

SB 5476 - S Amd

By Senators Bailey, Hansen, Barr, Conner and Anderson

ADOPTED 3/7/91 - Voice Vote

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 15.35.030 and 1971 ex.s. c 230 s 3 are each amended to read as follows:

It is hereby declared that:

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

(2) The production, distribution, 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) It is the policy of the state to promote, foster, and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including milk, and to eliminate economic waste, destructive trade practices, and improper accounting for milk purchased from producers;

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

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

"**Sec. 2.** RCW 15.35.060 and 1971 ex.s. c 230 s 6 are each amended to read as follows:

The purposes of this chapter are to:

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

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

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

"**Sec. 3.** RCW 15.35.070 and 1971 ex.s. c 230 s 7 are each amended to read as follows:

It is the intent of the legislature that the powers conferred in this chapter shall be liberally construed. Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of milk, nor shall this chapter give the director authority to establish retail prices for milk or milk products."

"**Sec. 4.** RCW 15.35.080 and 1971 ex.s. c 230 s 8 are each amended to read as follows:

For the purposes of this chapter:

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

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

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural as the case may be;

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

(5) "Milk" means all fluid milk as defined in chapters 15.32 and 15.36 RCW as enacted or hereafter amended and rules adopted thereunder;

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

(7) "Milk dealer" means any person engaged in the handling of milk in his or her capacity as the operator of a milk plant ~~((, a country plant))~~ within the state or of any other plant from which milk or milk products that are produced at least in part from milk from producers are disposed of to any place or establishment within a marketing area ~~((other than to a plant in such marketing area))~~;

(8) "Producer" means a person producing milk within this state for sale under a grade A milk permit issued by the department under the provisions of chapter 15.36 RCW as enacted or hereafter amended;

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

(10) "Producer-dealer" means a producer who engages in the production ~~((as well as the distribution of milk products))~~ of milk and also operates a plant from which an average of more than three hundred pounds daily of milk products, except filled milk, is sold within the marketing area and who has been so designated by the director. A state

institution which processes and distributes milk of its own production shall be considered a producer-dealer for purposes of this chapter, but the director may by rule exempt such state institutions from any of the requirements otherwise applicable to producer-dealers."

"**Sec. 5.** RCW 15.35.090 and 1971 ex.s. c 230 s 9 are each amended to read as follows:

(1) The director shall in carrying out the provisions of this chapter and any marketing plan thereunder confer with the legally constituted authorities of other states of the United States, and the United States department of agriculture, for the purpose of seeking uniformity of milk control with respect to milk coming in to the state and going out of the state in interstate commerce with a view to accomplishing the purposes of this chapter, and may enter into a compact or compacts which will insure a uniform system of milk control between this state and other states.

(2) In order to facilitate carrying out the provisions and purposes of this chapter, the department may hold joint hearings with authorized officers or agencies of other states who have duties and powers similar to those of the department or with any authorized person designated by the United States department of agriculture, and may enter into joint agreements with such authorized state or federal agencies for exchange of information with regard to prices paid to producers for milk moving from one state to the other or any purpose to carry out and enforce this chapter."

"**Sec. 6.** RCW 15.35.100 and 1971 ex.s. c 230 s 10 are each amended to read as follows:

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

(1) To investigate all matters pertaining to the production, processing, storage, transportation, and distribution of milk and milk products in the state, and ~~((including but not limited to))~~ shall have the authority to:

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

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

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

~~((e))~~ (d) Determine by using uniform rules, what portion of the milk produced by each producer subject to the provisions of a marketing plan shall be marketable in fluid form and what proportion so produced shall be considered as surplus; such determination shall also apply to milk dealers who purchase or receive milk, for sale or distribution in such marketing area, from plants whose producers are not subject to such pooling arrangements;

~~((d))~~ (e) Provide for the pooling ~~((and averaging of all returns))~~ of minimum class values from the sales of each class of milk ~~((in a designated market area))~~ to milk dealers, and the ~~((payment to all producers of a uniform pool price for all milk so sold))~~ equalization of returns to producers;

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

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

~~((g))~~ (h) Employ such persons as may be necessary and incur all expenses necessary to carry out the purposes of this chapter;

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

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

(3) To make, adopt, and enforce all rules necessary to carry out the purposes of this chapter subject to the provisions of chapter 34.05 RCW concerning the adoption of rules, as enacted or hereafter amended: PROVIDED, That nothing contained in this chapter shall be construed to abrogate or affect the status, force, or operation of any provision of the public health laws enacted by the state or any municipal corporation or the public service laws of this state."

"NEW SECTION. **Sec. 7.** A new section is added to chapter 15.35 RCW to read as follows:

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

- (1) Cost of producing fluid milk for human consumption;
- (2) Transportation costs;
- (3) Milk prices in states or regions outside of the state that influence prices within the marketing areas;
- (4) Demand for fluid milk for human consumption; and

(5) Alternative enterprises available to producers."

"**Sec. 8.** RCW 15.35.110 and 1971 ex.s. c 230 s 11 are each amended to read as follows:

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

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

(a) Sixty-six and two-thirds percent of the producers that vote must be in favor of establishing a market area and pooling plan ~~((before it can be put into effect by the director))~~; and

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

The director, within ~~((one hundred twenty))~~ sixty days from the date the results of the referendum are filed with the secretary of state, shall establish a market pool in the market area, as provided for in this chapter.

~~((b))~~ (3) If fifty-one percent of ~~((those))~~ the producers voting representing fifty-one percent of the milk produced in the market area vote to terminate a pooling plan, the director, within one hundred twenty days, shall terminate all the provisions of said market area and pooling arrangement.

(4) A referendum of affected producers and milk dealers shall be conducted only when a market area pooling arrangement is to be established or terminated."

"**Sec. 9.** RCW 15.35.120 and 1971 ex.s. c 230 s 12 are each amended to read as follows:

(1) The producers qualified to sign a petition, or to vote in any referendum concerning a market pool, shall be all those producers shipping milk to the market area on a regular supply basis and who would or do receive or pay equalization in an existing market pool in a market area, or in a market pool if established in such market area.

(2) The milk dealers qualified to vote in any referendum establishing a market pool shall be all those milk dealers who operate a plant which is located within the state and who would receive milk priced under a market pool if established in such market area.

(3) The director is authorized during business hours to review the books and records of ((handlers)) milk dealers to obtain a list of the producers qualified to sign petitions or to vote in referendums and to verify that such milk dealers are qualified to vote in a referendum."

"**Sec. 10.** RCW 15.35.140 and 1971 ex.s. c 230 s 14 are each amended to read as follows:

(1) The director shall establish a system of classifying, pricing, and pooling of all milk used in each market area established under RCW 15.35.110.

(2) Thereafter the director ((shall)) may establish a system in each market area for the equalization of returns for all quota milk and all surplus over quota milk whereby all producers selling milk to milk dealers or delivering milk in such market area, or their cooperative associations, will receive the same prices for all quota milk and all surplus over quota milk, except that any premium paid to a producer by

a dealer above established prices shall not be considered in determining average pool prices. Such prices may reflect adjustments based on the value of component parts of each producer's milk."

"**Sec. 11.** RCW 15.35.150 and 1971 ex.s. c 230 s 15 are each amended to read as follows:

(1) Under a market pool and as used in this section, "quota" means a producer's portion of the total sales of (~~class I~~) milk in fluid form in a market area plus a reserve determined by the director.

(2) The director (~~shall~~) may in each market area subject to a market plan establish each producer's initial quota in the market area. Such initial quota shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. In making this determination, consideration shall be given to a history of the producer's production record.

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

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

"**Sec. 12.** RCW 15.35.170 and 1971 ex.s. c 230 s 17 are each amended to read as follows:

Quotas provided for in this chapter may not in any way be transferred without the consent of the director. Regulations regarding transfer of quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05

RCW. Any contract for the transfer of quotas, unless the transfer has previously been approved by the director, shall be null and void. The director shall make rules and regulations to preclude any person from using a corporation as a device to evade the provisions of this section. The quotas assigned to any ~~((corporation))~~ producer shall become null and void as of any time the ~~((corporation))~~ producer does not own the means of production to which the quotas pertain. Quotas shall in no event be considered as property ~~((not to))~~ and may be taken or abolished by the state without compensation."

"**Sec. 13.** RCW 15.35.180 and 1971 ex.s. c 230 s 18 are each amended to read as follows:

The director shall examine and audit not less than one time each year or at any other such time ~~((he))~~ the director considers necessary, the books and records, and may photostat such books, records, and accounts of milk dealers and cooperatives licensed or believed subject to license under this chapter for the purpose of determining:

(1) How payments to producers for the milk handled are computed and whether the amount of such payments are in accordance with the applicable marketing plan;

(2) If any provisions of this chapter affecting such payments directly or indirectly have been or are being violated.

No person shall in any way hinder or delay the director in conducting such examination.

The director may accept and use for the purposes of this section any audit made for or by a federal milk market order administrator which provides the information necessary for such purposes."

"**Sec. 14.** RCW 15.35.230 and 1971 ex.s. c 230 s 23 are each amended to read as follows:

(1) Application for each milk dealer's license shall be accompanied by an annual license fee (~~(of five dollars)~~) to be established by the director by rule.

(2) If an application for the renewal of a milk dealer's license is not filed on or before the first day of an annual licensing period a late fee of (~~(three dollars)~~) up to one-half of the license fee shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional assessment shall not apply if the applicant furnishes an affidavit that (~~(he)~~) the applicant has not acted as a milk dealer subsequent to the expiration of his or her prior license."

"**Sec. 15.** RCW 15.35.250 and 1971 ex.s. c 230 s 25 are each amended to read as follows:

There is hereby levied upon all milk sold or received in any marketing area subject to a marketing plan established under the provisions of this chapter an assessment, not to exceed five cents per one hundred pounds of all such milk, to be paid by the producer of such milk. Such assessment shall be collected by the first milk dealer who receives or handles such milk from any producer or his agent subject to such marketing plan and shall be paid to the director for deposit into the agricultural local fund.

The amount to be assessed and paid to the director under any marketing plan shall be determined by the director within the limits prescribed by this section and shall be determined according to the necessities required to carry out the purpose and provisions of this chapter under any such marketing plan.

Upon the failure of any dealer to withhold out of amounts due to or to become due to a producer at the time a dealer is notified by the director of the amounts to be withheld and upon failure of such dealer to pay such amounts, the director subject to the provisions of RCW

15.35.260, may revoke the license of the dealer required by RCW 15.35.230. The director may commence an action against the dealer in a court of competent jurisdiction in the county in which the dealer resides or has his principal place of business to collect such amounts. If it is determined upon such action that the dealer has wrongfully refused to pay the amounts the dealer shall be required to pay, in addition to such amounts, all the costs and disbursements of the action, to the director as determined by the court. If the director's contention in such action is not sustained, the director shall pay to the dealer all costs and disbursements of the action as determined by the court."

"**Sec. 16.** RCW 15.35.310 and 1971 ex.s. c 230 s 31 are each amended to read as follows:

(1) The provisions of this chapter shall not apply to ((a producer who acts as a milk dealer only for milk he produces on his own dairy farm from cows which he owns or is purchasing: PROVIDED, That such producer shall lease or own his processing facilities, or that he shall not have more than seventy five percent of the milk he produces processed, bottled, or packaged by another milk dealer or producer who acts as a dealer: PROVIDED FURTHER, That such milk producer shall remain exempt from the provisions of this chapter if he purchases not more than ten percent of the milk he handled from another producer or milk dealer and if he sells any excess production from his farm or farms to the pool at the lowest use classification price)) persons designated as producer-dealers, except that:

(a) The director may require pursuant to RCW 15.35.100 any information deemed necessary to verify a producer-dealer's status as a producer-dealer; and

(b) A producer-dealer shall comply with all requirements of this chapter applicable to milk dealers, except those which the director may deem unnecessary.

(2) The director shall upon request designate producer-dealers and adopt rules governing eligibility for designation of a producer-dealer and cancellation of such designation. To receive such designation, a producer-dealer shall, at a minimum:

(a) In its capacity as a handler, have and exercise complete and exclusive control over the operation and management of a plant at which it handles and processes milk received from its own milk production resources and facilities as designated in subsection (4)(a) of this section, the operation and management of which are under the complete and exclusive control of the producer-dealer in its capacity as a dairy farmer;

(b) Neither receive at its designated milk production resources and facilities nor receive, handle, process, or distribute at or through any of its milk handling, processing, or distributing resources and facilities, as designated in subsection (4)(b) of this section, milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) its designated milk production resources and facilities, (ii) other milk dealers within the limitation specified in subsection (2)(e) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products;

(c) Neither be directly nor indirectly associated with the business control or management of, nor have a financial interest in, another dealer's operation; nor shall any other dealer be so associated with the producer-dealer's operation;

(d) Not allow milk from the designated milk production resources and facilities of the producer-dealer to be delivered in the name of another person as producer milk to another handler; and

(e) Not handle fluid milk products derived from sources other than the designated milk production facilities and resources, except for fluid milk product purchased from pool plants which do not exceed in the aggregate a daily average during the month of one hundred pounds.

(3) Designation of any person as a producer-dealer following a cancellation of its prior designation shall be preceded by performance in accordance with subsection (2) of this section for a period of one month.

(4) Designation of a person as a producer-dealer shall include the determination and designation of the milk production, handling, processing, and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(a) As milk production resources and facilities: All resources and facilities, milking herd, buildings housing such herd, and the land on which such buildings are located, used for the production of milk:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-dealer;

(ii) In which the producer-dealer in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly, or partially owned, operated, or controlled by any partner or stockholder of the producer-dealer. However, for purposes of this item (4)(a)(iii) any such milk production resources and facilities which the producer-dealer proves to the satisfaction of the director do not constitute an actual or potential source of milk supply for the producer-dealer's operation as such shall not be considered a part of the producer-dealer's milk production resources and facilities; and

(b) As milk handling, processing, and distributing resources and facilities: All resources and facilities including store outlets used for handling, processing, and distributing any fluid milk product:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-dealer; or

(ii) In which the producer-dealer in any way has an interest, including any contractual arrangement, or with respect to which the producer-dealer directly or indirectly exercises any degree of management or control.

(5) Designation as a producer-dealer shall be canceled automatically upon determination by the director that any of the requirements of subsection (2) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred."

"NEW SECTION. Sec. 17. The following acts or parts of acts are each repealed:

(1) RCW 15.35.020 and 1971 ex.s. c 230 s 2;

(2) RCW 15.35.040 and 1971 ex.s. c 230 s 4; and

(3) RCW 15.35.050 and 1971 ex.s. c 230 s 5."

"NEW SECTION. Sec. 18. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately."

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By Senators Bailey, Hansen, Barr, Conner and Anderson

ADOPTED 3/7/91 - Voice Vote

On page 1, line 1 of the title, after "milk;" strike the remainder of the title and insert "amending RCW 15.35.030, 15.35.060, 15.35.070, 15.35.080, 15.35.090, 15.35.100, 15.35.110, 15.35.120, 15.35.140, 15.35.150, 15.35.170, 15.35.180, 15.35.230, 15.35.250, and 15.35.310;

adding a new section to chapter 15.35 RCW; repealing RCW 15.35.020, 15.35.040, and 15.35.050; and declaring an emergency."