

S.89

An act relating to stabilization of prices paid to Vermont dairy farmers

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. VERMONT MILK COMMISSION; PRODUCER PRICE

STABILIZATION

(a) The general assembly finds that the recent precipitous drop in producer prices is causing a tremendous burden on Vermont dairy producers and the industry at large and that this burden must be alleviated as quickly as possible.

(b) The general assembly followed the proceedings of the Vermont milk commission during the summer and fall of 2008 and finds that the commission has held public hearings and undertaken deliberations regarding the adoption of an over-order premium but did not reach a final disposition.

(c) Therefore, the milk commission shall resume deliberations on the commission's latest version of a "proposed order to establish a retail fluid milk premium" first issued on September 9, 2008.

Sec. 2. 6 V.S.A. § 2924 is amended to read:

§ 2924. POWERS AND DUTIES; PRICING AUTHORITY; PUBLIC

HEARINGS

(a) Authority over milk prices. The commission may establish an equitable minimum or maximum price, or both, and the manner of payments, which shall

be paid producers or associations of producers by handlers, and the prices charged consumers and others for milk used in dairy products by distributors or handlers. The cost of the contracts and employment pursuant to section 2923 of this title and of administering the collection and distribution of monies collected under this section shall not exceed \$100,000.00 annually and may be collected independently from any assessment imposed under this section. The commission may impose an assessment to cover the initial costs of establishing a pricing order as authorized by this section.

(b) Equitable minimum producer prices. The commission may establish by order after notice and hearing an equitable minimum price to be paid to dairy producers for milk produced in Vermont on the basis of the use thereof in the various classes, grades, and forms. Prices so established which exceed federal order prices shall be collected by the commission from the handlers for distribution to dairy producers as a blend price. ~~The cost of the contracts and employment pursuant to section 2923 of this title and of administering the collection and distribution of these moneys shall be covered by such moneys, not to exceed \$100,000.00.~~

(c) Public hearings. In order to be informed of the status of the state's dairy industry, the commission shall hold a public hearing: at least annually, when directed by the general assembly, and whenever the chair deems it necessary.

~~(1) At least annually.~~

~~(2) Whenever the price paid to producers, including the federal market order price and any over order premiums, on average, has been reduced by five percent or more over the last month or by 10 percent or more over the last three months.~~

~~(3) Whenever the retail price, on average, has increased by more than 10 percent per gallon within a three-month period or 15 percent per gallon within a 12-month period.~~

~~(4) Whenever the cost of production increases by 10 percent or more within a period of three to 12 months.~~

~~(5) Whenever a loss or substantial lessening of the supply of fluid dairy products of proper quality in a specified market has occurred or is likely to occur and that the public health is menaced, jeopardized, or likely to be impaired or deteriorated by the loss or substantial lessening of the supply of fluid dairy products of proper quality in a specified market.~~

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Sec. 3. PREMIUM START-UP FUNDING

(a) The commission may impose an assessment to cover the administrative costs of its activities required by Sec. 1 of this act. An assessment under this section shall not exceed \$35,000.00.

(b) The agency of agriculture, food and markets may borrow from its own general fund to cover these administrative expenses, and the milk commission shall reimburse the agency of agriculture, food and markets' general fund upon receipt of the proceeds of the assessment authorized by subsection (a) of this section.

Sec. 4. PRODUCER REFERENDUM

(a) If adopted pursuant to this act, a final order by the Vermont milk commission to establish a retail fluid milk premium shall be submitted by Vermont dairy producers to a producer referendum in accordance with part II, section 7 of the "Vermont Milk Commission Procedure, Development and Issuance of an Order to Establish a Retail Fluid Milk Premium, Or Amendment of Such Order." Notwithstanding the provisions of part III, section 8 of this commission procedure, however, the referendum shall not be conducted as a "qualified cooperative representative vote," but shall instead provide for individual ballot and vote by each Vermont producer.

(b) The referendum shall be carried out and certified not more than 30 days after the adoption of a final order.

(c) The commission shall file with the secretary of state and the legislative committee on administrative rules a letter explaining that a qualified cooperative representative vote pursuant to part III, section 8 of the "Vermont Milk Commission Procedure, Development and Issuance of an Order to

Establish a Retail Fluid Milk Premium, Or Amendment of Such Order” will not apply to an order adopted under this act. The commission shall also submit a copy of this act to the secretary of state and the legislative committee on administrative rules.

Sec. 5. ANTI-TRUST INQUIRY; REPORTS BY THE ATTORNEY

GENERAL AND MILK COMMISSION

(a) Findings. The general assembly is concerned that the highly concentrated market structure of the New England dairy industry, throughout all sectors, is operating to the disservice of Vermont dairy farmers and milk consumers alike. The raw milk sector of the industry is increasingly dominated by one large, nationally based dairy farm cooperative, and Vermont dairy farmers now have very few options for the initial marketing of their milk. The downstream processing sector is dominated by just two fluid milk processing concerns, which control both the procurement of raw milk from dairy farms and the sale of packaged milk to retail outlets. Finally, the dominant supermarket segment of the Vermont retail market is controlled by a few large firms, many of which are nationally based or multinational companies.

(b) Therefore, the attorney general shall undertake, in cooperation with attorneys general of other states when possible, a study of the Northeast fluid milk market and the Vermont segment of that market and further work with the

United States Congress and the United States attorney general to investigate possible anticompetitive practices of dairy cooperatives, processors, and retail firms operating in the Vermont marketplace.

(c) The general assembly further finds that the Capper-Volstead Act of 1922 was enacted for the purpose of exempting agricultural producers, including dairy farmers, from anti-trust laws, thereby allowing farmers to organize into cooperative associations that could leverage higher farm-gate prices than can individual producers. The past decades have seen further conglomeration of dairy cooperatives, but this centralization of farm-gate dairy purchasing has done nothing to stabilize prices or create more value for producers.

(d) Therefore, the milk commission is directed to work with other entities such as the Vermont attorney general, attorneys general from other states, milk regulatory entities from other states, the United States attorney general, and the Vermont congressional delegation to investigate why dairy cooperatives have not been able to use the Capper-Volstead Act to stabilize and raise dairy prices in the Northeast dairy market and to consider whether operation of the Capper-Volstead Act continues to serve its intended purpose and function in the public interest.

(e) By January 15, 2010, the attorney general and the milk commission shall report to the house and senate committees on agriculture with the findings and recommendations of the studies required by this section.

Sec. 6. 6 V.S.A. chapter 157 is amended to read:

CHAPTER 157. BONDS

§ 2881. CONDITIONS AND AMOUNT; FAILURE TO FILE

(a) Except as provided in section 2882 of this title, no handler shall purchase milk ~~or cream~~ from Vermont producers or milk cooperatives, and the secretary shall not issue a handler's license, unless the handler furnishes the secretary a good and sufficient surety bond, executed by a surety company duly authorized to transact business in this state in an amount ~~which, at the conclusion of five equal annual increases in bond coverage, is on January 1~~ equal to 50 percent for all species other than cattle, and 100 percent for cattle, of the maximum amount due all milk producers in the state who sell milk to the handler for a 41-day period during the previous 12 months. He or she may accept, in lieu of such bond, a guaranteed irrevocable letter of credit ~~in such sum as he or she deems sufficient~~. The bonds shall be taken for the ~~sole~~ benefit of milk producers ~~of such milk handlers~~ and milk cooperatives in this state. At any time in his or her discretion, the secretary may require such handlers to file detailed statements of the business transacted by them in this state, and at any time may require them to give such additional bonds as he or

she deems necessary. If the handler refuses or neglects to file the detailed statements or to give bonds required by the secretary, the secretary may suspend the license of the handler until he or she complies with the secretary's orders. The secretary ~~shall~~ shall report to the attorney general the name of any handler doing business in this state without a license or after suspension of its license by the secretary and the attorney general shall forthwith bring injunction proceedings against the handler. Renewals of bonds specified in this section shall be furnished the secretary 60 days before the effective date of the bond. If the handler fails to file the bonds as required, the secretary shall forthwith publish the name of the handler in four newspapers of general circulation in the state for a period of three consecutive days and notify, by registered mail, producers supplying such handler.

(b) ~~A handler shall be exempt from providing the financial security required by this section for payments the handler makes to a producer who is a member of a milk cooperative which guarantees its members' milk checks. To receive this exemption, a handler shall notify the secretary of each such producer and the secretary shall validate the cooperative membership of the producer.~~

§ 2882. EXEMPTIONS FROM FILING BOND

(a) ~~A handler who purchases or receives milk or cream from producers~~
milk cooperative or a nonprofit cooperative association organized under

Vermont law or similar laws in other states shall not be required to furnish surety as provided in section 2881 of this title ~~if the handler is a nonprofit cooperative association organized under Vermont statutes or under similar laws in other states~~ for payments made to a milk cooperative or to a producer who is a member of a milk cooperative.

(b) A handler who does not purchase milk ~~or cream~~ from Vermont producers or milk cooperatives shall not be required to furnish surety as provided under section 2881 of this title.

(c) A handler who pays a milk cooperative for milk in advance or at the time of delivery shall not be required to furnish surety as provided under section 2881 of this title. Every milk cooperative selling milk to handlers who pay for milk in advance or at the time of delivery shall, on January 1 and July 1 of each year, notify the secretary in writing of the identity of each handler and shall promptly notify the secretary, in writing, of any changes to the most recent notification.

(d) A handler who purchases fewer than 150,000 pounds of milk per month from a milk cooperative shall not be required to furnish surety as provided under section 2881 of this title.

Sec. 7. 20 V.S.A. § 3541(9) is added to read:

(9) "Working farm dog" means a dog that is bred or trained to herd or protect livestock or poultry or to protect crops and that is used for those

purposes and that is registered as a working farm dog pursuant to subsection 3581(a) of this title.

Sec. 8. 20 V.S.A. § 3549 is amended to read:

§ 3549. DOMESTIC PETS OR WOLF-HYBRIDS, REGULATION BY
TOWNS

The legislative body of a city or town by ordinance may regulate the keeping, leashing, muzzling, restraint, impoundment, and destruction of domestic pets or wolf-hybrids and their running at large except that a legislative body of a city or town shall not prohibit or regulate the barking or running at large of a working farm dog when it is on the property being farmed by the person who registered the working farm dog, pursuant to subsection 3581(a) of this title, in the following circumstances:

(1) If the working farm dog is barking in order to herd or protect livestock or poultry or to protect crops.

(2) If the working farm dog is running at large in order to herd or protect livestock or poultry or to protect crops.

Sec 9. 20 V.S.A. § 3581(a) is amended to read:

§ 3581. GENERAL REQUIREMENTS

(a) A person who is the owner of a dog or wolf-hybrid more than six months old shall annually on or before April 1 cause it to be registered, numbered, described, and licensed on a form approved by the secretary for one

year from that day in the office of the clerk of the municipality wherein the dog or wolf-hybrid is kept. A person who owns a working farm dog and who intends to use that dog on a farm pursuant to the exemptions in section 3549 of this title shall cause the working farm dog to be registered as a working farm dog and shall, in addition to all other fees required by this section, pay \$5.00 for a working farm dog license. The owner of a dog or wolf-hybrid shall cause it to wear a collar, and attach thereto a license tag issued by the municipal clerk. Dog or wolf-hybrid owners shall pay for the license \$4.00 for each neutered dog or wolf-hybrid, and \$8.00 for each unneutered dog or wolf-hybrid. If the license fee for any dog or wolf-hybrid is not paid by April 1, its owner or keeper may thereafter procure a license for that license year by paying a fee of fifty percent in excess of that otherwise required.

Sec. 10. 6 V.S.A. § 2728 is added to read:

§ 2728. MANUFACTURING GRADE GOAT MILK

(a) "Manufacturing grade goat milk" is goat milk other than Grade A goat milk produced and distributed according to the Grade A Pasteurized Milk Ordinance.

(b) The maximum somatic cell count for manufacturing grade goat milk shall not exceed 1,500,000 per milliliter.

Sec. 11. SUNSET

6 V.S.A. § 2728 (manufacturing grade goat milk) shall be repealed when a National Conference on Interstate Milk Shipments amendment to the Grade A Pasteurized Milk Ordinance that raises the limit on somatic cell counts for goat milk to be equal to or higher than 1,500,000 per milliliter becomes effective.

Sec. 12. EFFECTIVE DATE

This act shall take effect upon passage.