
SENATE BILL 5263

State of Washington 53rd Legislature 1993 Regular Session

By Senators M. Rasmussen, Anderson, Barr and Bauer

Read first time 01/20/93. Referred to Committee on Agriculture.

1 AN ACT Relating to the marketing of milk; and amending RCW
2 15.35.060, 15.35.080, 15.35.100, 15.35.105, 15.35.110, 15.35.115,
3 15.35.150, and 15.35.250.

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

5 **Sec. 1.** RCW 15.35.060 and 1991 c 239 s 2 are each amended to read
6 as follows:

7 The purposes of this chapter are to:

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

13 (2) Authorize and enable the director to formulate marketing plans
14 subject to the provisions of this chapter, in accordance with chapter
15 34.05 RCW, which provide for pricing and pooling arrangements and
16 declare such plans in effect for any marketing area;

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

1 **Sec. 2.** RCW 15.35.080 and 1992 c 58 s 1 are each amended to read
2 as follows:

3 For the purposes of this chapter:

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

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

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

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

17 (5) "Milk" means all fluid milk from cows as defined in RCW
18 15.36.011 (~~as enacted or hereafter amended~~) and rules adopted
19 thereunder;

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

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

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

28 (b) Whose milk plant is located within the state or from whose milk
29 plant milk or milk products that are produced at least in part from
30 milk from producers are disposed of to any place or establishment
31 within a marketing area;

32 (8) "Producer" means a person producing milk within this state for
33 sale under a grade A milk permit issued by the department under the
34 provisions of chapter 15.36 RCW (~~as enacted or hereafter amended~~) or
35 a person producing milk to be processed within the state under a grade
36 A milk permit issued by another state;

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

1 (10) The terms "plan," "market area and pooling arrangement,"
2 "market area pooling plan," "market area and pooling plan," "market
3 pool," and "market plan" all have the same meaning;

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

13 **Sec. 3.** RCW 15.35.100 and 1991 c 239 s 6 are each amended to read
14 as follows:

15 Subject to the provisions of this chapter and the specific
16 provisions of any marketing plan established (~~thereunder~~) under this
17 chapter, the director is hereby vested with the authority:

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

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

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

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

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

1 (e) Provide for the pooling of minimum class values from the sales
2 of each class of milk to milk dealers, and the equalization of returns
3 to producers;

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

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

8 (h) Employ such persons or contract with such entities as may be
9 necessary and incur all expenses necessary to carry out the purposes of
10 this chapter;

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

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

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

28 **Sec. 4.** RCW 15.35.105 and 1991 c 239 s 7 are each amended to read
29 as follows:

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

34 (1) Cost of producing fluid milk for human consumption;

35 (2) Transportation costs;

36 (3) Milk prices in states or regions outside of the state that
37 influence prices within the marketing areas;

38 (4) Demand for fluid milk for human consumption; ((and))

- 1 (5) Alternative enterprises available to producers; and
2 (6) Economic impact on milk dealers.

3 **Sec. 5.** RCW 15.35.110 and 1992 c 58 s 4 are each amended to read
4 as follows:

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

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

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

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

20 (c) Producer-dealers providing notice to the director under RCW
21 15.35.115(1), shall be authorized to vote both as producers and as milk
22 dealers.

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

27 (3) If fifty-one percent of the producers and producer-dealers
28 voting representing fifty-one percent of the milk produced and fifty-
29 one percent of the milk dealers and producer-dealers in the market area
30 vote to terminate a pooling plan, the director, within one hundred
31 twenty days, shall terminate all the provisions of said market area and
32 pooling arrangement.

33 (4) A referendum of affected producers, producer-dealers, and milk
34 dealers shall be conducted only when a market area pooling arrangement
35 is to be established. Only producers, milk dealers, and producer-
36 dealers who are subject to the plan may vote on the termination of a
37 pooling plan.

1 **Sec. 6.** RCW 15.35.115 and 1992 c 58 s 2 are each amended to read
2 as follows:

3 (1) Not less than sixty days before a referendum creating a market
4 area and pooling plan with quotas is to be conducted under RCW
5 15.35.110, the director shall notify each producer-dealer regarding the
6 referendum. Any producer-dealer may choose to vote on the referendum
7 and each choosing to do so shall notify the director in writing of this
8 choice not later than thirty days before the referendum is conducted.
9 Such a producer-dealer and any person who becomes a producer-dealer or
10 producer by acquiring the quota of such a producer-dealer shall be a
11 fully regulated producer under such an approved plan and shall receive
12 a quota which is not less than the sales of milk in fluid form from the
13 producer facilities during the reference period used by the director in
14 determining quotas for producers. Such a producer-dealer shall also be
15 a fully regulated milk dealer under the terms of such an approved plan.
16 RCW 15.35.310(1) does not apply to a producer-dealer who is subject to
17 regulation under this subsection.

18 (2) If a person was not a producer-dealer at the time notice was
19 provided to producer-dealers under subsection (1) of this section
20 regarding a referendum on a proposed market area and pooling plan with
21 quotas, the plan was approved by referendum, and the person
22 subsequently became a producer-dealer (other than by virtue of the
23 person's acquisition of the quota of a producer-dealer who is fully
24 regulated under the plan), the person is subject to all of the terms of
25 the plan for producers and milk dealers during the duration of the plan
26 and RCW 15.35.310(1) does not apply to such a person with regard to
27 that plan.

28 (3) This subsection applies: To a person who was a producer-dealer
29 at the time the notice was provided to producer-dealers under
30 subsection (1) of this section regarding a referendum which was
31 approved and who did not notify the director under subsection (1) of
32 this section to vote in that referendum; and to a person who acquires
33 the facility of such a person.

34 If such a person's sales of milk in fluid form subsequent to the
35 adoption of the plan increases such that those sales in any year are
36 more than fifty percent greater than the sales of milk in fluid form
37 from the producer facilities during any of the previous five years, RCW
38 15.35.310(1) does not apply to that person with regard to that plan.
39 Such a producer-dealer shall be a fully regulated producer under such

1 an approved plan and shall receive a quota which is not less than the
2 producer-dealer's sales of milk in fluid form during the reference
3 period used by the director in determining quotas for producers. Such
4 a producer-dealer shall also be a fully regulated dealer under the
5 terms of such an approved plan.

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

9 **Sec. 7.** RCW 15.35.150 and 1992 c 58 s 5 are each amended to read
10 as follows:

11 (1) Under a market pool and as used in this section, "quota" means
12 a producer's or producer-dealer's portion of the total sales of milk in
13 fluid form and for the production of other milk products in a market
14 area (~~((plus a reserve determined by the director))~~).

15 (2) The director may in each market area subject to a market plan
16 establish each producer's and each producer-dealer's initial quota in
17 the market area. Such initial quotas shall be determined by the
18 department after due notice and the opportunity for a hearing as
19 provided in chapter 34.05 RCW. In making this determination,
20 consideration shall be given to a history of the producer's production
21 record. In no case shall a producer-dealer receive as a quota an
22 amount which is less than his or her fluid milk sales for the reference
23 period used by the director in determining quotas for other producers.

24 In any system of establishing quotas, provision shall be made for
25 new producers to qualify for allocation of quota in a reasonable
26 proportion and for old and new producers to participate in any new
27 increase in fluid milk sales in a reasonable proportion. The director
28 may establish a method to proportionately decrease quota allocations in
29 the event decreases in fluid milk consumption occur.

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

33 **Sec. 8.** RCW 15.35.250 and 1991 c 239 s 15 are each amended to read
34 as follows:

35 (1) There is hereby levied upon all milk sold or received in any
36 marketing area subject to a marketing plan established under the
37 provisions of this chapter an assessment, not to exceed five cents per

1 one hundred pounds of all such milk, to be paid by the producer of such
2 milk. Such assessment shall be collected by the first milk dealer who
3 receives or handles such milk from any producer or his or her agent
4 subject to such marketing plan and shall be paid to the director for
5 deposit into the agricultural local fund.

6 The amount to be assessed and paid to the director under any
7 marketing plan shall be determined by the director within the limits
8 prescribed by this (~~section~~) subsection and shall be determined
9 according to the necessities required to carry out the purpose and
10 provisions of this chapter under any such marketing plan.

11 (2) In the event a producer's milk dealer does not provide milk
12 testing and other necessary marketing services, the director may levy
13 an additional assessment on all such milk, not to exceed three cents
14 per one hundred pounds of milk, to be paid by the producer of such
15 milk. Such assessment shall be collected by the first milk dealer who
16 receives or handles such milk from any producer or the producer's agent
17 subject to the marketing plan and shall be paid to the director for
18 deposit into the agricultural local fund.

19 The amount to be assessed and paid to the director under this
20 subsection shall be determined by the director within the limits
21 prescribed by this subsection and shall be determined according to the
22 marketing services required.

23 The director shall determine what constitutes necessary marketing
24 services and determine whether a producer's milk dealer is providing
25 such services.

26 (3) Upon the failure of any dealer to withhold out of amounts due
27 to or to become due to a producer at the time a dealer is notified by
28 the director of the amounts to be withheld and upon failure of such
29 dealer to pay such amounts, the director subject to the provisions of
30 RCW 15.35.260, may revoke the license of the dealer required by RCW
31 15.35.230. The director may commence an action against the dealer in
32 a court of competent jurisdiction in the county in which the dealer
33 resides or has his principal place of business to collect such amounts.
34 If it is determined upon such action that the dealer has wrongfully
35 refused to pay the amounts the dealer shall be required to pay, in
36 addition to such amounts, all the costs and disbursements of the
37 action, to the director as determined by the court. If the director's
38 contention in such action is not sustained, the director shall pay to

1 the dealer all costs and disbursements of the action as determined by
2 the court.

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