

1 S.83

2 Introduced by Senator Ingalls

3 Referred to Committee on

4 Date:

5 Subject: Agriculture; taxation; dairy products; Dairy Industry Stabilization
6 Program

7 Statement of purpose of bill as introduced: This bill proposes to impose a
8 \$0.05 tax on every retail package of dairy products sold by a distributor to a
9 retailer. The bill would also establish the Dairy Industry Stabilization Program
10 to provide financial assistance to dairy farmers in the State. The financial
11 assistance would be provided in the form of a premium over the federal order
12 price that the State shall pay each registered dairy farmer in the State per
13 hundredweight of milk sold in the State.

14 An act relating to the Dairy Industry Stabilization Program

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

16 Sec. 1. 32 V.S.A. chapter 234 is added to read:

17 CHAPTER 234. DAIRY PRODUCTS TAX

18 § 9851. DEFINITIONS

19 As used in this chapter:

1 (1) “Beverage for medical use” means a beverage suitable for human
2 consumption and manufactured for use as an oral nutritional therapy for
3 persons who cannot absorb or metabolize dietary nutrients from food or
4 beverages or for use as an oral rehydration electrolyte solution for infants and
5 children formulated to prevent or treat dehydration due to illness. “Beverage
6 for medical use” also means a “medical food” as defined in subdivision 5(b)(3)
7 of the Orphan Drug Act, 21 U.S.C. § 360ee. “Beverage for medical use” does
8 not include drinks commonly referred to as “sports drinks” or any other
9 common names that are derivations thereof.

10 (2) “Commissioner” means the Commissioner of Taxes and his or her
11 authorized agents and employees.

12 (3) “Consumer” means a person who purchases or otherwise obtains a
13 retail package of dairy product for consumption and not for sale to another.

14 (4) “Dairy product” is milk, or a product derived therefrom, which
15 conforms to the appropriate legal standard or definition for the specific product
16 as defined in 6 V.S.A. part 6 and regulations made under that part.

17 (5) “Department” means the Vermont Department of Taxes.

18 (6) “Distribution” or “Distribute” means the transfer of title or
19 possession from one person to another for consideration or within a business
20 entity or between or among business entities subject to the same ownership or
21 control, such as by a wholesale or warehousing unit to a retail outlet or

1 between two or more employees or contractors. “Distribution” or “Distribute”
2 does not mean the retail sale to a consumer.

3 (7) “Distributor” means any person, including a manufacturer and a
4 wholesale dealer, that receives, stores, manufactures, bottles, or distributes
5 retail packages of dairy products for sale to retailers, whether or not that person
6 also sells such products to consumers. “Distributor” also means any person
7 importing or causing to be imported retail packages of dairy products into the
8 State from outside the State for sale to a retailer or consumer.

9 (8) “Milk,” unless preceded or succeeded by an explanatory term, means
10 the pure lacteal secretion of dairy cattle. Milk from other dairy livestock listed
11 in this subdivision shall be preceded by the common name for the type of
12 livestock that produced the milk. Such milk may be standardized by the
13 addition of pure, fresh skim milk or cream as defined by regulation.

14 (A) “Cows’ milk” is the colostrum-free, pure, lacteal product of
15 healthy cattle that contains not less than 11.50 percent of total milk solids to
16 which nothing has been added or taken away. Cows’ milk sold as fluid in
17 retail packages of dairy products shall contain not less than 3.25 percent milk
18 fat, and not less than 8.25 percent nonfat milk solids.

19 (B) “Goats’ milk” is the colostrum-free, pure, lacteal product of
20 healthy goats that contains not less than 10 percent of total milk solids to
21 which nothing has been added or taken away. Goats’ milk sold as fluid in

1 retail packages of dairy products shall contain not less than 2.5 percent milk fat
2 and not less than 7.5 percent nonfat milk solids.

3 (C) “Sheep’s milk” is the colostrum-free, pure, lacteal product of
4 healthy sheep that contains not less than 11.50 percent of total milk solids to
5 which nothing has been added or taken away.

6 (D) “Water buffalo’s milk” is the colostrum-free, pure, lacteal
7 product of healthy water buffalo that contains not less than 11.50 percent of
8 total milk solids to which nothing has been added or taken away.

9 (9) “Place of business” means any place where retail packages of dairy
10 products are manufactured or received for sale in the State.

11 (10) “Retail package of dairy product” is a package to be sold to a
12 consumer.

13 (11) “Retailer” means any person that sells retail packages of dairy
14 products to consumers in the State.

15 (12) “Sale” means the transfer of title or possession for valuable
16 consideration regardless of the manner by which the transfer is completed.

17 § 9852. TAX IMPOSED

18 Notwithstanding subdivision 9741(14) of this title, there is imposed a tax of
19 \$0.05 on every retail package of dairy product sold in this State by a distributor
20 to a retailer.

1 § 9853. EXEMPTIONS

2 The following shall be exempt from the tax imposed by section 9852 of this
3 chapter:

4 (1) Retail packages of dairy products sold to the U.S. government, its
5 subdivisions, or under any other circumstances in which the State is without
6 power to impose the tax.

7 (2) Retail packages of dairy products sold by a distributor for resale or
8 consumption outside the State.

9 (3) Retail packages of dairy products that are purchased with benefits
10 under the Supplemental Nutrition Assistance Program or any successor
11 program, consistent with federal law.

12 (4) Infant formula.

13 (5) Beverages for medical use.

14 § 9854. RETURNS, REMITTANCES, AND RECORDS

15 (a) Any distributor liable for the tax imposed by this chapter shall, on or
16 before the 25th day of every month, return to the Commissioner, under oath of
17 a person with legal authority to bind the distributor, a statement containing its
18 name and place of business, the quantity of retail packages of dairy products
19 subject to the tax imposed by this chapter sold in the preceding month, and any
20 other information required by the Commissioner, along with the tax due.

21 (b) Every distributor shall maintain, for not less than three years, accurate

1 records showing all transactions subject to tax liability under this chapter.
2 Distributors must identify the amount of tax collected as a separate invoice
3 entry on sales to retailers. These records are subject to inspection by the
4 Commissioner at all reasonable times during normal business hours.

5 (c) The Commissioner shall deposit the tax collected under this chapter in
6 the General Fund.

7 § 9855. LICENSE REQUIRED

8 Each distributor shall secure a license from the Commissioner before
9 engaging in the business of selling retail packages of dairy products in this
10 State.

11 § 9856. APPLICATION FOR AND ISSUANCE OF LICENSE

12 (a) A separate application and license shall be required for each wholesale
13 outlet when a distributor owns or controls more than one such outlet.

14 (b) Licenses shall be issued by the Commissioner upon application, without
15 charge, on forms prescribed by the Commissioner, stating the name and
16 address of the applicant, the address of the place of business, the type of
17 business, and any other information the Commissioner may require for the
18 administration of this chapter.

19 § 9857. TERM OF LICENSES

20 Each license issued under the provisions of this chapter shall remain valid
21 as long as the licensee continues to do business at the place named, unless the

1 license is revoked or suspended by the Commissioner pursuant to section 9858
2 of this chapter. The license shall be nonassignable and nontransferable and
3 shall be surrendered immediately to the Commissioner if the business is sold or
4 transferred or if the licensee ceases to do business at the place named.

5 § 9858. REVOCATION AND SUSPENSION OF LICENSES

6 The Commissioner may revoke or suspend the license of any licensee for
7 failure to comply with any provision of this chapter or for failure to comply
8 with the provisions of 11 V.S.A. chapter 15.

9 § 9859. PENALTIES AND INTEREST

10 (a) Any person subject to the provisions of this chapter that fails to pay the
11 tax imposed by this chapter by the date that payment is due or fails to submit a
12 return as required by this chapter shall be subject to the penalty and interest
13 provisions of section 3202 of this title.

14 (b) Any person subject to the provisions of this chapter that sells or offers
15 for sale any retail package of dairy product in this State by a distributor to a
16 retailer in the State without holding a license as required by this chapter is
17 liable for a penalty of up to \$100.00 for each day such sales are made or
18 offered.

19 § 9860. APPEALS

20 Any person aggrieved by an action taken by the Commissioner under this
21 chapter may appeal in writing to the Commissioner for a review. The

1 Commissioner shall then grant a hearing under 3 V.S.A. chapter 25 and notify
2 the aggrieved person in writing of his or her determination. The
3 Commissioner's determination may be appealed within 30 days to the Superior
4 Court of the county of this State in which the taxpayer resides or has a place of
5 business or to the Superior Court of Washington County.

6 § 9861. RULES

7 The Commissioner is authorized to adopt rules and procedures to
8 accomplish the purposes of this chapter.

9 Sec. 2. 6 V.S.A. chapter 164 is added to read:

10 CHAPTER 164. DAIRY INDUSTRY STABILIZATION PROGRAM

11 § 2991. DAIRY INDUSTRY STABILIZATION PROGRAM; FUND

12 (a) There is established the Dairy Industry Stabilization Program to provide
13 financial assistance to dairy farmers in the State. Financial assistance shall be
14 provided in the form of a premium over the federal order price that the State
15 shall pay each registered dairy farmer in the State per hundredweight of milk
16 sold in the State. On or before July 1 annually, the Secretary of Agriculture,
17 Food and Markets shall calculate the premium to be paid to Vermont dairy
18 farmers in that fiscal year based on the projected market order price, the
19 number of registered dairy farms in the State, and the amount of funds
20 appropriated to the Dairy Industry Stabilization Program Fund for the relevant
21 fiscal year.

1 (b) There is established the Dairy Industry Stabilization Program Special
2 Fund pursuant to 32 V.S.A. chapter 7, subchapter 5 comprising monies
3 appropriated by the General Assembly together with any additions or interest
4 accruing to the Fund. The Commissioner of Finance and Management may
5 draw warrants for disbursements from this Fund in anticipation of receipts.
6 Any remaining balance at the end of the fiscal year shall be carried forward in
7 the Fund. The Fund shall be administered by the Secretary of Agriculture,
8 Food and Markets.

9 Sec. 3. APPROPRIATION; DAIRY INDUSTRY STABILIZATION

10 PROGRAM; REPORT

11 On or before January 15, 2022 and annually thereafter, the Secretary of
12 Agriculture, Food and Markets shall submit to the Senate Committee on
13 Appropriations and the House Committee on Appropriations a recommended
14 appropriation to the Dairy Industry Stabilization Program Special Fund for
15 implementation of the financial assistance to dairy farmers required under
16 6 V.S.A. chapter 164.

17 Sec. 4. IMPLEMENTATION

18 The tax imposed under 32 V.S.A. chapter 234 shall be implemented
19 beginning January 1, 2022, with the first remittance from a distributor to the
20 Commissioner of Taxes due on January 25, 2022.

1 Sec. 5. EFFECTIVE DATE

2 This act shall take effect on July 1, 2021.