

1 Introduced by Senator Starr

2 Referred to Committee on

3 Date:

4 Subject: Agriculture; Vermont Milk Commission; milk pricing

5 Statement of purpose of bill as introduced: This bill proposes to amend the  
6 authority of the Vermont Milk Commission to clarify the discretionary  
7 authority of the Milk Commission to set an equitable minimum price that milk  
8 handlers shall pay to milk producers for milk processed and manufactured  
9 within the State. The bill proposes additional procedures that the Milk  
10 Commission would be required to follow in setting an equitable minimum  
11 producer price, including a producer referendum and public hearings. In  
12 addition, the bill clarifies the procedure that the Milk Commission would  
13 follow to disburse the proceeds from the minimum producer price directly to  
14 individual producers who are subject to price regulation.

15 An act relating to the authority of the Vermont Milk Commission to set an  
16 equitable minimum price paid to milk producers

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

18 Sec. 1. 6 V.S.A. chapter 161 is amended to read:

19 CHAPTER 161. VERMONT MILK COMMISSION

20 Subchapter 1. Vermont Milk Commission

1 § 2921. DECLARATION OF POLICY AND PURPOSE

2 (a) It is hereby declared by the General Assembly that dairy farming is of  
3 paramount importance in helping to maintain a strong economy, including the  
4 State's flourishing manufactured dairy products industry, and in preserving the  
5 State's ~~remaining~~ rural character; and that dairy farming at present is in serious  
6 jeopardy because of the ~~rapidly declining~~ inadequate and volatile price of milk  
7 being paid to producers while corresponding costs of production remain the  
8 same or increase; ~~that~~ and because the federal milk marketing order minimum  
9 price for milk is now and may be in the future inadequate to cover the costs of  
10 milk production and provide for a reasonable economic return to dairy  
11 producers; The General Assembly further finds that the entire distribution  
12 structure of the State's milk industry is threatened; and that Vermont should  
13 ensure that there is an adequate supply of milk for the State's processing and  
14 manufacturing industry and for the consuming public both inside and outside  
15 Vermont. The General Assembly also reaffirms and restates its findings and  
16 statement of policy as set forth in section 2671 of this title. Due to the  
17 uncertainty in the federal milk market order structure and marked fluctuations  
18 in market order prices, the dairy industry of the State is imperiled, which is a  
19 menace to the health, welfare, and reasonable comfort of the inhabitants of the  
20 State.

1 (b) The general purposes of this subchapter are to protect and promote the  
2 public welfare by ~~insuring~~ ensuring at all times an adequate supply of clean,  
3 pure milk and cream of proper quality to meet the needs of the inhabitants of  
4 this State and the procurement needs of the State's processing and  
5 manufacturing industry to ensure the continuing economic vitality of the dairy  
6 industry by ~~stabilizing~~ regulating the price received by supplying farmers for  
7 their milk at a level allowing them an equitable rate of return. These purposes  
8 are to be accomplished through regulation of the State's milk-marketing  
9 industry, and through control in general, consistent with constitutional  
10 limitations, of the price of all ~~fluid~~ raw milk and dairy products sold or offered  
11 ~~or exposed~~ for sale to the inhabitants of this State and by Vermont farmers and  
12 Vermont handlers, to the end that the public health and economic welfare of  
13 the State shall not be menaced or jeopardized.

14 § 2922. VERMONT MILK COMMISSION; MEMBERSHIP

15 There shall be a Vermont Milk Commission, to consist of ~~nine~~ ten  
16 members, one member of which shall be the Secretary of Agriculture, Food  
17 and Markets and one of which shall be the Secretary of Natural Resources.  
18 The Secretary of Agriculture, Food and Markets shall be chair of the  
19 Commission and serve without compensation. A quorum shall be a majority  
20 of the Commission. The Commission shall act only by an affirmative vote of  
21 at least six members. The remaining Commission members shall serve for

1 terms of three years, except for the legislative members who shall serve for the  
2 term of their election, and be chosen as follows:

3 (1) Each dairy farmer cooperative, and each proprietary handler  
4 purchasing milk from independent farmers, doing business in the State and  
5 registered with the Secretary of State’s office shall submit the name of a  
6 Vermont dairy farmer with knowledge of the production and marketing of  
7 dairy products to the Vermont Dairy Industry Association. The Board of  
8 Directors of the Association shall submit the names of four of these persons to  
9 the Governor, who shall appoint two Commission members from the list  
10 submitted. The initial appointment of one of these members shall be for a term  
11 of two years.

12 (2) Each milk handler doing business in the State and registered with the  
13 Secretary of State’s office shall submit the name of one such handler with  
14 knowledge and experience in the marketing of dairy products to the Vermont  
15 Dairy Industry Association. The Board of Directors of the Association shall  
16 submit three names to the Governor, who shall choose one Commission  
17 member from the list provided. In compiling the lists under subdivisions (1)  
18 and (2) of this section, the Board shall consider whether the persons chosen  
19 sell their milk to or are handlers who purchase a substantial percentage of their  
20 milk from Vermont producers and utilize the milk purchased in the most  
21 advantageous manner possible.

1           (3) Two members representing milk consumers and having no pecuniary  
2 interest in the sale of milk or milk products shall be chosen by the Governor.  
3 The initial appointment of one of these members shall be for a term of one  
4 year.

5           (4) One dairy farmer, chosen directly by the Governor, who does not  
6 serve on the Board of Directors of any organization ~~which~~ that handles or  
7 processes dairy products, nor is an officer of any organized farm organization  
8 in the State.

9           (5) One member from the House Committee on Agriculture and  
10 Forestry chosen by the Speaker and one member from the Senate Committee  
11 on Agriculture chosen by the President Pro Tempore of the Senate. For  
12 attendance at a meeting when the General Assembly is not in session, these  
13 two legislative members shall be entitled to the same per diem compensation  
14 and reimbursement of necessary expenses as provided members of standing  
15 committees under 2 V.S.A. § 406.

16 § 2923. ADMINISTRATIVE WORK

17           The Vermont Agency of Agriculture, Food and Markets shall perform the  
18 administrative work of the Commission as directed by the Commission. The  
19 Commission may reimburse the Agency of Agriculture, Food and Markets for  
20 the cost of services performed by the Agency. The Commission may enter into  
21 contracts with and employ technical experts and authorize and retain legal

1 counsel and other such officers, agents, and employees as are necessary to  
2 effect the purposes of this chapter and may fix their qualifications, duties, and  
3 compensation. The contract remuneration and employment compensation shall  
4 be paid from the Vermont Milk Commission ~~fund~~ Fund and shall be subject to  
5 the limitations of section 2924 of this chapter.

6 § 2924. POWERS AND DUTIES; PRICING AUTHORITY; PUBLIC

7 HEARINGS

8 (a) Authority over milk prices. The Commission may establish an  
9 equitable minimum or maximum price, or both, and the manner of payments,  
10 which shall be paid producers or associations of producers by Vermont  
11 handlers, and the prices charged consumers and others for milk used in dairy  
12 products by distributors or handlers. The cost of the contracts and employment  
13 pursuant to section 2923 of this title and of administering the collection and  
14 distribution of monies collected under this section shall not exceed  
15 \$100,000.00 annually and may be collected independently from any  
16 assessment imposed under this section. The Commission may impose an  
17 assessment to cover the initial costs of establishing a pricing order as  
18 authorized by this section.

19 (b) Equitable minimum producer prices. The Commission may establish  
20 by order after notice and hearing an equitable minimum price to be paid by  
21 Vermont handlers to dairy producers for milk produced in Vermont on the

1 basis of the use thereof in the various classes, grades, and forms. Prices so  
2 established ~~which~~ that exceed federal order prices shall be collected by the  
3 Commission from the handlers for distribution to dairy producers as a ~~blend~~  
4 price an equalization payment from the equalization pool and fund established  
5 by section 2938 of this title and in accordance with subsection 2925(e) of this  
6 title.

7 (c) Public hearings. In order to be informed of the status of the State's  
8 dairy industry, the Commission shall hold a public hearing at least annually,  
9 ~~when~~ whenever directed by the General Assembly, ~~and~~ or whenever the ~~chair~~  
10 Chair deems it necessary.

11 (d) Voluntary payments. The Commission may accept voluntary premium  
12 payments for distribution to dairy farmers as a blend price.

13 (e) Premiums on handlers and distributors for milk used in dairy products  
14 sold at retail in Vermont. The Commission may assess a premium on handlers  
15 and distributors for milk used in dairy products sold at retail in Vermont. The  
16 premiums assessed and received shall be paid to the State Treasury and  
17 deposited in the special fund established pursuant to section 2938 of this  
18 chapter. The proceeds of the premium shall be distributed to dairy producers  
19 as a blend price. Any applicable provision of subsections 2925(b)-(f) of this  
20 title shall apply to the assessment of such premiums. In assessing these

1 premiums, the Commission shall also take into account any similar  
2 assessments made by other states.

3 (f) Payment Statements. Payment statements provided to producers of  
4 cows' milk shall include in the payment statement the national support price;  
5 the Boston, Massachusetts, price; the producer price differential; and the  
6 amount per hundredweight of any charges or deductions where applicable.  
7 The format shall be provided with clear language and with no abbreviations,  
8 except where the abbreviation is spelled out elsewhere in the statement.

9 § 2925. MINIMUM PRODUCER PRICE REGULATION

10 (a) The Commission may make, rescind, or amend an order regulating  
11 minimum producer prices if the Commission finds that the federal ~~milk~~  
12 ~~marketing order~~ Milk Market Order 1 minimum price is adequate or  
13 inadequate as the case may be to ensure that the price paid to dairy producers  
14 will cover the costs of milk production and provide a reasonable economic  
15 return to dairy producers sufficient to ensure a stable milk production and  
16 distribution system in Vermont.

17 (b) Guidelines for setting prices. In setting equitable minimum prices, the  
18 Commission may investigate and ascertain what are reasonable costs and  
19 charges for producing, hauling, handling, processing, and any other services  
20 performed in respect to Vermont raw milk production and the processing and  
21 manufacture of Vermont dairy products. The Commission shall take into



1 consideration the balance between production and consumption of dairy  
2 products, the costs of production and distribution, the purchasing power of the  
3 public, the positioning of Vermont milk and dairy products within and outside  
4 the Vermont marketplace, and the price necessary to yield a reasonable return  
5 to ~~the~~ Vermont producers, handlers, and distributors. The Commission shall  
6 also take into account the marketing conditions and costs of all differing  
7 market sectors, including organic and conventional raw milk production,  
8 processing, and manufacture. The Commission may set the equitable  
9 minimum price according to market sector, such as a separate price for organic  
10 milk production.

11 (1) Minimum producer prices may be based on the producer prices  
12 prevailing in federal ~~market order~~ Milk Market Order I and reflect as  
13 accurately as possible the costs of production in Vermont. The prices should  
14 also reflect, within constitutional limitations, the competitive position of  
15 Vermont producers within the market order. Minimum producer prices should  
16 also reflect the actual rate of return received by distributors or handlers,  
17 whichever is greater, as determined by the Commission.

18 (2) Minimum producer price regulation shall in part specifically include  
19 an investigation and hearing procedure that accounts for the costs of trucking  
20 and hauling Vermont raw milk, and the manner of payment to producers under  
21 federal Milk Market Order 1 regulation.

1            (3) Minimum producer price regulation may include tiered payments to  
2            producers, based on differing producer costs or production or other criteria  
3            deemed appropriate by rule by the Commission, including accounting for the  
4            unique costs of environmental compliance incurred by Vermont handlers in  
5            complying with the State water quality initiative and other environmental  
6            requirements.

7            ~~(2)~~(4) Minimum retail prices should reflect the lowest price at which  
8            milk purchased from producers can be received, processed, packaged, and  
9            distributed by handlers and distributors at a just and reasonable return.

10           ~~(3)~~(5) In establishing minimum producer and retail prices, the  
11           Commission shall make applicable findings regarding the competitive position  
12           of producers and their costs, handler and distributor costs, reasonable rates of  
13           return, and actual handler and distributor rates of return.

14           (c) Prices so established need not be uniform in all markets and may be  
15           changed from time to time after such notice and public hearing as deemed by  
16           the Commission to be in the public interest.

17           (d) A minimum producer price order shall include additional provisions  
18           regulating milk supplies:

19           (1) to ensure the over-order price does not create an incentive for  
20           producers to generate additional supplies of milk or imbalance in supply and  
21           demand for raw milk in the Vermont dairy marketplace; and

1           (2) to assure that Vermont raw milk production is sustainable and  
2           without adverse impact on the environment.

3           (e) Nothing in The Commission may disburse the proceeds of the minimum  
4           producer price directly to individual producers who are subject to the price  
5           regulation from the equalization pool and fund established by section 2938 of  
6           this title, or collectively to handlers for their disbursement to such regulated  
7           producers. If distributed to and disbursed collectively by them, producer  
8           cooperatives shall pay the full individual amount of the minimum producer  
9           price due to each member producer whose milk is subject to the price  
10           regulation, provided that this section shall not otherwise be construed to  
11           prohibit a producers cooperative from otherwise blending the proceeds from  
12           the sale of its milk in all markets and all classifications, and distributing such  
13           to its members in accordance with the contract with its members, or from  
14           making deductions from sums due members of such sums as may be  
15           authorized by the membership to be so deducted accordance with federal law.

16           (f) The Commission shall conduct a referendum among producers subject  
17           to an order regulating price to determine whether the issuance or amendment  
18           of an order establishing a minimum producer price, including any provision  
19           with respect to milk supplies under subsection (d) of this section, is approved  
20           by producers. The referendum shall be held in a timely manner as determined  
21           by rule of the Commission.

1           (1) An order or an amendment to an order shall be deemed approved by  
2           producers if the Commission determines that it is approved by at least two-  
3           thirds of the voting producers who, during a representative period determined  
4           by the Commission, have been engaged in the production of milk the price of  
5           which would be regulated under the proposed order or amendment.

6           (2) The Commission may adopt rules establishing the procedure or  
7           process for the conduct of a referendum. The Commission’s referendum rule  
8           shall, at minimum, provide for the Commission to supply individual  
9           referendum ballots to all producers who, during a representative period  
10           determined by the Commission, have been engaged in the production of milk  
11           the price of which would be regulated under the proposed order or amendment.  
12           The ballot shall include and describe the terms and conditions of the proposed  
13           order or amendment and shall provide specific notice that the producer may  
14           return the ballot to the Commission in order to register the Commissioner’s  
15           approval or disapproval of the proposed order or amendment.

16           (g) A minimum price order shall include provisions that exempt producer-  
17           handlers, as defined by the Commission. Such exemption may be aligned with  
18           the exemption provided by the applicable federal market order as deemed  
19           appropriate by the Commission.

20           (h) A minimum price order shall include provisions that eliminate any  
21           impact on the Child Nutrition and WIC Reauthorization Act of 2004, or other

1 charitable organizations, as deemed appropriate by the Commission after  
2 notice and comment rulemaking under this chapter.

3 (i) Notwithstanding the requirements of section 2929 that the Commission  
4 hold a public hearing prior to finalizing an order under this chapter, the  
5 Commission is authorized to issue an emergency order without first holding a  
6 public hearing in order to relieve critical conditions on dairy farms, based on  
7 examination of current economic forces affecting producers, probable trends in  
8 production and consumption, the level of dairy farm prices in relation to costs,  
9 and the financial conditions of dairy farmers. Within 60 days after issuing the  
10 emergency order, the Commission shall convene a public hearing and  
11 formalize the issuance of the order according to the requirements of this  
12 chapter.

13 (j) The legal obligation to pay a minimum producer price under this chapter  
14 shall be determined solely by the terms and purpose of the order issued by the  
15 Commission without regard to the physical or legal location of the transfer of  
16 title, possession, or any other factors not related to the purposes of the order  
17 and this chapter.

18 ~~(e)~~(k) This chapter shall apply to milk produced outside the State subject to  
19 regulation by the State in the exercise of its constitutional police powers. Any  
20 sale or purchase by distributors or handlers of such milk within this State at a  
21 price less than a regulated minimum price shall be unlawful.

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§ 2929. POWER TO MAKE ORDERS AND CONDUCT HEARINGS;  
RULES

(a) In administering this chapter, the Commission shall have the power to make orders under this section or other sections in this chapter, conduct hearings, subpoena, and examine under oath producers, handlers, and distributors; their books, records, documents, correspondence, and accounts; and any other person it deems necessary to carry out the purposes and intent of this chapter.

(b) Any order issued under this chapter shall only be made final after a public hearing and after publication of a proposed order for public review and comment for 30 days following the publication of the proposed order.

(1) The Commission shall provide notice of the hearing on the proposed order to interested persons in accordance with the applicable provisions of 3 V.S.A. § 809(b), and to the public by posting notice on its website and by publication of an advertisement in the newspapers of record approved by the Secretary of State under 3 V.S.A. § 839 general circulation within the State. The notice shall include proposed regulatory procedures for administration of the pricing order, as appropriate, and otherwise provide sufficient notice and explanation of the potential operation and impact of the order, including

1 proposed findings and conclusions consistent with the requirements of section  
2 2925 of this chapter.

3 (2) Interested persons shall not be considered “parties,” and, except as  
4 otherwise specifically provided by subsection (c) of this section, the provisions  
5 of 3 V.S.A. chapter 25 relating to contested cases shall not apply to the  
6 procedure for the conduct of the hearing, the issuance of a proposed pricing  
7 order, or the promulgation of a final order. The hearing on the proposed order  
8 shall be held in accordance with the applicable provisions of 3 V.S.A. § 840(c)  
9 and (d), other than the provisions relating to notice and the requirements of 3  
10 V.S.A. § 832a. The hearing procedure shall provide for the establishment of a  
11 formal record of sworn evidence received, matters officially noticed, questions  
12 and offers of proof submitted by interested persons, and any proposed findings  
13 presented.

14 (3) The Commission shall allow all members of the public to attend  
15 each of its hearings unless the hearing is for the sole purpose of considering  
16 information to be treated as confidential under this chapter or other provision  
17 of law.

18 (A) The Commission shall make all reasonable efforts to ensure that  
19 the location of each hearing is sufficient to accommodate all members of the  
20 public seeking to attend.

1           (B) The Commission shall ensure that the public may safely attend  
2           the hearing, including obtaining such resources as may be necessary to fulfill  
3           this obligation.

4           ~~(3)~~(4) The final order shall contain separate findings of fact and  
5           conclusions responsive to the requirements of section 2925 of this chapter and  
6           based exclusively on the evidence presented at the hearing and on matters  
7           officially noticed. The final order shall also provide specific response to any  
8           submissions filed by interested persons, including proposed findings. The final  
9           order shall be issued again in accordance with the procedural requirements of  
10          subdivision (1) of this subsection.

11          ~~(4)~~(5) The Commission shall hold at least one formal deliberative  
12          meeting before the issuance of a proposed or final order. Except as provided in  
13          section 2922 of this chapter with respect to affirmative votes, a majority of the  
14          Commission shall constitute a quorum for these deliberative meetings, as well  
15          as for any hearing conducted in accordance with this section.

16          (c) The procedure relating to ex parte communications set forth in 3 V.S.A.  
17          § 813 shall apply as the Commission deems appropriate to the development of  
18          a proposed order and to the deliberation and issuance of a final order.

19          (d) The Commission shall adopt rules of procedure for the conduct of a  
20          hearing and issuance of a proposed and final pricing order under this chapter.  
21          Such rules may be adopted as emergency rules in accordance with 3 V.S.A.



1 chapter 25. The Commission may adopt and enforce such reasonable rules and  
2 procedures as are deemed necessary to carry out the administration of the  
3 provisions of this chapter.

4 § 2931. REHEARING OF ORDERS AND DECISIONS

5 (a) Within 20 days after any final order or decision has been made by the  
6 Commission, any party to the action or proceeding before the Commission, or  
7 any person directly affected thereby, may apply for a rehearing in respect to  
8 any matter determined in the action or proceeding, or covered or included in  
9 the order, specifying in the motion for rehearing the ground therefor. The  
10 Commission may grant the rehearing if in its opinion good reason for rehearing  
11 is stated in the motion.

12 (b) The motion shall set forth fully every ground upon which it is claimed  
13 that the decision or order complained of is unlawful or unreasonable. No  
14 appeal from any order or decision of the Commission shall be taken unless the  
15 appellant shall have made application for rehearing as provided in this section.  
16 When the application has been made, no ground not set forth in the application  
17 shall be urged, relied on, or given any consideration by the court, unless the  
18 court for good cause shown allows the appellant to specify additional grounds.

19 § 2932. DETERMINATION OF MOTION FOR REHEARING

1        Upon the filing of a motion for rehearing, the Commission shall within ~~ten~~  
2        10 days either grant or deny the motion, or suspend the order or decision  
3        complained of pending further consideration.

4        § 2933. APPEAL TO SUPREME COURT

5        When any application for a rehearing is denied, or if the applicant is  
6        aggrieved at the decision on rehearing, the applicant may appeal to the  
7        Supreme Court.

8        § 2935. PROHIBITION; ADMINISTRATIVE PENALTY; INJUNCTIVE  
9        RELIEF

10        (a) Any handler or distributor that buys, offers to buy, sells, or transfers  
11        ownership of milk in any form at any price or for any consideration ~~which~~ that  
12        is less than the price or prices set by ~~rule~~ order of the Commission may be  
13        assessed an administrative penalty by the Secretary, in accordance with the  
14        standards and procedures set forth in sections 15, 16, and 17 of this title, in an  
15        amount not to exceed \$10,000.00 for each violation and not to exceed  
16        \$50,000.00 per day for multiple violations in a single transaction or a series of  
17        related transactions.

18        (b) The Commission, through the Secretary, may seek appropriate  
19        injunctive relief to enforce the provisions of this chapter.

20        § 2936. REPORTS FROM MILK HANDLERS; RELEASE OF  
21        INFORMATION BY HANDLERS

1 (a) In order that the Commission has adequate information available to  
2 proceed under this chapter, as a condition of a handler’s license, the  
3 Commission may require from a handler:

4 (1) information on a time schedule established by the Secretary from  
5 handlers showing the prices paid to purchase various forms of milk from  
6 Vermont producers, the costs of production, processing, transporting,  
7 distributing, and marketing milk, together with any other information deemed  
8 necessary and relevant by the Commission; and

9 (2) that each milk handler licensed pursuant to section 2721 of this title  
10 execute a release with the federal ~~market order~~ Milk Market Order 1  
11 administrator authorizing the Secretary and the Commission to obtain all  
12 production data ~~which~~ that in the discretion of the Secretary and Commission  
13 is deemed relevant and necessary.

14 (b) The Commission shall keep information received under this section  
15 confidential except as necessary for the adoption of rules or enforcement  
16 actions.

17 § 2937. PERIODIC REPORT

18 The Commission may report as needed on its activities to the House  
19 Committee on Agriculture and Forestry and Senate ~~Committees~~ Committee on  
20 Agriculture.

21 § 2938. FUND ESTABLISHED

1           The Vermont Milk Commission Fund is established in the State Treasury  
2           and shall be administered by the Secretary of Agriculture, Food and Markets in  
3           accordance with the provisions of 32 V.S.A. chapter 7, subchapter 5, except  
4           that interest earned on the Fund shall be retained in the Fund. Proceeds from  
5           this chapter shall be deposited into the Fund. The Fund shall be used as  
6           necessary for the purposes of this chapter. The Treasurer shall distribute funds  
7           as directed by the Commission.

8           Sec. 2. EFFECTIVE DATE

9           This act shall take effect on July 1, 2023.