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**SUBSTITUTE SENATE BILL 5476**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By** Senate Committee on Agriculture & Water Resources (originally sponsored by Senators Bailey, Barr, Hansen, Anderson, Conner, Newhouse, Gaspard and Bauer).

Read first time February 20, 1991.

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,  
4 15.35.250, and 15.35.310; adding a new section to chapter 15.35 RCW;  
5 repealing RCW 15.35.020, 15.35.040, and 15.35.050; and declaring an  
6 emergency.

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

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

10       It is hereby declared that:

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

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

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

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

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

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

21       The purposes of this chapter are to:

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

27       (2) Authorize and enable the director to formulate marketing plans  
28 subject to the provisions of this chapter (~~(with respect to the~~  
29 ~~contents of such)), in accordance with chapter 34.05 RCW, which provide~~

1 for pricing and pooling arrangements and declare such plans in effect  
2 for any marketing area;

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

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

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

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

15 For the purposes of this chapter:

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

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

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

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

1 (5) "Milk" means all fluid milk as defined in chapters 15.32 and  
2 15.36 RCW as enacted or hereafter amended and rules adopted thereunder;

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

5 (7) "Milk dealer" means any person engaged in the handling of milk  
6 in his or her capacity as the operator of a milk plant(~~((, a country~~  
7 ~~plant))~~ within the state or of any other plant from which milk or milk  
8 products that are produced at least in part from milk from producers  
9 are disposed of to any place or establishment within a marketing area  
10 (~~((other than to a plant in such 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 (~~((as well as the distribution of milk products))~~) of milk and  
18 also operates a plant from which an average of more than three hundred  
19 pounds daily of milk products, except filled milk, is sold within the  
20 marketing area and who has been so designated by the director. A state  
21 institution which processes and distributes milk of its own production  
22 shall be considered a producer-dealer for purposes of this chapter, but  
23 the director may by rule exempt such state institutions from any of the  
24 requirements otherwise applicable to producer-dealers.

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

27 (1) The director shall in carrying out the provisions of this  
28 chapter and any marketing plan thereunder confer with the legally  
29 constituted authorities of other states of the United States, and the

1 United States department of agriculture, for the purpose of seeking  
2 uniformity of milk control with respect to milk coming in to the state  
3 and going out of the state in interstate commerce with a view to  
4 accomplishing the purposes of this chapter, and may enter into a  
5 compact or compacts which will insure a uniform system of milk control  
6 between this state and other states.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 20 (1) Cost of producing fluid milk for human consumption;
- 21 (2) Transportation costs;
- 22 (3) Milk prices in states or regions outside of the state that  
23 influence prices within the marketing areas;
- 24 (4) Demand for fluid milk for human consumption; and
- 25 (5) Alternative enterprises available to producers.

26 **Sec. 8.** RCW 15.35.110 and 1971 ex.s. c 230 s 11 are each amended  
27 to read 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 either be established or terminated, a referendum of  
7 affected individual producers shall be conducted by the department.

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

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

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

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

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



1       (3) Any cooperative association may, if it elects to do so, vote  
2 and cast one ballot on behalf of all producers who are members of,  
3 stockholders in, or under contract with, such cooperative association.  
4 A cooperative association shall submit with its ballot, a certified  
5 copy of the resolution authorizing the casting of the ballot. Each  
6 such cooperative association entitled to vote in a referendum casting  
7 more than one ballot with conflicting votes shall thereby invalidate  
8 all ballots cast by such voter in such referendum.

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

11       (1) The director shall establish a system of classifying, pricing,  
12 and pooling of all milk used in each market area established under RCW  
13 15.35.110.

14       (2) Thereafter the director (~~shall~~) may establish a system in  
15 each market area for the equalization of returns for all quota milk and  
16 all surplus over quota milk whereby all producers selling milk to milk  
17 dealers or delivering milk in such market area, or their cooperative  
18 associations, will receive the same prices for all quota milk and all  
19 surplus over quota milk, except that any premium paid to a producer by  
20 a dealer above established prices shall not be considered in  
21 determining average pool prices. Such prices may reflect adjustments  
22 based on the value of component parts of each producer's milk.

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

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

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

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

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

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

18           Quotas provided for in this chapter may not in any way be  
19 transferred without the consent of the director. Regulations regarding  
20 transfer of quotas shall be determined by the department after due  
21 notice and the opportunity for a hearing as provided in chapter 34.05  
22 RCW. Any contract for the transfer of quotas, unless the transfer has  
23 previously been approved by the director, shall be null and void. The  
24 director shall make rules and regulations to preclude any person from  
25 using a corporation as a device to evade the provisions of this  
26 section. The quotas assigned to any (~~corporation~~) producer shall  
27 become null and void as of any time the (~~corporation~~) producer does  
28 not own the means of production to which the quotas pertain. Quotas

1 shall in no event be considered as property (~~not to~~) and may be taken  
2 or abolished by the state without compensation.

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

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

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

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

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

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

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

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

26 (2) If an application for the renewal of a milk dealer's license is  
27 not filed on or before the first day of an annual licensing period a  
28 late fee of (~~three dollars~~) up to one-half of the license fee shall

1 be assessed and added to the original fee and shall be paid by the  
2 applicant before the renewal license shall be issued: PROVIDED, That  
3 such additional assessment shall not apply if the applicant furnishes  
4 an affidavit that ((he)) the applicant has not acted as a milk dealer  
5 subsequent to the expiration of his or her prior license.

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

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

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

21 Upon the failure of any dealer to withhold out of amounts due to or  
22 to become due to a producer at the time a dealer is notified by the  
23 director of the amounts to be withheld and upon failure of such dealer  
24 to pay such amounts, the director subject to the provisions of RCW  
25 15.35.260, may revoke the license of the dealer required by RCW  
26 15.35.230. The director may commence an action against the dealer in  
27 a court of competent jurisdiction in the county in which the dealer  
28 resides or has his principal place of business to collect such amounts.  
29 If it is determined upon such action that the dealer has wrongfully

1 refused to pay the amounts the dealer shall be required to pay, in  
2 addition to such amounts, all the costs and disbursements of the  
3 action, to the director as determined by the court. If the director's  
4 contention in such action is not sustained, the director shall pay to  
5 the dealer all costs and disbursements of the action as determined by  
6 the court.

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

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

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

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

27 (2) The director shall upon request designate producer-dealers and  
28 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. 17. The following acts or parts of acts are  
10 each repealed:

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

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

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

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