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By Representatives Kremen, Rasmussen, Wilson, Rayburn, Haugen, Dorn, R. Johnson, Bowman, Spanel, Braddock, McLean, Nealey and Chandler.

Read first time February 18, 1991. Referred to Committee on Agriculture & Rural Development.

1 AN ACT Relating to the marketing of milk; amending RCW 15.35.030,
2 15.35.060, 15.35.070, 15.35.080, 15.35.090, 15.35.100, 15.35.110,
3 15.35.120, 15.35.140, 15.35.150, 15.35.170, 15.35.180, 15.35.230, and
4 15.35.310; adding a new section to chapter 15.35 RCW; repealing RCW
5 15.35.020, 15.35.040, and 15.35.050; and declaring an emergency.

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

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

9 It is hereby declared that:

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

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

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

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

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

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

18 The purposes of this chapter are to:

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

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

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

3 **Sec. 3.** RCW 15.35.070 and 1971 ex.s. c 230 s 7 are each amended to
4 read 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 retail
10 prices for milk or milk products.

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

13 For the purposes of this chapter:

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

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

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

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

27 (5) "Milk" means all fluid milk as defined in chapters 15.32 and
28 15.36 RCW as enacted or hereafter amended and rules adopted thereunder;

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

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

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

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

14 (10) "Producer-dealer" means a producer who engages in the
15 production (~~((as well as the distribution of milk products))~~) of milk and
16 also operates a plant from which an average of more than three hundred
17 pounds daily of fluid milk products, except filled milk, is sold within
18 the marketing area.

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

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

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

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

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

15 (1) To investigate all matters pertaining to the production,
16 processing, storage, transportation, and distribution of milk and milk
17 products in the state, and ~~((including but not limited to))~~ shall have
18 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 ((payment)) such payments to be made ((to producers)) by
26 dealers to producers or their cooperative associations in accordance
27 with a marketing plan for milk;

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

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

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

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

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

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

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

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

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

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

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

- 14 (1) Cost of producing fluid milk for human consumption;
- 15 (2) Transportation costs;
- 16 (3) Milk prices in states or regions outside of the state that
17 influence prices within the marketing areas;
- 18 (4) Demand for fluid milk for human consumption; and
- 19 (5) Alternative enterprises available to producers.

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

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

1 (a) Sixty-six and two-thirds percent of the producers that vote
2 must be in favor of establishing a market area and pooling plan before
3 it can be put into effect by the director. The director, within ((one
4 hundred twenty)) sixty days from the date the results of the referendum
5 are filed with the secretary of state, shall establish a market pool in
6 the market area, as provided for in this chapter.

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

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

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

19 (2) The director is authorized during business hours to review the
20 books and records of ((handlers)) milk dealers to obtain a list of the
21 producers qualified to sign petitions or to vote in referendums.

22 (3) Any cooperative association may, if it elects to do so, vote
23 and cast one ballot on behalf of all producers who are members of,
24 stockholders in, or under contract with, such cooperative association.
25 A cooperative association shall submit with its ballot, a certified
26 copy of the resolution authorizing the casting of the ballot. Each
27 such cooperative association entitled to vote in a referendum casting
28 more than one ballot with conflicting votes shall thereby invalidate
29 all ballots cast by such voter in such referendum.

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

3 (1) The director shall establish a system of classifying, pricing,
4 and pooling of all milk used in each market area established under RCW
5 15.35.110.

6 (2) Thereafter the director shall establish a system in each market
7 area for the equalization of returns for all quota milk and all surplus
8 over quota milk whereby all producers selling milk to milk dealers or
9 delivering milk in such market area, or their cooperative associations,
10 will receive the same price for all quota milk and all surplus over
11 quota milk, except that any premium paid to a producer by a dealer
12 above established prices shall not be considered in determining average
13 pool prices. Such prices may reflect adjustments based on the value of
14 component parts of each producer's milk.

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

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

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

26 In any system of establishing quotas, provision shall be made for
27 new producers to qualify for allocation of quota in a reasonable
28 proportion and for old and new producers to participate in any new
29 ~~((class I))~~ increase in fluid milk sales in a reasonable proportion.

1 The director may establish a method to proportionately decrease quota
2 allocations in the event decreases in fluid milk consumption occur.

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

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

8 Quotas provided for in this chapter may not in any way be
9 transferred without the consent of the director. Regulations regarding
10 transfer of quotas shall be determined by the department after due
11 notice and the opportunity for a hearing as provided in chapter 34.05
12 RCW. Any contract for the transfer of quotas, unless the transfer has
13 previously been approved by the director, shall be null and void. The
14 director shall make rules and regulations to preclude any person from
15 using a corporation as a device to evade the provisions of this
16 section. The quotas assigned to any ~~((corporation))~~ producer shall
17 become null and void as of any time the ~~((corporation))~~ producer does
18 not own the means of production to which the quotas pertain. Quotas
19 shall in no event be considered as property ~~((not to))~~ and may be taken
20 or abolished by the state without compensation.

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

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

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

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

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

8 (f) The director may accept and use for the purposes of this
9 section any audit made for or by a federal milk market order
10 administrator which provides the information necessary for such
11 purposes.

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

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

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

25 **Sec. 15.** RCW 15.35.310 and 1971 ex.s. c 230 s 31 are each amended
26 to read as follows:

27 The provisions of this chapter shall not apply to ~~((a producer who~~
28 ~~acts as a milk dealer only for milk he produces on his own dairy farm~~

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

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

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

16 NEW SECTION. Sec. 16. The following acts or parts of acts are
17 each repealed:

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

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

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

21 NEW SECTION. Sec. 17. This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of the
23 state government and its existing public institutions, and shall take
24 effect immediately.