

1 6155 AMH RAYB H5056.4

2 **SB 6155** - H AMD 0325 ADOPTED 03/05/92  
3 By Representatives Rayburn and Nealey

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5 On page 2, line 26, after "(10)" insert "The terms "plan," "market  
6 area and pooling arrangement," "market area pooling plan," "market area  
7 and pooling plan," "market pool," and "market plan" all have the same  
8 meaning;

9 (11)"

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13 On page 3, after line 4, insert the following:

14 "NEW SECTION. **Sec. 2.** A new section is added to chapter 15.35 RCW  
15 to read as follows:

16 (1) Not less than sixty days before a referendum creating a market  
17 area and pooling plan with quotas is to be conducted under RCW  
18 15.35.110, the director shall notify each producer-dealer regarding the  
19 referendum. Any producer-dealer may choose to vote on the referendum  
20 and each choosing to do so shall notify the director in writing of this  
21 choice not later than thirty days before the referendum is conducted.  
22 Such a producer-dealer and any person who becomes a producer-dealer or  
23 producer by acquiring the quota of such a producer-dealer shall be a  
24 fully regulated producer under such an approved plan and shall receive  
25 a quota which is not less than the sales of milk in fluid form from the  
26 producer facilities during the reference period used by the director in  
27 determining quotas for producers. Such a producer-dealer shall also be  
28 a fully regulated dealer under the terms of such an approved plan. RCW

1 15.35.310(1) does not apply to a producer-dealer who is subject to  
2 regulation under this subsection.

3 (2) If a person was not a producer-dealer at the time notice was  
4 provided to producer-dealers under subsection (1) of this section  
5 regarding a referendum on a proposed market area and pooling plan with  
6 quotas, the plan was approved by referendum, and the person  
7 subsequently became a producer-dealer (other than by virtue of the  
8 person's acquisition of the quota of a producer-dealer who is fully  
9 regulated under the plan), the person is subject to all of the terms of  
10 the plan for producers and dealers during the duration of the plan and  
11 RCW 15.35.310(1) does not apply to such a person with regard to that  
12 plan.

13 (3) This subsection applies: To a person who was a producer-dealer  
14 at the time the notice was provided to producer-dealers under  
15 subsection (1) of this section regarding a referendum which was  
16 approved and who did not notify the director under subsection (1) of  
17 this section to vote in that referendum; and to a person who acquires  
18 the quota of such a person.

19 If such a person's sales of milk in fluid form subsequent to the  
20 adoption of the plan increases such that those sales on an annual basis  
21 are more than fifty percent greater than the sales of milk in fluid  
22 form from the producer facilities during the reference period used by  
23 the director in determining quotas under the plan, RCW 15.35.310(1)  
24 does not apply to that person with regard to that plan. Such a  
25 producer-dealer shall be a fully regulated producer under such an  
26 approved plan and shall receive a quota which is not less than the  
27 producer-dealer's sales of milk in fluid form during the reference  
28 period used by the director in determining quotas for producers. Such  
29 a producer-dealer shall also be a fully regulated dealer under the  
30 terms of such an approved plan.

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

4 "Sec. 3. RCW 41.06.084 and 1990 c 37 s 2 are each amended to read  
5 as follows:

6 In addition to the exemptions set forth in RCW 41.06.070, the  
7 provisions of this chapter shall not apply in the department of  
8 agriculture to the director, the director's confidential secretary, the  
9 deputy director, not more than eight assistant directors, ((and)) the  
10 state veterinarian, and the milk pooling administrator employed under  
11 RCW 15.35.100."

12 "Sec. 4. RCW 15.35.110 and 1991 c 239 s 8 are each amended to read  
13 as follows:

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

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

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

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

1        (c) Producer-dealers providing notice to the director under section  
2 2(1) of this act, shall be authorized to vote both as producers and as  
3 milk dealers.

4        The director, within sixty days from the date the results of the  
5 referendum are filed with the secretary of state, shall establish a  
6 market pool in the market area, as provided for in this chapter.

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

12        (4) A referendum of affected producers, producer-dealers, and milk  
13 dealers shall be conducted only when a market area pooling arrangement  
14 is to be established (~~or terminated~~). Only producers and producer-  
15 dealers who are subject to the plan may vote on the termination of a  
16 pooling plan."

17        "**Sec. 5.** RCW 15.35.150 and 1991 c 239 s 11 are each amended to  
18 read as follows:

19        (1) Under a market pool and as used in this section, "quota" means  
20 a producer's or producer-dealer's portion of the total sales of milk in  
21 fluid form in a market area plus a reserve determined by the director.

22        (2) The director may in each market area subject to a market plan  
23 establish each producer's and each producer-dealer's initial quota in  
24 the market area. Such initial quotas shall be determined by the  
25 department after due notice and the opportunity for a hearing as  
26 provided in chapter 34.05 RCW. In making this determination,  
27 consideration shall be given to a history of the producer's production  
28 record. In no case shall a producer-dealer receive as a quota an

1 amount which is less than his or her fluid milk sales for the reference  
2 period used by the director in determining quotas for other producers.

3 In any system of establishing quotas, provision shall be made for  
4 new producers to qualify for allocation of quota in a reasonable  
5 proportion and for old and new producers to participate in any new  
6 increase in fluid milk sales in a reasonable proportion. The director  
7 may establish a method to proportionately decrease quota allocations in  
8 the event decreases in fluid milk consumption occur.

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

12 "Sec. 6. RCW 15.35.310 and 1991 c 239 s 16 are each amended to  
13 read as follows:

14 (1) Except as provided in section 2 of this act, the provisions of  
15 this chapter shall not apply to persons designated as producer-dealers,  
16 except that:

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

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

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

27 (a) In its capacity as a handler, have and exercise complete and  
28 exclusive control over the operation and management of a plant at which  
29 it handles and processes milk received from its own milk production

1 resources and facilities as designated in subsection (4)(a) of this  
2 section, the operation and management of which are under the complete  
3 and exclusive control of the producer-dealer in its capacity as a dairy  
4 farmer;

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

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

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

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

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

29 (4) Designation of a person as a producer-dealer shall include the  
30 determination and designation of the milk production, handling,

1 processing, and distributing resources and facilities, all of which  
2 shall be deemed to constitute an integrated operation, as follows:

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

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

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

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

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

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

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

27 (5) Designation as a producer-dealer shall be canceled  
28 automatically upon determination by the director that any of the  
29 requirements of subsection (2) of this section are not continuing to be  
30 met, such cancellation to be effective on the first day of the month

1 following the month in which the requirements were not met, or the  
2 conditions for cancellation occurred."

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4 By Representative Rayburn

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6 On page 1, line 1 of the title, after "orders;" strike the  
7 remainder of the title and insert "amending RCW 15.35.080, 41.06.084,  
8 15.35.110, 15.35.150, and 15.35.310; and adding a new section to  
9 chapter 15.35 RCW."