) "Milk products" includes any product manufactured from milk or  
12 any derivative or product of milk;

13 (7) "Milk dealer" means any person engaged in the handling of milk  
14 in his or her capacity as the operator of a milk plant, as that term is  
15 defined in RCW 15.36.040 (~~as enacted or hereafter amended~~) and rules  
16 adopted thereunder:

17 (a) Who receives milk in an unprocessed state from dairy farms, and  
18 who processes milk into milk or milk products; and

19 (b) Whose milk plant is located within the state or from whose milk  
20 plant milk or milk products that are produced at least in part from  
21 milk from producers are disposed of to any place or establishment  
22 within a marketing area;

23 (8) "Producer" means a person producing milk within this state for  
24 sale under a grade A milk permit issued by the department under the  
25 provisions of chapter 15.36 RCW (~~as enacted or hereafter amended~~) or,  
26 if the director so provides by rule, a person who markets to a milk  
27 dealer milk produced under a grade A permit issued by another state;

28 (9) "Classification" means the classification of milk into classes  
29 according to its utilization by the department;

30 (10) The terms "plan," "market area and pooling arrangement,"  
31 "market area pooling plan," "market area and pooling plan," "market  
32 pool," and "market plan" all have the same meaning;

33 (11) "Producer-dealer" means a producer who engages in the  
34 production of milk and also operates a plant from which an average of  
35 more than three hundred pounds daily of milk products, except filled  
36 milk, is sold within the marketing area and who has been so designated  
37 by the director. A state institution which processes and distributes  
38 milk of its own production shall be considered a producer-dealer for  
39 purposes of this chapter, but the director may by rule exempt such

1 state institutions from any of the requirements otherwise applicable to  
2 producer-dealers.

3 **Sec. 5.** RCW 15.35.070 and 1991 c 239 s 3 are each amended to read  
4 as follows:

5 It is the intent of the legislature that the powers conferred in  
6 this chapter shall be liberally construed. Nothing in this chapter  
7 shall be construed as permitting or authorizing the development of  
8 conditions of monopoly in the production or distribution of milk, nor  
9 shall this chapter give the director authority to establish wholesale  
10 or retail prices for ((milk or)) processed milk products.

11 **Sec. 6.** RCW 15.35.100 and 1991 c 239 s 6 are each amended to read  
12 as follows:

13 Subject to the provisions of this chapter ((and the specific  
14 provisions of any marketing plan established thereunder)), the director  
15 is hereby vested with the authority:

16 (1) To investigate all matters pertaining to the production,  
17 processing, storage, transportation, and distribution of milk and milk  
18 products in the state, and shall have the authority to:

19 (a) Establish classifications of processed milk and milk products,  
20 and a minimum price or a formula to determine a minimum price to be  
21 paid by milk dealers for milk used to produce each such class of  
22 products;

23 (b) Require that payment be made by dealers to producers of fluid  
24 milk or their cooperative associations and prescribe the method and  
25 time of such payments by dealers to producers or their cooperative  
26 associations in accordance with a marketing plan for milk;

27 (c) Determine what constitutes a natural milk market area;

28 (d) Establish quota systems within marketing plans, and to  
29 determine by using uniform rules, what portion of the milk produced by  
30 each producer ((subject to the provisions of a marketing plan shall be  
31 marketable in fluid form and what proportion so produced shall be  
32 considered as surplus; such determination shall also apply to milk  
33 dealers who purchase or receive milk, for sale or distribution in such  
34 marketing area, from plants whose producers are not subject to such  
35 pooling arrangements)) shall be assigned to each quota classification;

1 (e) Provide for the pooling of minimum class values from the sales  
2 of each class of milk to milk dealers, and the equalization of returns  
3 to producers;

4 (f) Provide and establish market pools for a designated market area  
5 with such rules (~~and regulations~~) as the director may adopt;

6 (g) Employ an executive officer, who shall be known as the milk  
7 pooling administrator;

8 (h) Employ such persons or contract with such entities as may be  
9 necessary and incur all expenses necessary to carry out the purposes of  
10 this chapter;

11 (i) Determine by rule, what portion of any increase in the (~~demand~~  
12 ~~for fluid milk subject to a pooling arrangement and marketing plan~~  
13 ~~providing for~~) available quotas shall be assigned to new producers or  
14 existing producers.

15 (2) To issue subpoenas to compel the attendance of witnesses and/or  
16 the production of books, documents, and records anywhere in the state  
17 in any hearing affecting the authority of privileges granted by a  
18 license issued under the provisions of this chapter. Witnesses shall  
19 be entitled to fees for attendance and travel as provided for in  
20 chapter 2.40 RCW (~~as enacted or hereafter amended~~).

21 (3) To make, adopt, and enforce all rules necessary to carry out  
22 the purposes and policies of this chapter subject to the provisions of  
23 chapter 34.05 RCW concerning the adoption of rules(~~(, as enacted or~~  
24 ~~hereafter amended:—PROVIDED, That)~~). Nothing contained in this  
25 chapter shall be construed to abrogate or affect the status, force, or  
26 operation of any provision of the public health laws enacted by the  
27 state or any municipal corporation or the public service laws of this  
28 state.

29 **Sec. 7.** RCW 15.35.105 and 1991 c 239 s 7 are each amended to read  
30 as follows:

31 (1) In establishing a minimum milk price or a formula to determine  
32 a minimum milk price, as provided under RCW 15.35.060 and 15.35.100,  
33 the director shall, in addition to other appropriate criteria, consider  
34 the:

35 ~~((+1))~~ (a) Cost of producing fluid milk for human consumption;

36 ~~((+2))~~ (b) Transportation costs;

37 ~~((+3))~~ (c) Milk prices in states or regions outside of the state  
38 that influence prices within the marketing areas;

1       ~~((4))~~ (d) Demand for fluid milk for human consumption; ~~((and~~  
2       ~~(5))~~ (e) Alternative enterprises available to producers; and  
3       (f) Economic impact on milk dealers.

4       (2) A milk dealer who believes that actual competition from outside  
5 the marketing area is having a significant economic impact on that milk  
6 dealer, may petition the director for a public hearing on an expedited  
7 basis to consider whether the minimum milk price in the market plan  
8 should be changed relative to the milk price to a competitor located  
9 outside the state plus transportation costs for that competitor to  
10 compete with the petitioning milk dealer.

11       (a) To be considered, the petition must identify the specific  
12 action requested, and must be accompanied by a statement summarizing  
13 the facts and evidence that would be provided at a public hearing by or  
14 on behalf of the petitioner to support the need for the requested  
15 action, including an identification of circumstances that have changed  
16 since the last rule-making proceeding at which the minimum price was  
17 established.

18       (b) Within twenty-one days of receiving the petition, the director  
19 shall either:

20       (i) Adopt rules on an emergency basis, in accordance with RCW  
21 34.05.350;

22       (ii) File, and distribute to all milk dealers and other interested  
23 parties, notice that a hearing will be held within sixty days of  
24 receiving the petition;

25       (iii) Advise the petitioner in writing that the request for rule  
26 making is denied, and explain the reasons for the denial; or

27       (iv) Advise the petitioner in writing that the petition provides  
28 insufficient information from which to find that rule making should be  
29 initiated, and request that the petition be resubmitted with additional  
30 information.

31       (c) Except as otherwise specifically provided in this section, this  
32 petition must be handled in accordance with RCW 34.05.330, and the  
33 rule-making procedures of chapter 34.05 RCW.

34       (3) The director may adopt rules of practice or procedure with  
35 respect to the proceedings.

36       **Sec. 8.** RCW 15.35.110 and 1992 c 58 s 4 are each amended to read  
37 as follows:

1 (1) The director, either upon his or her own motion or upon  
2 petition by ten percent of the producers in any proposed area, shall  
3 conduct a hearing to determine whether to establish or discontinue a  
4 market area pooling arrangement. Upon determination by the director  
5 that in order to satisfy the purposes of this chapter a pooling  
6 arrangement should be established, a referendum of affected individual  
7 producers and milk dealers shall be conducted by the department.

8 (2) In order for the director to establish a market area and  
9 pooling plan:

10 (a) Sixty-six and two-thirds percent of the producers and producer-  
11 dealers that vote must be in favor of establishing a market area and  
12 pooling plan;

13 (b) Sixty-six and two-thirds percent of the milk dealers and  
14 producer-dealers that vote must be in favor of establishing a market  
15 area and pooling plan; and

16 (c) Producer-dealers providing notice to the director under RCW  
17 15.35.115(1), shall be authorized to vote both as producers and as milk  
18 dealers.

19 The director, within ~~((sixty))~~ ninety days from the date the  
20 results of the referendum are filed with the secretary of state, shall  
21 adopt rules to establish a market pool in the market area, as provided  
22 for in this chapter. Following public hearings, the director may find  
23 that no market pool should be established if the lack of milk  
24 regulation in neighboring states would render the market plan  
25 ineffective or impractical.

26 (3) If fifty-one percent of the producers and producer-dealers  
27 voting representing fifty-one percent of the milk produced and fifty-  
28 one percent of the milk dealers and producer-dealers in the market area  
29 vote to terminate a pooling plan, the director, within one hundred  
30 twenty days, shall terminate all the provisions of said market area and  
31 pooling arrangement.

32 (4) A referendum of affected producers, producer-dealers, and milk  
33 dealers shall be conducted only when a market area pooling arrangement  
34 is to be established. Only producers, milk dealers, and producer-  
35 dealers who are subject to the plan may vote on the termination of a  
36 pooling plan.

37 **Sec. 9.** RCW 15.35.115 and 1992 c 58 s 2 are each amended to read  
38 as follows:

1 (1) Not less than sixty days before a referendum creating a market  
2 area and pooling plan with quotas is to be conducted under RCW  
3 15.35.110, the director shall notify each producer-dealer regarding the  
4 referendum. Any producer-dealer may choose to vote on the referendum  
5 and each choosing to do so shall notify the director in writing of this  
6 choice not later than thirty days before the referendum is conducted.  
7 Such a producer-dealer and any person who becomes a producer-dealer or  
8 producer by acquiring the quota of such a producer-dealer shall be a  
9 fully regulated producer under such an approved plan and shall receive  
10 a quota which is not less than the sales of milk in fluid form from the  
11 producer facilities during the reference period used by the director in  
12 determining quotas for producers. Such a producer-dealer shall also be  
13 a fully regulated milk dealer under the terms of such an approved plan.  
14 RCW 15.35.310(1) does not apply to a producer-dealer who is subject to  
15 regulation under this subsection.

16 (2) If a person was not a producer-dealer at the time notice was  
17 provided to producer-dealers under subsection (1) of this section  
18 regarding a referendum on a proposed market area and pooling plan with  
19 quotas, the plan was approved by referendum, and the person  
20 subsequently became a producer-dealer (other than by virtue of the  
21 person's acquisition of the quota of a producer-dealer who is fully  
22 regulated under the plan), the person is subject to all of the terms of  
23 the plan for producers and milk dealers during the duration of the plan  
24 and RCW 15.35.310(1) does not apply to such a person with regard to  
25 that plan.

26 (3) This subsection applies: To a person who was a producer-dealer  
27 at the time the notice was provided to producer-dealers under  
28 subsection (1) of this section regarding a referendum which was  
29 approved and who did not notify the director under subsection (1) of  
30 this section to vote in that referendum; and to a person who acquires  
31 the facility of such a person.

32 If such a person's sales of milk in fluid form subsequent to the  
33 adoption of the plan increases such that those sales in any year are  
34 more than fifty percent greater than the sales of milk in fluid form  
35 from the producer facilities during any of the previous five years, RCW  
36 15.35.310(1) does not apply to that person with regard to that plan.  
37 Such a producer-dealer shall be a fully regulated producer under such  
38 an approved plan and shall receive a quota which is not less than the  
39 producer-dealer's sales of milk in fluid form during the reference

1 period used by the director in determining quotas for producers. Such  
2 a producer-dealer shall also be a fully regulated dealer under the  
3 terms of such an approved plan.

4 If changes are made, on a market area-wide basis, to the quotas  
5 established under the plan, the director shall by rule adjust the fifty  
6 percent limitation provided by this section by an equivalent amount.

7 **Sec. 10.** RCW 15.35.150 and 1992 c 58 s 5 are each amended to read  
8 as follows:

9 (1) Under a market pool and as used in this section, "quota" means  
10 a producer's or producer-dealer's portion of the total sales of milk  
11 (~~in fluid form~~) in a market area (~~plus a reserve determined by the~~  
12 ~~director~~) in fluid form or, in the director's discretion, in other  
13 forms.

14 (2) The director may in each market area subject to a market plan  
15 establish each producer's and each producer-dealer's initial quota in  
16 the market area. Such initial quotas shall be determined by the  
17 department after due notice and the opportunity for a hearing as  
18 provided in chapter 34.05 RCW. In making this determination,  
19 consideration shall be given to a history of the producer's production  
20 record. In no case shall a producer-dealer receive as a quota an  
21 amount which is less than his or her fluid milk sales for the reference  
22 period used by the director in determining quotas for other producers.

23 In any system of establishing quotas, provision shall be made for  
24 new producers to qualify for allocation of quota in a reasonable  
25 proportion and for old and new producers to participate in any new  
26 increase in (~~fluid milk sales~~) available quota in a reasonable  
27 proportion. The director may establish a method to proportionately  
28 decrease quota allocations in the event decreases in (~~fluid~~) milk  
29 (~~consumption~~) usage occur.

30 All subsequent changes or new quotas issued shall be determined by  
31 the department after due notice and the opportunity for a hearing as  
32 provided in chapter 34.05 RCW.

33 **Sec. 11.** RCW 15.35.250 and 1991 c 239 s 15 are each amended to  
34 read as follows:

35 (1) There is hereby levied upon all milk sold or received in any  
36 marketing area subject to a marketing plan established under the  
37 provisions of this chapter an assessment, not to exceed five cents per

1 one hundred pounds of all such milk, to be paid by the producer of such  
2 milk. Such assessment shall be collected by the first milk dealer who  
3 receives or handles such milk from any producer or his or her agent  
4 subject to such marketing plan and shall be paid to the director for  
5 deposit into the agricultural local fund.

6 The amount to be assessed and paid to the director under any  
7 marketing plan shall be determined by the director within the limits  
8 prescribed by this (~~section~~) subsection and shall be determined  
9 according to the necessities required to carry out the purpose and  
10 provisions of this chapter under any such marketing plan.

11 (2) In the event a producer's milk dealer does not provide milk  
12 testing in a state-certified laboratory, the director may levy an  
13 additional assessment on all such milk, not to exceed three cents per  
14 one hundred pounds of milk, to be paid by the producer of such milk.  
15 Such assessment shall be collected by the first milk dealer who  
16 receives or handles such milk from any producer or the producer's agent  
17 subject to the marketing plan and shall be paid to the director for  
18 deposit into the agricultural local fund.

19 The amount to be assessed and paid to the director under this  
20 subsection shall be determined by the director within the limits  
21 prescribed by this subsection.

22 (3) Upon the failure of any dealer to withhold out of amounts due  
23 to or to become due to a producer at the time a dealer is notified by  
24 the director of the amounts to be withheld and upon failure of such  
25 dealer to pay such amounts, the director subject to the provisions of  
26 RCW 15.35.260, may revoke the license of the dealer required by RCW  
27 15.35.230. The director may commence an action against the dealer in  
28 a court of competent jurisdiction in the county in which the dealer  
29 resides or has his principal place of business to collect such amounts.  
30 If it is determined upon such action that the dealer has wrongfully  
31 refused to pay the amounts the dealer shall be required to pay, in  
32 addition to such amounts, all the costs and disbursements of the  
33 action, to the director as determined by the court. If the director's  
34 contention in such action is not sustained, the director shall pay to  
35 the dealer all costs and disbursements of the action as determined by  
36 the court.

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