

1 6155 AMS BAIL S4081.1

2 SB 6155 - S AMD

3 By Senator Bailey

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5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 15.35.080 and 1991 c 239 s 4 are each amended to read
8 as follows:

9 For the purposes of this chapter:

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

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

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

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

23 (5) "Milk" means all fluid milk from cows as defined in (~~chapters~~
24 ~~15.32 and 15.36~~) RCW 15.36.011 as enacted or hereafter amended and
25 rules adopted thereunder;

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

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

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

7 (b) Whose milk plant is located within the state or ((of any other
8 plant)) from ((which)) whose milk plant milk or milk products that are
9 produced at least in part from milk from producers are disposed of to
10 any place or establishment within a marketing area;

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

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

16 (10) "Producer-dealer" means a producer who engages in the
17 production of milk and also operates a plant from which an average of
18 more than three hundred pounds daily of milk products, except filled
19 milk, is sold within the marketing area and who has been so designated
20 by the director. A state institution which processes and distributes
21 milk of its own production shall be considered a producer-dealer for
22 purposes of this chapter, but the director may by rule exempt such
23 state institutions from any of the requirements otherwise applicable to
24 producer-dealers."

25 "Sec. 2. RCW 15.35.100 and 1991 c 239 s 6 are each amended to read
26 as follows:

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

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

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

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

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

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

20 (e) Provide for the pooling of minimum class values from the sales
21 of each class of milk to milk dealers, and the equalization of returns
22 to producers;

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

25 (g) Employ an executive officer, who shall be known as the milk
26 pooling administrator and who shall be exempt from the provisions of
27 the state civil service law, and shall be paid a salary fixed by the
28 governor in accordance with the procedures established by law for the
29 fixing of salaries for officers exempt from the operation of the state
30 civil service law;

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

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

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

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

20 "Sec. 3. RCW 15.35.110 and 1991 c 239 s 8 are each amended to read
21 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 be established, a referendum of affected individual
28 producers and milk dealers shall be conducted by the department.

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

3 (a) Sixty-six and two-thirds percent of the producers and producer-
4 dealers that vote must be in favor of establishing a market area and
5 pooling plan; (~~and~~)

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

9 (c) Producer-dealers shall be authorized to vote both as producers
10 and as milk dealers.

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

14 (3) If fifty-one percent of the producers and producer-dealers
15 voting representing fifty-one percent of the milk produced in the
16 market area vote to terminate a pooling plan, the director, within one
17 hundred twenty days, shall terminate all the provisions of said market
18 area and pooling arrangement.

19 (4) A referendum of affected producers, producer-dealers, and milk
20 dealers shall be conducted only when a market area pooling arrangement
21 is to be established or terminated. Only producers and producer-
22 dealers may vote on termination of a pooling plan."

23 "**Sec. 4.** RCW 15.35.150 and 1991 c 239 s 11 are each amended to
24 read as follows:

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

28 (2) The director may in each market area subject to a market plan
29 establish each producer's or producer-dealer's initial quota in the

1 market area. Such initial quota shall be determined by the department
2 after due notice and the opportunity for a hearing as provided in
3 chapter 34.05 RCW. In making this determination, consideration shall
4 be given to a history of the producer's production record. In no case
5 shall a producer-dealer receive less than one hundred ten percent of
6 his or her fluid milk sales as quota, for the reference period used by
7 the director in determining quota for other producers.

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

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

17 **"Sec. 5.** RCW 15.35.310 and 1991 c 239 s 16 are each amended to
18 read as follows:

19 (1) Except as provided in section 6 of this act, the provisions of
20 this chapter shall not apply to persons designated as producer-dealers,
21 except that:

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

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

28 (2) The director shall upon request designate producer-dealers and
29 adopt rules governing eligibility for designation of a producer-dealer

1 and cancellation of such designation. To receive such designation, a
2 producer-dealer shall, at a minimum:

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (ii) In which the producer-dealer in any way has an interest,
30 including any contractual arrangement, or with respect to which the

1 producer-dealer directly or indirectly exercises any degree of
2 management or control.

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

9 "NEW SECTION. **Sec. 6.** A new section is added to chapter 15.35 RCW
10 to read as follows:

11 In the event that a market pool with quota is established as
12 provided in RCW 15.35.140(2), the provisions of RCW 15.35.310 shall not
13 be effective within the market area, and the director shall provide
14 that: (1) All producer-dealers shall be fully regulated milk plants;
15 and (2) when the initial quota is issued to producers under RCW
16 15.35.150, all producer-dealers shall be fully regulated producers and
17 shall receive quota which reflects one hundred ten percent of the
18 producer-dealer's sales of milk in fluid form in the market during the
19 reference period used by the director in determining quota for other
20 producers.

21 If a marketing order does not contain quota provisions pursuant to
22 RCW 15.35.150, the provisions of this chapter shall not apply to
23 producer-dealers."

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25 By Senator Bailey

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27 On page 1, line 1 of the title, after "orders;" strike the
28 remainder of the title and insert "amending RCW 15.35.080, 15.35.100,

1 15.35.110, 15.35.150, and 15.35.310; and adding a new section to
2 chapter 15.35 RCW."