



**BEFORE THE UNITED STATES DEPARTMENT
OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE**

In the Matter of Milk in California;
Notice of Hearing on a Proposal to
Establish a Federal Milk Marketing
Order

7 CFR Part 1051

Docket No.: AO-15-0071;

AMS-DA-14-0095

Clovis, California, November 9, 2015

Exhibits to Testimony of Anthony Gonsalves

In Support of Proposal 3 of the California Producer-Handler Association

Proposal to Establish a Federal Milk Marketing Order for the

State of California

INDEX OF EXHIBITS

EXHIBIT A.

- *ASSEMBLY BILL 910 (Gonsalves) - Chaptered by State, Chapter # 927, Statutes of 1967.*
- 1. AB 910 (Gonsalves) Chapter # 927, dated 7/27/67.
- 2. Legislative Counsel of California, Question & Answer re: Milk Pooling # 23877, by Kent L. DeChambeau, Principal Deputy, dated 07/12/67.
- 3. Senate Agriculture Committee Analysis, AB 910 (Gonsalves) as amended 07/21/67.
- 4. 3 Photographs.

EXHIBIT B.

- *ASSEMBLY BILL 1110 (Keene) - Chaptered by State, Chapter # 1119, Statutes of 1977.*
- 1. AB 1110 (Keene) Chapter # 1192, dated 10/01/77.
- 2. Legislative Analysis of AB 1110 (Keene) as amended 05/16/77, dated 06/10/77.
- 3. Letter from Director of California Department of Food & Agriculture, R.E. Rominger to Joe A. Gonsalves, dated 06/29/77.
- 4. Senate Agriculture & Water Committee Analysis, AB 1110 (Keene) as amended 8/01/77, dated 08/02/77.
- 5. Memo from Joe A. Gonsalves to Members of the Senate Finance Committee, dated 08/09/77.

EXHIBIT C.

- ***SENATE BILL 688 (McCorquodale) - Chaptered by State, Chapter # 1112, Statutes of 1993.***
1. SB 688 (McCorquodale) Chapter # 1112, dated 10/11/93.
 2. Legislative Counsel of California, Question & Answer re: Milk: Stabilization and Marketing Plans # 32529, by Frances S. Dorbin, Deputy Legislative Counsel, dated 12/16/93.
 3. Letter from Joe A. Gonsalves to Senator Dan McCorquodale, requesting amendments, dated 05/24/93.
 4. Assembly Agriculture Committee Analysis, SB 688 (McCorquodale) as amended 08/16/93, dated 08/23/93.
 5. Senate Rules Committee Analysis, SB 688 (McCorquodale) as amended 08/16/93, dated 11/03/93.
 6. Senate Third Reading Analysis, SB 688 (McCorquodale) as amended 08/16/93, dated 10/24/94.

EXHIBIT D.

- ***ASSEMBLY BILL 1285 (Cannella) - Chaptered by State, Chapter # 601, Statutes of 1994.***
1. AB 1285 (Cannella) Chapter # 601, dated 09/16/94.
 2. Senate Agriculture & Water Committee Analysis, AB 1285 (Cannella) as amended 07/06/93, dated 07/13/93.

3. Legislative Counsel of California, Question & Answer re: Milk Pooling Plans (AB 1285) # 19990, by Frances S. Dorbin, Deputy Legislative Counsel, dated 06/21/94.
4. Request for Signature from Senate Republican Floor Leader, Kenneth L. Maddy to Governor, Peter Wilson, dated 08/26/94.

EXHIBIT E.

- ***SENATE BILL 105 (Kelley) - Chaptered by State, Chapter # 174, Statutes of 1995.***
1. SB 105 (Kelley) as introduced, repealing and adding § 62708.5 of the Food & Agricultural Code, dated 01/12/95.
 2. SB 105 (Kelley) as amended 05/04/95.
 3. SB 105 (Kelley) Chapter # 174, dated 07/24/95.
 4. Letter from Executive Director of Milk Producers Council, Bob Feenstra to Senate Agriculture & Water Committee Chairman, Jim Costa, opposing SB 105 (Kelley), dated 03/20/95.
 5. Memo from Joe and Anthony Gonsalves on behalf of the California Producer-Handler Association to Senate Agriculture & Water Committee, opposing SB 105 (Kelley), dated 04/01/95.
 6. Memo from Joe and Anthony Gonsalves on behalf of the California Producer-Handler Association to all Members of the Senate, opposing SB 105 (Kelley), dated 05/01/95.
 7. SB 105 (Kelley) Senate Floor Roll Call (Ayes 33 Noes 1) Passed, dated 05/11/95.
 8. Producer – Distributor Exemption Outline, dated 1995.

EXHIBIT A-1

A-1

Assembly Bill No. 910

CHAPTER 927

An act to amend and renumber the heading of Chapter 3 (commencing with Section 62801), Part 3, Division 21 of, to add Chapter 3 (commencing with Section 62700) to Part 3, Division 21 of, and to repeal Article 16 (commencing with Section 62271) of Chapter 2, Part 3, Division 21 of, the Agricultural Code as proposed by Senate Bill No. 1, relating to milk, and making an appropriation therefor.

[Approved by Governor July 27, 1967. Filed with Secretary of State July 27, 1967.]

The people of the State of California do enact as follows:

SECTION 1. Article 16 (commencing with Section 62271) of Chapter 2, Part 3, Division 21 of the Agricultural Code, as proposed by Senate Bill No. 1, is repealed.

SEC. 2. The heading of Chapter 3 (commencing with Section 62801), Part 3, Division 21 of the Agricultural Code as proposed by Senate Bill No. 1, is amended and renumbered to read:

CHAPTER 4. MARKETING OF EDIBLE NUTS

SEC. 3. Chapter 3 (commencing with Section 62700) is added to Part 3, Division 21 of the Agricultural Code as proposed by Senate Bill No. 1, to read:

CHAPTER 3. EQUALIZATION POOLS

62700. The production and distribution of fluid milk and fluid cream is hereby declared to be a business affected with a public interest. The provisions of this chapter are enacted in the exercise of the police powers of this state for the purpose of protecting the health and welfare of the people of this state.

62701. It is hereby declared that fluid milk and fluid cream are necessary articles of food for human consumption; that the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to public health and welfare, and that the production, transportation, processing, storage, distribution and sale of fluid milk and fluid cream in the State of California is an industry, in whole and in part, affecting public health and welfare; that unfair, unjust, destructive and demoralizing trade practices have appeared within this industry and these practices constitute a menace

to the health and welfare of the inhabitants of this state by threatening the stability of this industry and by thereby endangering the assurance to the people of the State of California of the maintenance of an adequate supply of this necessary commodity; that it is a policy of this state to promote, foster and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including fluid milk and fluid cream, and to eliminate speculation, waste, improper marketing, unfair and destructive trade practices, and improper accounting for milk purchased from producers.

62702. It is recognized by the Legislature that currently the powers conferred upon the director by Chapter 2 (commencing with Section 61801) of this part are inadequate to enable the dairy industry to correct existing evils, develop and maintain satisfactory marketing conditions, and bring about and maintain a reasonable amount of stability and prosperity in the production of fluid milk and fluid cream; and that to accomplish these purposes, and particularly to insure to consumers within California an adequate and continuous supply of pure, fresh, and wholesome milk at fair and reasonable prices, including a reasonable estimate of the additional supply which is needed to provide for normal fluctuations in production and in consumer demand for such products, such powers must be supplemented by the powers conferred in this chapter upon the director to equalize gradually the distribution of class 1 usage among the producers of this state.

62703. In effectuating the purposes of this chapter, a production base and a pool quota shall be established for each producer pursuant to Section 62707. The establishing of these bases and their functions shall be as provided in the pooling plan formulated by the director pursuant to the provisions of this chapter.

62704. The director is authorized to develop a proposed pooling plan and to designate the proposed areas in which the plan will be made effective. He shall appoint fluid milk producers, and representatives of producers, to be the members and alternate members of a formulation committee, reasonably representative of all producers and areas to be included in such proposed pooling plan, which committee shall advise with and assist the director in the establishment of the proposed pooling plan area and in the formulation of the proposed pooling plan. Such pooling plan shall include all areas covered by stabilization and marketing plans under Chapter 2 (commencing with Section 61801) of this part except any relatively isolated region of the state may be excluded therefrom, if the director after a public hearing finds that the inclusion

of the region is not practical or in conformity with the purposes of the pooling plan, or if he finds that the producers in any such relatively isolated region do not desire to be a part of either their own or one of the pools.

62705. After the director, with the advice and assistance of the formulation committee, has formulated the proposed plan, which shall be within 90 days of the effective date of this chapter, he shall hold one or more public hearings in each proposed pooling area to be affected by the proposed plan for the purposes of considering modification of the proposed boundaries and formulating the pooling plan which will best accomplish the purposes of this chapter. Notice of such public hearings shall be given to each producer, including each member of cooperative marketing associations, who ships fluid milk to a distributor and to each distributor who receives fluid milk from producers. The procedures for the giving of notice and the conducting of such hearings shall be the same as those provided in Article 13 (commencing with Section 62181) of Chapter 2 of this part for public hearings on stabilization and marketing plans.

62706. The pooling plan shall prescribe the pooling area to be covered by each pool. Any such pooling area shall mean and include a large sales and consuming center together with all intermediate and secondary cities, towns and rural areas, which depend upon and receive their fluid milk supplies from a common producing and supply area, and including the fluid milk producers who produce fluid milk for such sales and consuming area, and including the fluid milk processing plants which receive, process or distribute the fluid milk supplies for such an area.

In establishing pool areas the director shall take into consideration the fact that some producers and processors may produce, or process and distribute, respectively, fluid milk for more than one pool area and therefore may qualify for inclusion and participation in more than one pool. Producers who so qualify for participation in more than one pool shall be permitted to do so on the basis of the proportions of their shipments of fluid milk to each pool area.

62707. The formulation committee shall make recommendations to the director for inclusion in the pooling plan, and the director shall include in the pooling plan, the following:

(a) The establishment of one or more pools throughout the state.

(b) The base period to be used by the director in determining the production and class 1 usage bases of each producer directly affected by the pooling plan. Such base period shall mean an historical period of fluid milk production for, and usage in, the pool area which the committee finds is reasonably

equitable to all producers directly affected by the pooling plan, and will tend to effectuate the declared purposes of this chapter. The historical period shall not include any production after January 1, 1967.

As to a producer south and east of San Geronio Pass, his production base may at his option, be four times his production in the months of December, 1965, and January and February, 1966.

If a producer, during any such base period, had a valid contract with a distributor, or as a member of a cooperative association had an allocation, which provided that the distributor or cooperative association was required to accept a larger amount of fluid milk from such producer than the producer actually produced during such period, on proof satisfactory to the director of such contract or allocation, the producer may, at his option, have the amount specified in the contract or allocation established as his production base.

(c) The establishment of a class 1 usage for each producer, which shall be the amount of his production of fluid milk accounted for as class 1, and any fluid milk sold for use as class 1 to a United States military installation but which was not accounted for as class 1.

(d) The allocation to each producer within any pool of a pool quota, which, initially, shall be 110 percent of that producer's class 1 usage, as determined in subdivision (c).

(e) The determination of new class 1 usage and the allocation of pool quota based thereon in a manner consistent with effectuating the purposes of this chapter.

All producers who have not reached the equalization point shall share in such allocation of pool quota on the basis of a formula which shall give substantial weight to each producer's production base, but which at the same time shall allocate a larger percentage to hardship cases and low class 1 usage producers.

Such allocations shall be made on the basis of each individual producer, with each cooperative association considered as a single producer. The cooperative associations of producers shall reassign any new quota to their own members subject to the provisions of Section 62710.

No allocation shall be made to any producer for any new pool quota in excess of the equalization point as expressed in subdivision (c) of Section 62712.

Annually, within not more than two months after August 31 of each year, the pool quota shall be adjusted to reflect any such additional pool quota. It is intended that such increase shall generally reflect the increased class 1 usage which developed during the preceding year, adjusted for the director's estimate of class 1 requirements for the succeeding year, allo-

cated in the manner specified in the pool plan. There shall be no downward adjustment of pool quota below the quota initially established pursuant to this chapter.

(f) The establishment of production bases and pool quotas for new fluid milk producers who wish to enter the pooling plan after the effective date of the plan. The recommendations of the committee shall be reasonably equitable to both such new producers and to participating producers and consistent with effectuating the purposes of this chapter.

(g) The transfer of production bases and pool quotas from one fluid milk producer to another under conditions so designed as to prevent abuses in such transfers and to avoid the development of excessive values for such bases and quotas.

(h) Any and all other matters necessary and desirable to effectuate the provisions of this chapter.

The recommendations of the formulation committee and the pooling plan may provide exceptions from the plan's general application for individual cases of hardship.

62707.5. If a portion of the pool quota of any producer is transferred, it shall carry with it the same quantity of production base, and the producer making a partial transfer of his pool quota shall lose a percentage of his production base equal to the percentage of his pool quota which is so transferred. If a producer transfers his entire production base to one person, his entire pool quota shall also be transferred to the recipient of the production base, and if a producer transfers his entire pool quota to one person, his entire production base shall also be transferred to the recipient of the pool quota.

All transfers of production base and pool quota shall be recorded by the director in a manner consistent with the purposes of this chapter. Permanent records shall be maintained by the director of all transactions in either production base or pool quota.

Any person who purchases or otherwise acquires a producer's business or a portion of a producer's business prior to the operative date of the pooling plan shall succeed to that same proportion of the producer's production base and pool quota.

62708. "Producer-distributor" for purposes of this chapter is any person that is both a producer and a distributor of fluid milk or fluid cream. For the purposes of this chapter a producer-distributor is a producer in any transaction which involves the delivery of bulk fluid milk or bulk fluid cream which was produced by him to a distributor, or any nonprofit cooperative association of producers and is a distributor in any transaction which involves the purchase by him of fluid milk or fluid cream, the pasteurization or packaging of fluid

milk or fluid cream, or the sale or delivery of packaged fluid milk or packaged fluid cream to any person.

A producer-distributor, including partnerships or corporations with common ownership, where the ownership of the producing entity is substantially proportionate to the ownership of the distributing entity, shall have the option, at the time of the adoption of the initial pooling plan under this chapter, to have a production base and pool quota established as a part of the pooling plan provided for in this chapter, or to elect to operate entirely outside of the pool for producer payment purposes. This option is available only in such cases where the producer-distributor on January 1, 1967, exercised complete and exclusive control over the operation and management of a plant at which he processes milk received from his own milk production facilities, except for purchases in bulk or packaged fluid milk, fluid skim milk or fluid cream which do not exceed an annual average of 50 gallons per day or 5 percent of his total fluid milk sales, whichever is greater, and only in such case as the producer-distributor had retail sales for its own account of not less than 66 $\frac{2}{3}$ percent of its total class 1 sales.

Any producer-distributor, as herein defined, electing to become a part of the pool shall have the right to deduct his entire pool quota from his own class 1 sales before being required to account to the pool, irrespective of the fact that the average class 1 usage in the pool for that month may be less than 100 percent of the pool quota in that pool.

Any producer-distributor electing to be excluded from the pool may at any later time be admitted to the pool, but with only the production base and pool quota to which he would have originally been entitled or his existing production and class 1 usage at the time of such admittance, whichever is less.

62709. Producers who do not, in the months of September, October, and November of any year, market the amount of fluid milk equal to their pool quota, shall lose the production base equal to the difference between the average amount of milk marketed and their pool quota.

The provisions of this section shall not apply to producers south and east of San Geronio Pass or to producers in Del Norte, Humboldt, and Siskiyou Counties. The director may waive the provisions of this section in any case in which he finds that production was restricted by causes beyond the control of the individual producer.

62710. The production base and the pool quota for milk shipped through a cooperative association shall belong to the individual producer but shall be assigned to the custody and control of the cooperative association and the production

base and pool quota may be transferred only in accordance with the articles of incorporation, bylaws, or marketing agreements of such association. The cooperative association shall continue to be treated as a single producer, both for producer payment purposes and for pool settlement purposes.

62711. Each producer shall be paid the highest usage for that amount of his fluid milk production which is equal to his pool quota and shall be paid the next highest usage for the difference between his pool quota and his production base under the production pool hereinafter designated and the lowest usage for all milk produced in excess of his production base under the overproduction pool hereinafter designated.

62712. (a) The director may require distributors, including cooperative associations acting as distributors, to make reports at such intervals and in such detail as he finds necessary for the operation of the pool. In conjunction with the pools authorized by this chapter, the director may require distributors to make payments into a settlement fund for fluid milk received and the director may provide for the disbursement of moneys from the settlement fund in the course of administering such pools. The director may employ a pool manager to operate each pool and may permit such pool manager to employ such other necessary personnel and incur such expenses incidental to the operation of the pool as the director finds are necessary.

Distributors who have a financial obligation to the pool resulting from the operation of the pooling plan shall pay such obligations to the pool manager each month as requested. All of such moneys shall be deposited in a bank or banks approved by the director, and shall be paid out by the pool manager to distributors who have pool credits resulting from the operation of the pooling plan. All financial operations of each pool shall be audited by Department of Agriculture at least once annually. The director may require distributors to make such deductions from amounts due to producers as he finds are necessary to establish a reserve fund to insure prompt payment to producers.

(b) The pool manager shall effectuate the purposes of Section 62711 by designating the percentage of each price class (i.e., classes 1, 2, and 3) to be paid within each pool settlement classification (i.e., quota pool, production pool, and overproduction pool), and in so doing he shall allocate the highest usage available, first to the quota pool, next to the production pool, and last to the overproduction pool.

(c) All pool quotas initially determined pursuant to Section 62707, except as modified pursuant to Section 62709, shall be recognized and shall not in any way be diminished, and all

quotas shall not hereafter be increased beyond 95 percent of the individual's production base. This 95 percent shall be designated the "equalization point."

(d) When the pool quota of every producer in a pool has reached the equalization point any additional class 1 usage shall be apportioned among producers of the adjacent pool or pools selected by the director as most appropriate for carrying out the purposes of this chapter.

62714. After the director has established pools, each distributor shall report to the director the total production bases and total pool quotas of the producers that are shipping to the distributor and the total receipts and class 1, class 2, and class 3 usage of the distributor and any other information determined by the director as necessary to carry out the operation of the pool.

62715. Any individual distributor purchasing milk from a producer shall continue to have the right to specify quality requirements that are more stringent than standards set by public regulatory or health authorities, and to specify these standards in a contract with the producer, provided that all contract quality requirements by the distributor are identical as to all producers under contract with that distributor. The distributor may reject milk for class 1 purposes if it fails to meet these specified standards, and may continue to reject such milk continuously until it again meets these standards. Any such rejected milk must be picked up separately from all other milk, and the contract shall give the producers the unqualified right to sell this rejected milk to others. In the event the rejected milk is not sold or used for class 1 purposes, the producer's pool quota shall be reduced by an amount equal to the amount of pool quota milk rejected during the period in which it is rejected. The producer's pool quota shall be restored to its full amount when all his production meets the specified standards.

The quality standards specified shall be subject to review by the director, and the purported failure of a producer to meet these standards shall be subject to impartial laboratory tests or such other procedures as the director may find necessary to prevent abuse.

62716. Following the required hearing, the director shall submit the pooling plan to producers concerned for their approval or disapproval in a statewide referendum.

The approval or disapproval of individual producers voting in this referendum shall be kept confidential.

Each producer shall have one vote and such vote shall be individually cast so that there will be no block voting. The director shall prepare a ballot. The ballot form shall be substantially as follows:

Ballot

Shall the proposed pooling plan be made effective?

Yes ----- No -----

The director may reveal the names of producers whose votes have been received to both proponents and opponents of the plan.

The referendum shall be set for a period of 60 days. The director may at his own discretion or upon a proper showing, extend the referendum for a period not to exceed 30 days.

62717. If the director finds that producers on a statewide basis have assented in writing to the proposed pooling plan submitted to them for assent, the director shall place the proposed pool plan into effect. The director shall find that producers have assented to the plan if he finds on a statewide basis that:

(a) Not less than 51 percent of the total number of eligible producers in the state shall have voted in the referendum; and

(b) 65 percent or more of the total number of eligible producers who voted in the referendum who produced 51 percent or more of the total amount of fluid milk produced in 1966 in the state by all producers who voted in referendum approve the plan; or

(c) 51 percent or more of the total number of eligible producers who voted in the referendum who produced 65 percent or more of the total amount of fluid milk produced in 1966 by all producers who voted in the referendum, approve the plan.

If the plan is not approved, the director may resubmit the plan, or submit a new plan, at any time after six months from the date the director announces the pool plan was not approved.

The director may amend the plan, after notice and public hearing has been given in the same manner as is provided in Article 13 (commencing with Section 62181) of Chapter 2 of this part for stabilization and marketing plans, if he finds that the amendment is necessary to effectuate the purposes of this chapter. After the hearing, the director upon his own motion may make nonsubstantive amendments to the plan. The director may make substantive amendments to the plan only if producers assent to the proposed amendments at a referendum conducted in the same manner and in the same number as provided for the referendum approving the pooling plan.

The director may terminate the plan on a statewide basis after notice and public hearing has been given in the same manner as is provided in Article 13 (commencing with Section 62181) of Chapter 2 of this part for stabilization and

marketing plans, if he finds that the plan is no longer in conformity with the standards described in, or will not tend to effectuate the purposes of, this chapter. Such hearing may be held upon the motion of the director, and shall be held upon receipt of a petition signed by producers representing not less than 25 percent of the total number of all producers and not less than 25 percent of the total production of all producers.

The director shall submit the termination of the plan on a statewide basis in a referendum conducted in the same manner as provided for initial approval of such plan if, after notice and public hearing has been given in the same manner as is provided in Article 13 (commencing with Section 62181) of Chapter 2 of this part for stabilization and marketing plans, he finds that a substantial question exists as to whether or not producers desire the plan to continue and shall submit the plan for termination upon receipt of a petition requesting termination signed by producers representing not less than 25 percent of the total number of all producers and not less than 25 percent of the total production of all producers. The plan shall be terminated if termination is favored by the same percentage of producers producing the same amount of fluid milk as required to initiate the plan.

62718. The pools established shall be administered by the director. Each distributor shall deduct from moneys owed producers and pay to the director the amount necessary to cover the cost of administering the pool plan, but not to exceed two cents (\$0.02) per hundredweight of fluid milk.

The amount of such fee shall be paid to the director on or before the 30th day following the last day of the month in which such fluid milk or fluid cream was received.

The director may fix such fee at a lesser amount and may adjust such fee from time to time.

In the event any distributor fails to pay to the director the fee provided for in this section on or before the date specified in this section, the director may add to such unpaid fee an amount not exceeding 10 percent of such unpaid fee to defray the cost of enforcing the collection of such unpaid fee. The distributor shall not be entitled to pass this penalty on to the producer.

All moneys received under the provisions of this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

62719. The director shall, from nominations submitted by producers, appoint a review board composed of no less than 12 members to advise him in the administration of the pool plan. The director shall appoint three members of the first board for a one-year term, three members for two-year terms,

three members for three-year terms, and three members for four-year terms. Thereafter all appointments shall be for a term of four years and no member may be appointed to more than two four-year terms. The board members shall be producers and not more than three may be producer-managers of associations and not more than two shall be producer-distributors. The board members shall give proportionate representation to all areas of the state, with due regard to the relative production and usage of fluid milk in the various areas of the state. Each member of the review board shall be paid not less than twenty-five dollars (\$25) or more than thirty-five dollars (\$35) per day plus travel expenses, including expenses for lodging and meals, which are incurred in the attendance at board meetings or in conducting the business of the board; all per diem and expenses being subject to approval by the director.

62720. No pooling plan formulated pursuant to this chapter shall restrict the free movement of fluid milk and no pooling plan shall result in an unequal raw product cost between distributors in the same marketing areas.

62721. No pooling plan shall control the production of fluid milk except insofar as may otherwise be specifically authorized in this chapter.

62722. Pooling plans shall not apply to the production of goats milk or producer-distributors who produce and sell less than 200 gallons of fluid milk used for class 1 purposes per day unless they specifically request entry into the pool at the time of the adoption of the initial pooling plan for that area. Producers of certified milk or guaranteed raw milk shall have the option, at the time of the adoption of the initial pooling plan under this chapter, to be subject to such plan, and accordingly to have a production base and pool quota established for such producer, or to be excluded from such plan.

(a) Any such producer of less than 200 gallons of fluid milk per day, or any such producer of certified milk, or any such producer of guaranteed raw milk, electing to be excluded from such plan, may at any later time be admitted to the pool, but with only the production base and pool quota to which he would have originally been entitled or his existing production and class 1 usage, whichever is less.

(b) Any producer claiming exemptions from the provision of any pooling plan by reason of the provisions of Section 62708 or this section, who loses his exemption by failure to meet the requirements for exemptions set forth in those sections shall automatically be deemed to have applied for and become a part of a producer pool on September 1st following any year ended August 31st during which the director determines he is no longer entitled to exemption, and his admittance

into such a pool shall be on the basis of the production base and pool quota calculations as set forth in those sections.

62723. Unless the context otherwise requires, the definitions contained in Chapter 2 (commencing with Section 61801) of this part govern the construction of this chapter.

62724. This chapter does not modify the provisions of Chapter 1 (commencing with Section 61301) nor Chapter 2 (commencing with Section 61801) of this part, except as may be necessary to effect the purposes of this chapter. If necessary to effect the purposes of this chapter, the director, in establishing the minimum prices which shall be paid for fluid milk to producers, may establish minimum producer prices applicable at the producer's place of production.

62725. The director is authorized to use moneys in the Department of Agriculture Fund derived from assessments and fees collected pursuant to provisions of Chapter 2 (commencing with Section 61801) of this part, to the extent necessary to defray the expenses incident to the formulation and making effective the pooling plan pursuant to this chapter; provided, that as soon as sufficient moneys are available from fees collected pursuant to this chapter, all such amounts shall be repaid.

62726. The director is the instrumentality of this state for the purpose of administering and enforcing the provisions of this chapter and to execute the legislative intent which is expressed in this chapter, and is hereby vested with the administrative authority which is described in this chapter. Notwithstanding other laws to the contrary, in the event a milk marketing order under the jurisdiction of the United States Department of Agriculture or other appropriate federal agency, is created by referendum or under the applicable laws and procedures relating thereto, in this state or in any geographical area within this state, the provisions of this chapter or any part thereof which is in conflict with such federal order, or which is unnecessary or is a duplication thereof, shall be suspended in the geographical area covered by and during the existence of such federal order. The director shall take such steps and procedures as are necessary to wind up and conclude the administration and enforcement of the provisions of this chapter, or any part thereof, prior to the suspension date.

62728. The director shall terminate any pooling plan in effect in any marketing area without notice or hearing at any time that there ceases to be a stabilization and marketing plan in force and effect in such marketing area, establishing minimum prices to be paid to producers, unless minimum prices payable by distributors to producers for fluid milk in such marketing area are subject to a federal milk marketing agree-

ment or order which is not in conflict with, or in duplication of, the pooling plan.

62729. The director or his assistants, deputies, agents, or other employees, are authorized to travel out-of-state in order to carry out the purposes of this chapter.

62730. Any violation of any provision of this chapter, or any regulations adopted pursuant to this chapter shall be punishable, and shall have the same effect, as a violation of Chapter 2 (commencing with Section 61801) of Part 3, of Division 21.

62731. This chapter shall be known as the Gonsalves Milk Pooling Act.

EXHIBIT A-2

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CHIEF DEPUTY

(A-2)

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DEPUTIES

Honorable Joe A. Gonsalves
Assembly Chamber

Milk Pooling - #23877

Dear Mr. Gonsalves:

You have asked several questions which we will
state and consider separately.

QUESTION NO. 1

How would Assembly Bill No. 910, as amended in
the Senate June 27, 1967, change existing provisions of
law in the area of milk stabilization and marketing which
govern contracts between producers and distributors?

OPINION AND ANALYSIS NO. 1

Chapter 2 (commencing with Section 61801) of
Part 3 of Division 21 of the Agricultural Code* contains
provisions relating to the stabilization and marketing
of fluid milk and fluid cream and Section 62048 specifically
relates to the requirements that a contract to purchase fluid
milk from a producer must contain. Section 62048 provides:

"62048. Except as otherwise provided in
Section 62050, the purchase of any fluid milk
in excess of 200 gallons monthly from any
producer unless a written contract, which
complies with all of the requirements which are
prescribed by this section, has been entered into
with such producer is an unfair practice.

* All section references are to sections of the
Agricultural Code as proposed by Senate Bill No. 1,
or as proposed to be added to the proposed code by
the bill under consideration.

"The contract shall include all of the following:

"(a) The amount of fluid milk which is to be purchased for any period.

"(b) Except as otherwise provided in this subdivision, the minimum quantity of such milk which is to be paid for as class 1, if any is to be purchased for class 1 purposes. The quantity shall be stated in pounds of milk, pounds of milk fat, or gallons of milk, unless the price which is to be paid for such class 1 milk is established separately for the milk fat and skim milk which is contained in such milk. If it is, the quantity which is to be paid for as class 1 shall be stated in pounds of milk, pounds of milk fat, or gallons of milk, or both in pounds of milk fat and pounds of skim milk separately.

"In any marketing area where an equalization pool is a part of a stabilization and marketing plan, such contract need not specify the quantity of milk to be paid for as class 1.

"The minimum quantity of milk which is to be paid for as class 1 shall be not less than 70 percent of the total quantity provided in the contract to be purchased at a milk products plant, and not less than 60 percent of the total quantity of milk fat, or the total quantity of skim milk components, but not necessarily both, provided in the contract to be purchased at a country plant, as defined by the director in stabilization and marketing plans.

"(c) The price to be paid for all milk which is received.

"(d) The date and method of payment for such fluid milk, which shall be that payment shall be made for approximately one-half of the milk delivered in any calendar month not later than the first day of the next following month and the remainder not later than the 15th day of that month.

"(e) The charges for transportation if hauled by the distributor.

"(f) A proviso that no milk which is received within the total quantity provided by the contract to be purchased for any period shall be paid for at less than the minimum price for fluid milk that is used for class 2.

"The contract may contain such other provisions as are not in conflict with this chapter. A signed copy of such contract shall be filed by the distributor with the director within five days from the date of its execution."

A.B. 910 very generally provides for the development of an equalization milk pooling plan with the establishing of base periods, production and usage bases for each producer, and pool quota for each producer. Each producer will be paid the highest usage for that amount of his fluid milk production which is equal to his pool quota and shall be paid the next highest usage for the difference between his pool quota and his production base, and the lowest usage for all milk produced in excess of his production base (proposed added Sec. 62711).

Until such time as the pooling plan is developed, we of course cannot determine what exact effect its provisions will have on existing provisions governing contracts.

Section 62724, proposed to be added by A.B. 910, does provide:

"62724. This chapter does not modify the provisions of Chapter 1 (commencing with Section 61301) nor Chapter 2 (commencing with Section 61801) of this part, except as may be necessary to effect the purposes of this chapter. If necessary to effect the purposes of this chapter, the director, in establishing the minimum prices which shall be paid for fluid milk to producers, may establish minimum producer prices applicable at the producer's place of production."

As quoted above, subdivision (b) of Section 62048 very generally requires every contract of this nature to contain a statement of the minimum quantity of milk to be paid for as class 1 and specifies a percentage of the milk which shall be paid for as class 1. Such provision might well have to be modified to meet the provisions of a pooling plan designed to carry out the payment provisions of proposed Section 62711. Since Section 62048 is contained in the Chapter 2 mentioned in proposed Section 62724, the effect of Section 62724 would be to modify Section 62048 "as may be necessary to effect the purposes" of the pooling plan provisions.

Depending on the actual provisions finally contained in the pooling plan, there may be other provisions of Chapter 2 which would have to be modified to effect the purposes of the pooling plan. However, the necessity for such modification and the extent thereof could only be determined after the plan is finally formulated.

QUESTION NO. 2

How does Assembly Bill No. 910 differ in this regard from Assembly Bill No. 2029 or Senate Bill No. 569?

OPINION AND ANALYSIS NO. 2

Assembly Bill No. 2029, as amended in the Assembly May 22, 1967, very generally provides for an equalization pool plan as part of any stabilization and marketing plan (proposed added Sec. 62271). This bill would amend Section 62048 (quoted above) to revise the second paragraph of subdivision (b), which presently provides:

"In any marketing area where an equalization pool is a part of a stabilization and marketing plan, such contract need not specify the quantity of milk to be paid for as class 1."

This provision would be changed to read:

"In any marketing area where an equalization pool plan is a part of a stabilization and marketing plan, such contract shall not specify a quantity of milk in excess of any production base issued to the producer under the equalization pool plan."

Also, A.B. 2029 would add a subdivision (d) of proposed Section 62272, to provide that an equalization pool plan may contain provisions for:

"(d) The suspension of the provisions of subdivisions (a) and (b) of Section 62048, and of any optional provision in contracts provided for in Section 62048, to the extent that such provisions are in direct and substantial conflict with the contract requirements for participation of producers in the equalization pool plan."

Thus, A.B. 2029 differs from A.B. 910, in this regard, in that A.B. 2029 makes a specific designation of the contract provisions subject to modification.

However, since under A.B. 2029 the precise modifications are only as provided in the plan, no

determination of the exact effect of these provisions can be made in absence of such plan. Likewise, the exact differences or similarities between a plan under A.B. 910 and A.B. 2029 cannot be determined in absence of a proposed plan under A.B. 910.

As to S.B. 569, which also provides for the formulation and establishing of equalization pooling plans, proposed added Section 62294 would provide:

"62294. Upon the effective date of this article, any other provisions of this chapter which are inconsistent with or contrary to the provisions of this article shall be deemed to be superseded by the provisions of this article."

The chapter referred to is the chapter of present law governing such contracts. Thus, S.B. 569 provides for superseding of inconsistent contract provisions. Similar to A.B. 910, it does so in general terms, unlike A.B. 2029 which more specifically designates the provisions which may be superseded. However, again, as with A.B. 910 and A.B. 2029, the exact effect of these provisions cannot be determined in absence of a proposed plan.

It should also be noted that S.B. 569 contains a specific provision for the superseding of provisions of existing contracts, as distinguished from existing provisions of law governing contracts, which are contrary to or in conflict with the provisions of a pooling plan (proposed added Sec. 62293). Neither A.B. 910 or A.B. 2029 contains such a specific provision.

QUESTION NO. 3

Assuming a pooling plan under A.B. 910 is in effect for two or three years and is then terminated, what is the status of a contract entered into prior to the pooling plan which had a term beyond the date of such termination?

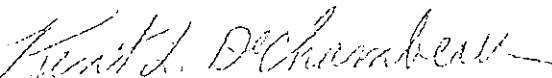
OPINION AND ANALYSIS NO. 3

We find no provision in A.B. 910 which would annul or void any pre-existing contract. Even assuming

that under the provisions of a given pooling plan certain or all provisions of a given contract might, in order for the plan to operate, be inoperative or unenforceable, we find no provision which would annul such provisions. Therefore, although they might be inoperative while the plan is in effect, in our opinion on termination of the plan they would then be as operative and enforceable as before the plan was instituted, assuming no action had been taken by the parties to the contract to modify or otherwise change it to reflect the changed situation under the pooling plan.

Very truly yours,

George H. Murphy
Legislative Counsel

By 
Kent L. DeChambeau
Principal Deputy

KLD:dn

Two copies to Honorable Carley V. Porter and
Honorable Stephen P. Teale, pursuant to Joint Rule 34.

EXHIBIT A-3

(A-3)

ANALYSIS

ASSEMBLY BILL NO. 910, AMENDED JULY 21, 1967

Article

- 22700 Declares production and distribution of milk to be of public interest and evokes the State's police powers to protect the public interest.
- 22701 Declares fluid milk and fluid cream to be necessary articles of food for human consumption affecting public health and welfare. Further declares that disruptive practices have arisen within the production and marketing of fluid milk. Declares that it is the State's policy to promote intelligent production and orderly marketing.
- 22702 Declares that the legislature recognizes that the existing law is inadequate to correct current evils in the dairy industry or to assure necessary stability. Further declares that existing law must be supplemented by this Chapter in order to achieve the purpose of gradually equalizing the distribution of Class 1 usage among producers.

62703 Requires that a production base and pool quota be established for each producer as specified under conditions set forth in Section 62707. Pooling plan to establish method of base assignment and the function of the base.

62704 authorizes the Director to develop a proposed pooling plan and to designate proposed pooling areas. Requires appointment of a formulation committee by the Director to assist him in establishing the proposed pooling plan areas and the proposed pooling plan. All marketing areas of the State are to be included under a pooling plan, except any relatively isolated region if the Director, after public hearing, finds that it is not practical to include the region or that producers in the region do not desire to be included.

62705 Requires the Director, with assistance of the formulation committee, to formulate a proposed pooling plan within 90 days of the effective date of the Chapter. Requires a public hearing or public hearings to be held in each proposed pooling area to consider the proposed pooling

plan. Prescribes the procedures for calling and conducting the public hearings.

2706 Requires that the proposed pooling plan prescribe the pooling areas and requires each pooling area to include a major consuming center together with its attendant supply area. Producers who supply more than one pool area shall be permitted to participate in more than one area pool on a proportionate basis.

2707 Requires the formulation committee to recommend and the Director to include within the proposed pooling plan the following:

- (a) One or more pools throughout the State.
- (b) A base period to be used in determining production bases and Class 1 usage bases. Restricts the base period to a period prior to January 1, 1967. Specifies exceptions for producers south and east of San Geronimo Pass and those producers whose distributor or cooperative association was required to accept a larger amount than was actually shipped.
- (c) The establishment of Class 1 usage for each producer for his production accounted for as Class 1 and for

his production used as Class 1 and sold to a United States military installation during the base period.

(d) The allocation to each producer of a pool quota which initially shall be 110 percent of the producer's Class 1 usage during the base period.

(e) The determination of new Class 1 usage and the allocation of new pool quota to be distributed to all producers below an equalization point. The distribution to be on the basis of a formula which gives substantial weight to the producer's production base and allocates a larger percentage to hardship cases and low Class 1 usage producers.

Cooperative associations shall be considered to be a single producer in the allocation of such new pool quota.

No new pool quota allocation may be given to a producer in excess of the equalization point.

New pool quota shall be allocated annually within two months after August 31. In making the annual adjustments no pool quotas may be adjusted downward below the quota initially established.

(f) The establishment of production bases and pool quotas for new producers which shall be equitable to new producers and existing producers.

(g) The transfer of production bases and pool quotas between producers. The conditions of transfer to prevent the development of excessive values for such bases and quotas.

(h) Any other matters necessary to effectuate the provisions of this Chapter.

2707.5 Provides for the transfer and partial transfer of production bases and pool quotas. Requires that a partial transfer of pool quota shall carry with it an equal quantity of production base; additionally the producer who makes the transfer shall lose a percentage of his production base equal to the percentage of his pool quota so transferred. If the total production base is transferred then the total pool quota shall also be transferred. If the total pool quota is transferred then the total production base shall also be transferred. Permanent records of all such transactions shall be maintained by the Director.

11738 Provides an option for a producer-distributor to be included or excluded from the pooling plan and the conditions under which a producer-distributor may exercise the option. The option is available only to producer-distributors who:

- (1) Exercised complete and exclusive control over the processing plant on January 1, 1967; and
- (2) Produced all of the milk for his total fluid milk sales except an annual average of 50 gallons per day or 5 percent of his total fluid milk sales, whichever is greater; and
- (3) Had retail sales for his own account of not less than two-thirds of his total Class 1 sales.

Permits a producer-distributor electing to become a part of the pool to deduct his entire pool quota from his own Class 1 sales before accounting to the pool.

Provides for entry into the pool by those producer-distributors who initially chose to be excluded, but choose to enter at a later date. Upon entering, his production base and pool quota are the original base and quota or his existing production and Class 1 usage at the time of admittance, whichever are less.

- 62709 Provides for a reduction of production base for producers who do not market the amount of milk equal to their pool quota in the months of September, October and November. Further provides exceptions to this reduction.
- 62710 Provides that pool quotas and production bases shipped through cooperatives shall belong to the individual producers; but shall be assigned into the custody and control of the cooperative in accordance with the cooperative's governing regulations. Stipulates that cooperative will be treated as a single producer for payment purposes.
- 62711 Provides for three pools in the pooling plan - a quota pool, a middle pool which is the difference between the production base pool and the quota pool, and an over-production base pool.
- It requires that each producer be paid for the highest usage in the quota pool, the next highest usage in the middle pool, and the lowest usage in the overproduction pool.
- 62712 (a) Provides that the Director may require distributors to make such reports as he finds necessary for the

operation of the pool. It further provides that the Director may require distributors to make payments into a settlement fund from which the Director may disburse monies in the course of administering the pool. It permits the Director to employ a pool manager and authorize him to employ necessary personnel and incur expenses necessary to operate the pool. Further provides that distributors with financial obligation to the pool shall pay each month to the pool manager such obligation. All such monies are to be deposited in a bank approved by the Director and subject to withdrawal by the pool manager in order to meet obligations to distributors who have pool credits. Allows for the establishment of a reserve fund. Requires the Department of Agriculture to audit the pool operations at least once annually.

- (b) The pool manager is given the responsibility of calculating the percentages of Class 1, Class 2, and Class 3 prices to be paid within each of the three pool classifications, quota pool, production pool, and overproduction pool, and in so doing he shall allocate

the highest usage available first to the quota pool, next to the production pool, and then to the overproduction pool.

(c) Establishes an equalization point, which is a pool quota equal to 95% of each individual producer's production base, and further provides that pool quotas initially determined shall not thereafter be diminished except pursuant to Section 62709.

(d) Provides that when the equalization point is reached in a pooling area additional Class 1 usage shall be apportioned among producers in adjacent pool area or areas selected by the Director.

62714 Requires distributors to report to the Director any information determined by the Director as necessary to carry out the pooling operations.

62715 Permits distributor to require quality standards above those established by governmental regulatory agencies, provided that all such contracted standards apply equally to all producers under contract. Specifies method of handling milk rejected under the quality provisions and

provides that quality standards are subject to review by the Director and failure to meet the quality standards is subject to Imperial Laboratory tests.

32716 Requires that after the public hearings on the proposed pooling plan have been held the proposed plan shall be submitted to a state-wide referendum. Specifies the ballot form and sets the referendum period at 60 days plus a 30-day extension for cause.

32717 Requires that the pooling plan be made effective if producers state-wide have assented to the plan. Specifies voting regulations and requirements for passage or defeat for the referendum.

Permits the Director to rescind the pooling plan or a new pooling plan after six months if the proposed pooling plan is defeated in the referendum.

Requires amendments to the pooling plan to be submitted to hearing in the manner prescribed for amending stabilization and marketing plans. Major amendments, after hearing, must be submitted to referendum.

Provides for the termination of the plan through the public hearing procedure. Such public hearing to be called on the

Director's initiative or upon petition from producers representing not less than 25 percent of producers or production.

Provides that if, following a hearing on termination, there is substantial question regarding termination the issue shall be determined by referendum.

18713 Provides for financing the administration of the pool or pools by assessment not to exceed two cents per hundredweight of fluid milk levied against monies owed producers. Stipulates manner of payment and penalty for nonpayment of assessments.

Requires all such assessments to be deposited in the State Treasury and credited to the Department of Agriculture Fund.

18719 Requires the Director to appoint a minimum of 12 advisory board members from nominations. Membership to be limited to producers, producer association managers and producer-distributors. Provides for reimbursement of expenses and per diem.

18720 Provides that no pooling plan may restrict free movement of milk or result in unequal raw product costs between distributors in the same marketing area.

- 12721 Restricts control of production to that authorized in this Chapter.
- 12722 Exempts goat milk from pooling plan. Also exempts producer-distributors selling less than 200 gallons of Class 1 milk unless the producer-distributor requests entry. Provides option for entry at time of pooling plan adoption for producers of certified or guaranteed raw milk.
- (a) Provides for later entry for producers excluded under this section.
- (b) Requires entry and specifies conditions of entry for producers who no longer qualify for exemption under this Section.
- 12723 Declares the definitions under Chapter 2 to govern the construction of this Chapter unless specifically delineated within this Chapter.
- 12724 Specifies in what manner, if at all, this Chapter modifies existing stabilization and marketing statutes. Also provides for establishment of minimum producer prices at producer's dairy location.

1725 Authorizes use of Chapter 2 funds to defray expenses of
formulation, with a provision for repayment if pooling
becomes effective.

746 Names the Director as the instrument of the State in
administering and enforcing provisions of this Chapter.
Abrogates in total or in part the portions of this Chapter
coming in conflict with a Federal marketing order should
such a Federal order be established within an area covered
by provisions of this Chapter.

748 Requires termination of any pooling plan in any marketing
area where a stabilization and marketing plan ceases to be
in force, unless minimum producer prices are subject to a
Federal order.

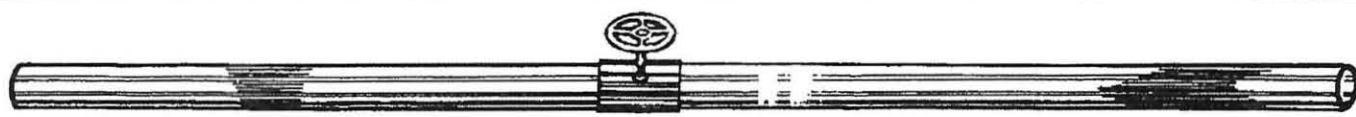
1749 Authorizes out-of-State travel to carry out the purposes of
this Chapter.

1750 Provides for penalties for violation of this Chapter to be
the same as provided in Chapter 2.

EXHIBIT A-4







U.D. Pipeline

Vol.3 The Official Publication of the United Dairymen's Association No.9

THE STORY BEHIND THE

MILK POOLING ACT



Sept. 1967



VISIT YOUR COUNTY FAIR

EXHIBIT B-1

B-1

Assembly Bill No. 1110

CHAPTER 1192

An act to amend Sections 32510, 61306, 62705, 62707, 62712, 62717, 62719, and 62723 of, to add Sections 62702.1, 62707.1, 62708.1, and 62727 to, to repeal and add Sections 62708, 62708.5, and 62722 of, to add Article 11 (commencing with Section 61581) to Chapter 1 of Part 3 of Division 21 of, to repeal Article 8 (commencing with Section 61501) of Chapter 1 of Part 3 of Division 21 of, and to repeal and add Chapter 2 (commencing with Section 61801) to Part 3 of Division 21 of, the Food and Agricultural Code, relating to milk and dairy products, and making an appropriation therefor.

[Approved by Governor September 30, 1977. Filed with
Secretary of State October 1, 1977.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1110, Keene. Milk and dairy products: marketing: pooling.

(1) The existing law, generally, under the fluid milk and cream stabilization and marketing provisions, provides for the regulation of marketing of fluid milk and fluid cream by the director and includes the authorization for the director to prescribe the minimum prices to be paid by distributors for fluid milk or cream and minimum wholesale prices for fluid milk or fluid cream.

This bill would, very generally, revise and restate the existing provisions, with substantive changes, and do all of the following:

(a) Redefine the term "market milk" for purposes of the Milk and Milk Products Act.

(b) Delete the provisions authorizing the director to establish and regulate minimum wholesale prices of fluid milk or fluid cream, but authorize temporary minimum prices under specified conditions and make various related changes.

(c) Require the director to establish minimum prices to be paid by handlers, as defined, for market milk and market cream, as defined for purposes of such provisions, to producers in established marketing areas, authorize the director to suspend, and require him to terminate, minimum retail prices in effect in any marketing area as specified, and exclude flavored milk products or market half-and-half which is ultra-pasteurized and packaged in hermetically sealed containers from the provisions designating class 1 milk under such provisions.

(d) Revise the provisions designating the factors to be considered in establishing minimum prices of market milk to be paid by handlers to producers and the provisions authorizing the establishment of prices for components of market milk in respective classes of milk.

(e) Authorize the director to establish different minimum prices to be paid by handlers to producers depending on certain specified

conditions in any marketing area.

(f) Authorize any stabilization and marketing plan to provide for minimum charges for various services performed or rendered by a nonprofit cooperative association respecting class 1 market milk sold or delivered to another handler.

(g) Make various modifications in the unfair practices provisions applicable to distributors.

(h) Delete the provisions authorizing the director to appoint a local advisory board for any marketing area to assist and advise him in matters relating to milk stabilization and marketing provisions.

(i) Delete the provisions requiring the payment of class 2 milk prices, as prescribed, to producers for milk used for the purpose of freezing and holding in cold storage.

(j) Delete the provisions providing for distributors' licenses.

(k) Revise the provisions establishing bond requirements for distributors who purchase market milk, and revise the provisions establishing the procedure for recovering claims on such bonds.

(l) Delete the provisions establishing designated fees and rate of assessments that distributors who purchase or handle fluid milk or fluid cream are required to pay to the director, marketing of milk and other dairy products to pay a designated fee to the director, on all milk fat contained in the ice cream mix and ice milk mix which is manufactured by him.

(2) The Gonsalves Milk Pooling Act provides for the establishment of a pooling plan for fluid milk, including provisions for establishment of pool quota for producers and for qualifying as a producer-distributor, for purposes of operating outside the pool.

This bill would require the Director of Food and Agriculture on July 1, 1978, to issue new pool quota to bring specified holders of quota of that date to the equalization point on both the fat and solids-not-fat components of quota. Subsequent to July 1, 1978, the director would be required to allocate new class I usage according to a specified formula including allocation of 40% of such usage to producers who are equal to or above the equalization point.

This bill would change the designation from producer-distributor to producer-handler and would revise the conditions under which producer-handlers who originally elected to operate outside of the pool to allow up to 25%, rather than 5%, of milk sold to be purchased from others, except that any purchases exceeding 5% of such sales are required to be from pool sources, and to allow 50%, rather than 66⅔%, to be for retail sales for its own account. It would authorize a producer-handler or producer of goats milk to be excluded from the plan if daily sales are less than 500, rather than 200, gallons for class I purposes and provide that any producer-handler electing to become a part of the pool shall have the right to various prescribed deductions, applicable to such producer-handler, from its own class I sales, rather than the right to deduct the amount of such quota at the time of such election from his own class I sales, before being

required to account to the pool. It would allow any producer-handler who qualifies under such provisions for exclusion from the pool, and is so excluded, to elect during designated period of any year to enter the pool subject to designated provisions. This bill would also provide for allocation of a pool quota to any producer-handler who qualifies for exclusion from the pool and who later enters the pool.

(3) Provide that there shall be no reimbursement pursuant to Section 2231 of the Revenue and Taxation Code nor shall there be an appropriation made by this bill for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 32510 of the Food and Agricultural Code is amended to read:

32510. "Market milk" means milk which conforms to the standards which are provided in Chapter 2 (commencing with Section 35751), Part 2, of this division. Market milk includes components and derivatives of market milk. Market milk may be supplied to the consumer in the fluid state or may also be utilized in the manufacture of milk products.

SEC. 2. Section 61306 of the Food and Agricultural Code is amended to read:

61306. "Distributor" means any person, that purchases or handles market milk, market cream, or any dairy product for processing, manufacture, or sale. It includes brokers and agents and the nonprofit cooperative associations described in Article 2 (commencing with Section 61331) of this chapter in the transactions in which such article provides that the associations are distributors. It also includes any person who regularly operates mobile vehicles on routes predominantly for sales of market milk, market cream, or dairy products on such routes to wholesale customers, or directly to consumers at their homes. It does not, however, include any of the following:

(a) Any retail store or wholesale customer which is not actively and directly engaged in manufacturing, processing, or packaging milk, cream, or any dairy product.

(b) Any producer that delivers milk or cream only to a distributor or manufacturer. A retail store or a wholesale customer is a "distributor" only as to milk, cream, or any dairy product that is actively and directly processed, manufactured or packaged by such retail store or wholesale customer.

SEC. 2.5. Article 8 (commencing with Section 61501) of Chapter 1 of Part 3 of Division 21 of the Food Agricultural Code is repealed.

SEC. 3. Article 11 (commencing with Section 61581) is added to Chapter 1 of Part 3 of Division 21 of the Food and Agricultural Code, to read:

Article 11. Temporary Pricing Authority

61581. The Legislature hereby finds and declares:

(a) Since 1937, the director has established minimum wholesale and minimum retail prices for packaged milk under the provisions of Chapter 2 (commencing with Section 61801) of this part.

(b) The provisions of this article are intended to effectuate the purposes stated in Article 3 (commencing with Section 61341) of this chapter; to provide an orderly transition in the dairy industry from a long period of public establishment of minimum wholesale and minimum retail prices for packaged milk to a period where prices for such milk will be determined by open competition, subject to the provisions of this chapter; and to prevent the development of monopoly and destructive trade practices.

61582. The director may, after investigation and public hearing, find and determine that within one or more sales areas, as to packaged milk, severe market disruption exists which prevents effectuation of the purposes and policies of this chapter and which tends to foster monopoly and other destructive trade practices. In the event of such finding, the director may, for a temporary period of 90 days, declare in effect minimum wholesale or minimum retail prices, or both, for packaged milk, and enforce such minimum prices in the manner provided in Article 10 (commencing with Section 61571) of this chapter. The director may extend such 90-day period, after public hearing, by one or more successive 90-day periods.

61583. The director, in establishing any minimum wholesale or minimum retail prices, or both, for packaged market milk under this article shall take into consideration the purposes and policies of this chapter and of Chapter 2 (commencing with Section 61801) of this part, and such evidence of reasonable and necessary costs of handling of packaged milk by distributors, retail stores and wholesale customers as is introduced before the director at public hearings held under this article.

61584. For the purposes of this article:

(a) "Minimum wholesale prices" means the prices at which packaged milk shall be sold by distributors to wholesale customers;

(b) "Minimum retail prices" means the prices at which packaged milk shall be sold by distributors and retail stores to consumers.

SEC. 4. Chapter 2 (commencing with Section 61801) of Part 3 of Division 21 of the Food and Agricultural Code is repealed.

SEC. 5. Chapter 2 (commencing with Section 61801) is added to Part 3 of Division 21 of the Food and Agricultural Code, to read:

CHAPTER 2. STABILIZATION AND MARKETING OF MARKET MILK

Article 1. Legislative Declarations

61801. The production and distribution of market milk and the

dissemination of accurate, scientific information as to the importance of market milk and other dairy products in the maintenance of a high level of public health, is hereby declared to be a business affected with a public interest. The provisions of this chapter are enacted in the exercise of police powers of this state for the purpose of protecting the health and welfare of the people of this state.

61802. The Legislature hereby declares all of the following:

(a) Market milk is a necessary article of food for human consumption.

(b) The production and maintenance of an adequate supply of healthful market milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare, and the production, transportation, processing, storage, distribution, or sale of market milk in this state is an industry affecting the public health and welfare.

(c) Unfair, unjust, destructive, and demoralizing trade practices have been carried on, are now being carried on, and because of the perishable quality of milk, the nature of milk production, the varying seasonal production and demand factors and other economic factors affecting the milk industry, the potential exists for the resumption and furtherance of such practices, in the absence of regulation, in the production, marketing, sale, processing, or distribution of market milk which constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine sanitary regulations and standards of content and purity, however effectually such sanitary regulations may be enforced.

(d) Health regulations alone are insufficient to prevent disturbances in the milk industry which threaten to destroy and seriously impair the future supply of market milk, and to safeguard the consuming public from future inadequacy of a supply of this necessary commodity.

(e) It is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including market milk, and to eliminate speculation, waste, improper marketing, unfair and destructive trade practices, and improper accounting for market milk purchased from producers.

(f) It is recognized by the Legislature that the economic factors concerning the production, marketing, sale, processing and distribution of market milk in California may be affected by the national market for milk for manufacturing purposes.

(g) It is recognized by the Legislature that in recent years the supply of manufacturing milk in California, as defined in Section 32059, has consistently declined and continues to decline, and that market milk has virtually supplanted manufacturing milk for manufacturing purposes in this state, and that it is therefore in the public interest to conform the pricing standards governing minimum producer prices for market milk established under this chapter to

current economic conditions.

61803. It is recognized by the Legislature that conditions within the milk industry of this state are such that it is necessary to establish marketing areas wherein different prices and regulations are necessary, and for that purpose the director shall have the administrative authority, with such additional duties as are herein prescribed, after investigation and public hearing, to prescribe such marketing areas and modify the same when advisable or necessary.

61804. The foregoing statements in this article of facts, policy, and application of this chapter are hereby declared a matter of legislative determination.

61805. The purposes of this chapter are to do all of the following:

(a) Provide funds for administration and enforcement of this chapter, by assessments to be paid by producers and handlers of market milk in the manner prescribed in this chapter.

(b) Authorize and enable the director to prescribe marketing areas and to determine minimum prices to be paid to producers by handlers for market milk which are necessary due to varying factors of costs of production, health regulations, transportation and other factors in such marketing areas of this state. In determining minimum prices to be paid producers by handlers, the director shall endeavor under like conditions to achieve uniformity of cost to handlers for market milk within any marketing area; provided, however, that no minimum prices established or determined under the provisions of this chapter shall be invalid because uniformity of cost to handlers for market milk in any marketing area is not achieved as a result of the minimum producer prices so established or determined.

(c) Authorize and enable the director to formulate stabilization and marketing plans subject to the limitations prescribed in this chapter with respect to the contents of such stabilization and marketing plans and to declare such plans in effect for any marketing area.

(d) Enable the dairy industry, with the aid of the state, to correct existing evils, develop and maintain satisfactory marketing conditions, and bring about and maintain a reasonable amount of stability and prosperity in the production and marketing of market milk and provide means for carrying on essential educational activities.

61806. It is the intent of the Legislature that the powers conferred in this chapter shall be liberally construed.

61807. Nothing in this chapter permits or authorizes the development of conditions of monopoly in the production of market milk. In the establishment of the terms and conditions under which market milk shall be purchased from producers, such terms and conditions shall be those which will, in the several localities and markets of the state, and under the varying conditions of production, insure an adequate and continuous supply of pure, fresh, wholesome

market milk to consumers of the market milk at fair and reasonable prices.

61808. The Legislature hereby declares that this chapter is intended to formulate a comprehensive scheme for the regulation of marketing milk. If, however, any provision of, or addition or amendment to, this chapter, either as originally enacted in 1935 at the 51st Regular Session of the California Legislature, or as amended, added to, recodified, or reenacted at any subsequent session of the California Legislature, should be held to be unconstitutional, the unconstitutionality of such provision does not affect any other provision of this chapter.

61808.5. (a) On or before March 1, 1978, the director shall report to the Legislature his proposed procedural regulations to assure a fair, open, effective, and expeditious participation of all interested parties in the establishment of prices for milk.

(b) On or before April 1, 1978, the director shall adopt procedural regulations for the submission and consideration of petitions and for the conduct of hearings.

(c) On or before January 1, 1979, after consultation with interested consumer and industry representatives, the director shall report to the Legislature such evaluation and recommendations to the Legislature as he may develop for further evolution, refinement, clarification, and improvement of the mechanism or procedures for establishing milk prices. The object of his proposals shall be to maximize, to the extent feasible, public comprehension of the pricing process consistent with the other purposes of this chapter.

61809. If any article, section, subdivision, sentence, clause, or phrase of any provision of this chapter is for any reason held to be unconstitutional, such decision does not affect the validity of the remaining provisions of this chapter. The Legislature hereby declares that it would have enacted each article, section, subdivision, sentence, clause, or phrase of this chapter irrespective of the fact that one or more other articles, sections, subdivisions, sentences, clauses, or phrases is declared unconstitutional.

61810. The provisions of Chapter 1 (commencing with Section 61301) and Chapter 3 (commencing with Section 62700) of this part shall be liberally construed as being complementary of, and supplemental to, the provisions of this chapter. The provisions of this chapter and of Chapter 1 (commencing with Section 61301) and Chapter 3 (commencing with Section 62700) shall be liberally construed as constituting a single comprehensive scheme for the regulation of the production, handling, distribution, and marketing of market milk; provided, however, that each such chapter, and each provision, article, section, subdivision, sentence, clause, and phrase of each such chapter is severable, and if one of such chapters or any provision, article, section, subdivision, sentence, clause or phrase of, or in, any one of such chapters is for any reason held void, invalid or unconstitutional, such decision shall not affect the validity of the

other such chapter, or any of its provisions, articles, sections, subdivisions, sentences, clause or phrases.

61811. No provision of this chapter, or of any stabilization and marketing plan formulated by the director pursuant to this chapter, is any limitation upon the right of any handler or producer-handler including any nonprofit cooperative association of producers which association is also a handler, by reason of the form or nature of the legal entity under which such handler conducts business, to sell or handle market milk, or any dairy product at prices or upon terms and conditions according to, and within, the several methods of handling, at or subject to which the market milk or dairy product lawfully may be sold or handled by any other handler.

This section does not make lawful or permit the payment by any such handler to a producer for market milk of prices less than the minimum prices prescribed in the applicable stabilization and marketing plan.

61812. Neither the repeal of former Chapter 2 of this part, the reenactment of this chapter nor the amendment of any provision of this chapter shall have the effect of terminating or invalidating any stabilization and marketing plan, including provisions thereunder regarding minimum prices to be paid producers for market milk, established by the director pursuant to this chapter or former Chapter 2 prior to the effective date of such repeal, enactment or amendment. The director shall, however, establish minimum prices pursuant to the provisions of such repeal, enactment or amendment at the earliest practicable date after the effective date of such amendment.

Article 2. Definitions

61821. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

61822. "Board" means any advisory board created as authorized in this chapter.

61823. "Bulk market milk" means market milk which has not been pasteurized or packaged in bottles, cartons, dispenser cans, or other consumer packages, and is handled or delivered, in bulk, in tanks, cans, or other bulk containers.

61824. "Consumer" means any person that purchases market milk, or any dairy product for consumption.

61825. "Dairy product" or "milk product" includes any product manufactured from milk or any derivative or product of milk.

61826. "Handler" means any person who, as owner, agent, broker, or intermediary, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of market milk in unprocessed or bulk form from a producer, a producer-handler, or another handler for the purpose of manufacture, processing, sale, or other handling, regardless of whether such market milk is produced

within or outside this state.

61827. "Market cream" means cream, as defined in this code, and any combination of cream and milk, or any fluid product of milk or cream sold under any trade name whatsoever, which complies with all of the following requirements:

(a) Is not packaged in hermetically sealed containers.

(b) Conforms to the health and sanitary regulations of the place where it is sold or disposed of for human consumption.

61828. "Market milk" has the meaning of that term as defined in Section 32510. Unless the context otherwise indicates, the term "market milk" includes market cream, the components and derivatives of market milk, and dairy products manufactured from market milk or its components and derivatives.

61829. "Market skim milk" means skim milk, as defined in this code, that is derived from market milk and conforms to the health and sanitary regulations of the place where sold or disposed of for human consumption.

61830. "Marketing area" is any area within this state declared to be such in the manner that is prescribed in this chapter.

61831. "Milk" has the meaning of that term as defined in Section 32511.

61831.5. "Milk used for manufacturing purposes" means all milk used for those products defined in Part 3 (commencing with Section 36601) of Division 15.

61832. "Milk plant" means any place, structure, or building where handler receives market milk.

61833. "Packaged market milk" or "packaged market cream" means market milk or market cream respectively, which is packaged in cartons, bottles, dispenser cans, or other consumer packages, for sale to wholesale customers, or consumers.

61834. "Person" means any individual, firm, corporation, partnership, trust, incorporated or unincorporated association, nonprofit cooperative association, nonprofit corporation, or any other business unit or organization.

61835. "Processing" means receiving, pasteurizing, and packaging market milk. It includes the manufacturing of milk products from market milk.

61836. "Producer" means any person that produces market milk from five or more cows in conformity with the applicable health regulations of the place in which it is sold, and whose bulk market milk is received, acquired, or handled by any handler or any nonprofit association of producers. It includes the nonprofit cooperative associations described in Article 3 (commencing with Section 61871) of this chapter in the transactions in which such article provides that the associations are producers.

61837. "Producer-handler" means any person that is both a producer and a handler of market milk. For the purposes of this chapter a producer-handler is a producer in any transaction which

involves the sale or delivery of bulk market milk which was produced by him to a handler or to any nonprofit cooperative association of producers, and is a handler in any transaction which involves the purchase, acquisition or receipt by him of market milk, the pasteurization or packaging of market milk, or the sale or delivery of packaged market milk to any person.

61838. "Stabilization and marketing plan" means any plan formulated and made effective by the director within the legislative standards provided by this chapter. It includes, among other things, the establishing of prices to be paid by handlers for any or all of the various classes of market milk.

61839. "Wholesale customer" means any person that buys milk, cream, or any dairy product from a handler or from a distributor, as defined in Section 61306, for resale to consumers.

Article 3. Nonprofit Cooperative Associations

61871. For the purposes of this chapter, a nonprofit cooperative association organized and existing under Chapter 1 (commencing with Section 54001) of Division 20, that acts for producers, including members and any nonmembers of the association, to whom it accounts on a patronage basis, is a producer in any of the following transactions:

(a) Any transaction which involves its receipt or handling of bulk market milk produced or delivered by such producers.

(b) Any transaction which involves the sale or delivery of bulk market milk to any producer, handler, or manufacturer, or other nonprofit cooperative association of producers.

(c) The receipt by it of payment for bulk market milk, packaged market milk, or any other product of market milk produced or delivered by such producers.

(d) Any transaction in connection with accounting to such producers for the proceeds derived from the sale or marketing of bulk market milk, packaged market milk, or any other product of market milk produced or delivered by such producers.

61872. For the purposes of this chapter, a nonprofit cooperative association organized and existing under Chapter 1 (commencing with Section 54001) of Division 20, that acts for producers, including members and any nonmembers of the association, to whom it accounts on a patronage basis, is a handler in any transaction which involves the receipt by it of market milk from any person other than a producer to whom it accounts on a patronage basis and in any transaction which involves the pasteurization of bulk market milk or the packaging of it in bottles, cartons, dispenser cans, or other consumer packages, or the sale or delivery of packaged market milk.

61873. A nonprofit cooperative association accounts to producers on a patronage basis when it accounts to each producer for his share of the net proceeds derived from the marketing operations of the

association, according to quantity and quality of market milk furnished to the association for marketing and according to any marketing pools and quotas established by the association.

Article 4. Administration

61891. The director shall enforce the provisions of this chapter and of any stabilization and marketing plan initiated pursuant to the provisions of this chapter. The director shall adopt those regulations necessary for the proper administration and enforcement of the provisions of this chapter.

61892. The director shall have and may exercise any or all the powers conferred by the Government Code upon the head of a department of the state with respect to hearings and investigations under this chapter.

61893. The director is the instrumentality of this state for the purpose of administering and enforcing the provisions of this chapter and to execute the legislative intent expressed in this chapter, and is hereby vested with the administrative authority described in this chapter. Notwithstanding other laws to the contrary, in the event a milk marketing order under the jurisdiction of the United States Department of Agriculture or other appropriate federal agency, is created by referendum or under the applicable laws and procedures relating thereto, in this state or in any geographical area within this state, the provisions of this chapter or any part thereof which is in conflict with such federal order, or which is unnecessary or is a duplication thereof, shall be suspended in the geographical area covered by and during the existence of such federal order. The director shall take such steps and procedures as are necessary to wind up and conclude the administration and enforcement of the provisions of this chapter, or any part thereof, for the period prior to the suspension date.

61894. For the purposes of enforcing the provisions of this chapter, the director may investigate any and all transactions, between producers and handlers, between nonprofit cooperative associations and producers, among handlers or between handlers and wholesale customers, between handlers and consumers, or between wholesale customers and consumers. For that purpose, the director shall have access to, and may enter at all reasonable hours, any place where market milk is being stored, bottled, or manufactured, where market milk or any market milk product is being bought, sold, or handled, or where the books, papers, records or documents which relate to such transactions are kept. He may inspect and copy such books, papers, records, or documents in any place within the state.

61895. The director may require the registration of producers.

61896. The director may formulate any stabilization and marketing plan as prescribed in this chapter and declare it effective after public hearing and reasonable notice by mail or otherwise to all producers,

handlers, and consumer organizations who have filed requests with the director or the Director of Consumer Affairs.

61897. A full and accurate record of business or acts performed, or of testimony taken, by the director pursuant to this chapter shall be kept and placed on file in the office of the director.

61898. In addition to the compilation of information which pertains to market milk from the reports required by this chapter, the director shall collect, assemble, compile, and distribute statistical data relative to market milk, other milk and milk products, and such other information as may relate to the dairy industry and the provisions of this chapter.

61899. Any order of the director made pursuant to this chapter which substantially affects the rights of any interested party may be reviewed by any court of competent jurisdiction. Any such action shall be commenced within 30 days after the effective date of the order complained of, or within 30 days after the injurious effect complained of becomes reasonably apparent.

61900. The director may confer, enter into agreements, or otherwise arrange with the constituted authorities of this state, other states, or agencies of the United States with respect to plans which relate to the stabilization and distribution of market milk within this state or as between this state and other states or the United States, and may exercise his powers pursuant to this chapter to effectuate and enforce such plans.

61901. All money received by the director pursuant to this chapter shall be paid monthly into the State Treasury to the credit of the Department of Agriculture Fund.

61902. If the director determines that it is probable that one or more factors or conditions which affect prices of market milk have changed on a relatively uniform basis throughout two or more marketing areas, he may consolidate the hearings on the matter of price changes for such areas. No price change shall be made as a result of such a consolidated hearing unless the amount of the change or the resulting prices are uniform throughout the areas which are affected.

61903. Any person who has testified under oath at a public hearing held by the director pursuant to this chapter may, within 10 calendar days following the closing date of the public hearing, file with the director a written posthearing brief in amplification, explanation, or withdrawal of such testimony. One copy of the brief shall be filed with the director at his office in Sacramento. A second copy of the brief shall be filed in the regional milk stabilization office of the director nearest to the location at which the public hearing was held. Any such posthearing brief shall be made available by the director to any interested person for inspection. Except as herein provided, the director, in formulating any stabilization and marketing plan, pursuant to this chapter, following a public hearing, shall not accept or consider any posthearing brief. Nothing in this section shall

require the director to prepare, or to make available, any verbatim transcript or other record or summary of the hearing within the 10-calendar-day period referred to in this section; provided, however, that any verbatim transcript or other record or summary of the hearing prepared for or by the director shall be made available to any interested party for inspection at the office of the director in Sacramento and, upon reasonable request, at the regional office of the director nearest the location at which the public hearing was held.

61904. Any provisions of a stabilization and marketing plan formulated, established, or rejected by the director pursuant to this chapter, shall be accompanied by written statements, which shall be made available by the director to any interested person upon request, stating in substance the considerations upon which such plan provisions and minimum prices are based, or upon which such provisions and prices were rejected.

Article 5. Classes of Market Milk

61931. Market milk may be classified for the purposes of this chapter as provided in this article.

61932. Class 1 comprises:

(a) Any market milk, market skim milk, half-and-half, or concentrated milk that is supplied to consumers in the fluid state, with the exception of the following:

(1) Any combination of market milk or market skim milk which is sterilized and packaged in hermetically sealed containers.

(2) Any flavored milk product or market half-and-half which is ultra-pasteurized and packaged in hermetically sealed containers.

(3) Any market half-and-half which is packaged in presterilized containers under aseptic conditions to meet the marketing requirements for such products in states other than this state; provided, however, that nothing in this paragraph shall authorize the sale within this state of any milk product as a sterilized product unless such product meets the standards and requirements for sterilized products contained in Division 15 (commencing with Section 32501).

(b) Any market milk, market skim milk, or market cream which is used in any other milk product, or products resembling milk products, in which the use of market milk or any components or derivatives of market milk is required by, or pursuant to, the provisions of this code, except any such product defined in Section 61933 as class 2.

(c) Any market milk, market skim milk, market cream, market milk fat, or market milk solids not fat which is used in the standardizing or fortifying of any milk product which is defined in this section as class 1.

(d) Any market milk, market skim milk, or market cream which is used in any product not otherwise classified, which is required by

any regulations adopted by the director pursuant to Article 2 (commencing with Section 36631), Chapter 1, Part 3 of Division 15 to be made from market milk or any components or derivatives of market milk.

(e) Any market milk, market skim milk, market cream, market milk fat or market milk solids not fat used in any filled product or imitation milk product, when the product imitated or resembled, is defined in this section as class 1.

61933. Class 2 comprises any market milk, market skim milk, or market cream used in the manufacture of market cream, homogenized market cream, sour cream, sour cream dressing, uncreamed, creamed, or partially creamed cottage cheese, and buttermilk. Class 2 also comprises any market milk, market skim milk, or market cream used in the manufacture of any product defined in paragraph (1), (2), or (3) of subdivision (a) of Section 61932 or for which a definition and standard is prescribed in Division 15 (commencing with Section 32501), except any such product which is included in class 1, class 3, or class 4.

61934. Class 3 comprises all market milk, market skim milk, or market cream used in the manufacture of frozen dairy products.

61935. Class 4 comprises all market milk, market skim milk, or market cream, used in the manufacture of butter, cheese other than cottage cheese, dried milk, dried skim milk, nonfat dry milk solids, defatted milk solids, dried buttermilk, and all market milk, market skim milk, or market cream which is supplied to consumers as condensed milk, condensed skim milk, evaporated skim milk, evaporated cream or clotted cream, or evaporated milk, or any product for which no definition and standards are prescribed in Division 15 (commencing with Section 32501), except the products defined in paragraph (2) of subdivision (a) of Section 61932.

61936. If the director establishes a temporary definition and standards for any new milk product pursuant to Article 2 (commencing with Section 36631), Chapter 1, Part 3 of Division 15, he shall assign such new product to that class under this article which includes the most nearly comparable product as determined by the director.

61937. Market milk, market skim milk, or market cream, utilized in bulk by handlers as condensed milk, condensed skim milk, evaporated skim milk, evaporated cream or clotted cream, or evaporated milk, shall be assigned by the director to the classification of ultimate usage of such market milk, market skim milk, or market cream.

Article 6. Marketing Areas

61961. The director shall designate marketing areas which he deems necessary or advisable to effectuate the purposes of this chapter, and in which he finds the conditions affecting the

production, handling, and sale of market milk, are reasonably uniform.

61962. The director may establish additional areas, or modify areas previously established, if he deems the establishment or modification of such areas necessary or advisable to effectuate the purposes of this chapter.

61963. If the director finds, after a public hearing in and for each particular marketing area under consideration for consolidation, that conditions of production and handling are reasonably uniform in two or more such marketing areas in which stabilization and marketing plans are in effect, he may consolidate the areas.

Article 7. Formation and Adoption of Stabilization and Marketing Plans

61991. Except as otherwise provided in Section 61992, the director shall, prior to the formulation of a stabilization and marketing plan for market milk for any marketing area, conduct a public hearing in the area for the purpose of determining whether or not the formulation of a stabilization and marketing plan for market milk for such area is desired by producers whose major interest in the market milk business is in the production of market milk for the marketing area and that both:

(a) Represent not less than 65 percent of the total number of producers whose major interest in the market milk business is in the production of market milk for the marketing area.

(b) Produce not less than 65 percent of the total volume of the market milk produced for the marketing area by all such producers.

61992. A hearing need not, however, be held if a petition requesting a stabilization and marketing plan is presented to the director by the producers whose major interest in the market milk business is in the production of market milk for the marketing area, and that both:

(a) Represent not less than 65 percent of the total number of producers whose major interest in the market milk business is in the production of market milk for the marketing area.

(b) Produce not less than 65 percent of the total volume of the market milk produced for the marketing area by all such producers.

61993. If the director finds that a stabilization and marketing plan is necessary to accomplish the purposes of this chapter, he shall formulate a stabilization and marketing plan for market milk for such area and issue a notice of public hearing upon the plan which is formulated to all producers and handlers of record with the department that may be subject to the provisions of such plan.

61994. The notice of the hearing may be effected by mail, or by publication pursuant to Section 6062 of the Government Code in the area which is designated. It shall specify the time and place of such hearing, which shall not be prior to 15 days from the mailing, or from

the final publication of such notice. If no daily newspaper of general circulation is published in the area which is designated, publication pursuant to Section 6066 of the Government Code shall be considered proper publication of notice.

61995. At the hearing, interested parties shall be heard and records kept of the proceedings of such hearing for determination by the director whether the plan proposed will accomplish the purposes of this chapter.

61996. If, after the public hearing, the director determines that the proposed plan will tend to accomplish the purposes of this chapter within the standards which are prescribed in it, he shall issue an order to all producers and handlers of record with the department and subject to the provisions of such plan, declaring such plan in effect within 45 days from the date of such hearing; provided, however, that after a consolidated hearing held pursuant to Section 61902, the director shall declare such plan in effect within 62 days from the date of such hearing. The director shall announce any order under this section at least 10 calendar days prior to the effective date of such plan.

61997. A handler that is subject to the provisions of any stabilization and marketing plan shall not purchase milk from any producer that does not comply with this chapter and such plan.

61998. No stabilization or marketing plan shall contain provisions the purposes of which are to establish limitations upon the production of market milk.

Article 8. Amendment and Termination of Stabilization and Marketing Plans

62031. The director may amend or terminate any stabilization and marketing plan, after notice and public hearing as prescribed in Article 7 (commencing with Section 61991) of this chapter, if he finds that such plan is no longer in conformity with the standards which are prescribed in, or will not tend to effectuate the purposes of, this chapter. Any order under this article amending or terminating any stabilization and marketing plan shall be subject to the provisions of Section 61996.

62032. A hearing on the amendment or termination of a stabilization and marketing plan may be held upon the motion of the director and shall be held upon receipt of a petition which is signed by producers, or by the board of directors of any nonprofit agricultural cooperative marketing association which is authorized by its members to so petition. Such petition shall represent not less than 55 percent of the total number of all producers and not less than 55 percent of the total production of all producers that are eligible to petition the director for the formulation of such a plan.

Article 9. Establishment of Minimum Prices and Provisions of Stabilization and Marketing Plans

62061. Each stabilization and marketing plan shall contain provisions for prohibiting producers and handlers from engaging in the unlawful trade practices applicable to them that are set forth in Article 10 (commencing with Section 62091) of this chapter.

62062. Each stabilization and marketing plan shall contain provisions whereby the director establishes minimum prices to be paid by handlers to producers for market milk in the various classes. The director shall establish such prices by designating them in the plan, or by adopting methods or formulas in the plan whereby such prices can be determined, or any combination of the foregoing. If the director directly designates prices in the plan, such prices shall be in reasonable and sound economic relationship with the value of milk used for manufacturing purposes. If the director adopts methods or formulas in the plan for designation of prices, such methods or formulas shall be reasonably calculated to result in prices which are in a reasonable and sound economic relationship with the value of milk used for manufacturing purposes.

In establishing such prices, the director shall take into consideration any relevant economic factors, including, but not limited to the following:

(a) The reasonableness and economic soundness of market milk prices in relation to the costs of producing and marketing market milk for all purposes, including manufacturing purposes. In determining such costs, the director shall consider the cost of management and a reasonable return on necessary capital investment.

(b) That prices established pursuant to this section shall insure an adequate and continuous supply, in relation to demand, of pure, fresh, wholesome market milk for all purposes including manufacturing purposes, at prices to consumers which, when considered with relevant economic criteria, are fair and reasonable.

(c) That the prices established by the director for the various classes of market milk bear a reasonable and sound economic relationship to each other.

In establishing such prices, the director shall also take into consideration all the purposes, policies, and standards contained in Sections 61801, 61802, 61805, 61806, 61807, 62077, and 62078.

62063. Subject to the provisions of Sections 62075 and 62076, each stabilization and marketing plan shall contain provisions whereby the director shall provide methods for the establishment of minimum prices for market milk received within a marketing area regardless of whether such milk is subsequently sold or distributed within or without such marketing area within the jurisdiction of this state, and may contain such provisions whether or not such market milk is subsequently sold or distributed outside the jurisdiction of this

state.

62064. Each stabilization and marketing plan shall provide all of the following:

(a) For the establishment of prices for market milk, whether or not such market milk is subsequently sold or distributed in another marketing area within this state where a stabilization and marketing plan is in effect.

(b) That, if area of usage pricing is in effect, producers shall be paid not less than the minimum prices established for the marketing area wherein such market milk is ultimately sold or distributed.

(c) That, if area of usage pricing is in effect and such market milk is subsequently sold or distributed in any place within the jurisdiction of this state where no stabilization and marketing plan is in effect, such market milk shall be paid by the handler to the producer at not less than the average of prices which are paid by handlers, whose plants are located within such area, to producers for market milk. If, however, no plants are located within such area, the price which shall be paid by the handler to the producer shall not be less than the average of prices which are paid by handlers to producers for market milk, at the plants in the nearest marketing areas adjacent to the area where such market milk is sold or distributed, as established by the stabilization and marketing plans in effect in such adjacent marketing areas.

62065. No amendment of this article terminates or invalidates any provision of any stabilization and marketing plan which has been established by the director prior to the effective date of such amendment. Each such plan shall, however, be brought into conformity with such amendment at the earliest practicable date after the effective date of such amendment.

62066. Notwithstanding any other provision of this code to the contrary, the director, in establishing minimum prices to be paid by handlers to producers, for market milk in any marketing area, may establish, as the applicable minimum prices, those prices applicable within the marketing area of ultimate usage of such market milk, those prices applicable within the marketing area where the plant of first receipt of such market milk is located, those prices applicable in the marketing area where the producers place of production is located, or any of the above or any combination of the above.

62067. Each stabilization and marketing plan may contain provisions which require handlers to report to each producer from whom market milk is secured all of the following:

(a) The volume of market milk received from such producer in pounds of milk.

(b) The milk fat, solids-not-fat, or other component tests of such milk.

(c) The amount of market milk in pounds of milk fat, solids-not-fat or other components paid for in the several classes or pools.

(d) The prices paid for the various classes for each month.

62068. Each stabilization and marketing plan may contain provisions which authorize any handler that purchases market milk under contract from any producer to pool such market milk for producer payment purposes in accordance with such contracts, irrespective of whether such market milk is actually and physically received at the same milk products plant or diverted, in accordance with such plan. Such provisions may do any of the following:

(a) Provide that market milk that is received from producers by milk products plants under the same ownership, may be pooled for purposes of payment to producers.

(b) Provide that if a handler pools market milk, as provided in subdivision (a), the handler shall allocate, among all producers that participate in the class 1 usage, transportation savings which are applicable to market milk, not actually transported between the plant of first receipt and one or more other plants subject to the pool, and used for class 1, and may pay to producers shipping market milk directly to a plant subject to the pool a price for usage of such market milk for class 1, which price represents the average of minimum producer prices payable by that particular plant for such class 1 usage.

62069. The director may establish minimum prices to be paid by handlers to producer-handlers for milk not used by the purchasing handler as class 1 milk. Such provisions may provide that such milk, if used in classes other than class 1 by the purchasing handler may be paid for at the minimum prices established by the director for such other usage but which shall not be less than the prices as found by the director to be paid by manufacturing milk plants in, or adjacent to, the area which use milk for similar purposes. Such prices shall remain in effect only for the period during which, as determined by the director, there is a surplus of producer-handler milk.

62070. Each stabilization and marketing plan may further provide for maximum charges for plant processing and transportation service on the market milk or market milk components which are transported to the area where sold. The stabilization and marketing plan may enumerate the applicable maximum charges, and may establish individual charges for each function enumerated. In establishing any such maximum charges for such transportation services, the director shall base such maximum charges upon the rates which are charged for actual or reasonably similar services by highway carriers, as the term "highway carriers" is defined in Section 3511 of the Public Utilities Code.

62071. Each stabilization and marketing plan may provide for minimum charges for the various services performed or rendered by a nonprofit cooperative association in respect to class 1 market milk sold or delivered to another handler. Handler services include component testing for payment purposes, quality control, producer payroll, weighing and sampling of bulk market milk. Each

stabilization and marketing plan may also include, but not be limited to, minimum charges for the handling of intermittent or irregular deliveries of market milk and plant standby services. The stabilization and marketing plan may enumerate applicable minimum charges and establish individual charges for each service enumerated or, in the alternative, the director may establish one or more minimum charges covering one or more of the separate handler services.

62072. In establishing minimum handler service charges under Section 62071, the director shall take into consideration all relevant factors, including, but not limited to, the following:

(a) The reasonably necessary costs of providing such services, including overhead, as determined by impartial cost surveys, examination of books and records, or both, of such portions of those handlers within the marketing area as are reasonably determined by the director to be sufficiently representative to indicate such costs of all reasonably efficient handlers within such marketing area.

(b) The relationship of the establishment of such minimum charges to the achievement and maintenance of the orderly marketing of market milk and to the effectuation of the purposes of this chapter.

62073. If any contract between a handler and a producer for the purchase of any market milk provides that the charges for the hauling of it shall be paid, in whole or in part, by the producer, and such hauling is done by the handler either directly or through an agent or by any person that contracts with, or is designated by, such handler for such hauling, the director may, and upon the written request of the producer or the written request of any association representing the producer shall, investigate the rates, terms, and conditions which are involved in such hauling in order to determine whether such rates, terms and conditions are in compliance with Section 62070.

If the director determines that such rates, terms, and conditions are not in compliance with Section 62070, he shall determine, within the standards which are prescribed in Section 62070, the maximum charges on account of such hauling that will comply with Section 62070 with respect to such purchase of market milk.

62074. If the director establishes a stabilization and marketing plan for market milk, the director shall establish minimum prices to be paid by handlers for market cream, market skim milk, or milk fat, or market skim milk components of such market milk.

62075. The director shall establish the minimum prices to be paid by handlers to producers for class I usage of market milk upon a milk fat, solids-not-fat or the subcomponents thereof, and fluid carrier basis. In establishing the minimum prices for classes of market milk other than class I, separate prices may be established for any one or more of the following:

(a) The milk fat contained in such milk.

(b) The solids-not-fat or subcomponents thereof contained in such milk.

(c) The fluid contained in such milk.

(d) Any combination of the milk fat, the solids-not-fat or subcomponents thereof, or the fluid contained in such milk.

62076. In establishing prices to be paid by handlers to producers for class 2, class 3 or class 4 market milk, the director may take into consideration any relevant economic factors, including, but not limited to, the following:

(a) The relative market value of the various products yielded from such market milk.

(b) The market price of other milk which may be used for the same purposes that are set forth in such respective classes.

(c) The value of milk used for manufacturing purposes giving consideration to any relevant factors including, but not limited to, product prices, product yields, and manufacturing costs of the lowest class of usage of manufactured products.

62077. A handler shall not pay any producer less than the applicable price established for the usage to which the market milk, purchased from him is applied pursuant to accounting procedures established by the director. If the market milk is not applied to any purpose set forth in Article 5 (commencing with Section 61931), then a handler shall not pay any producer less than the price established under the applicable stabilization and marketing plan for class 4 usage.

62078. All handlers who receive market milk within this state shall be obligated to pay minimum producer prices established under this chapter regardless of the area of origin of such milk, whether inside or outside the jurisdiction of the State of California.

Article 10. Unlawful Trade Practices

62091. The unlawful trade practices described in this article apply to every handler whether or not a stabilization and marketing plan is in effect in the area in which the handler is licensed or carries on his business. This article applies to transactions conducted, either directly or indirectly, between producers and handlers.

62092. The payment, allowance, or acceptance of any secret rebate, secret refund, or unearned discount by any person, whether in the form of money or otherwise, is an unlawful trade practice.

62093. The giving of any milk, cream, dairy product, service, or article of any kind, except to a bona fide charity, for the purpose of securing or retaining the market milk business of any customer is an unlawful trade practice.

62094. The payment, gift, or the offer or promise of any payment or gift, of money or other thing of value, directly or indirectly, or through any agent or other intermediary, to any person with the purpose or design of inducing such person to become or remain the

wholesale customer of any handler is an unlawful trade practice.

62095. The payment, gift, or the offer or promise of any payment or gift, of money or other thing of value by any person, directly or indirectly or through any agent or other intermediary, to any handler or producer, or the acceptance by any handler or producer of such payment or gift or thing of value is an unlawful trade practice if it is for any of the following:

(a) For the purpose of inducing a handler or producer to enter into a new contract, or to renew, extend, or modify an existing contract, for the purchase of market milk by a handler from a producer.

(b) As a condition upon which a handler will enter into a new contract, or renew, extend, or modify an existing contract for the purchase of market milk from a producer.

(c) For the purpose of enabling a handler to pay to a producer, or a producer to receive from a handler, less than the minimum class usage prices established by the director to be paid by handlers to producers for market milk.

62095.1. The payment by a handler, either directly or indirectly, of less than the minimum producer price established under the applicable stabilization and marketing plan adopted pursuant to this chapter, is an unlawful trade practice.

62096. Except as otherwise provided in Section 62098, the purchase of any market milk in excess of 200 gallons monthly from any producer unless a written contract, which complies with all of the requirements which are prescribed by this section, has been entered into with such producer is an unlawful trade practice. The contract shall include all of the following:

(a) The amount of market milk which is to be purchased for any period.

(b) Except as otherwise provided in this subdivision, the minimum quantity of such market milk which is to be paid for as class 1, if any, is to be purchased for class 1 purposes. The quantity shall be stated in pounds of market milk, pounds of market milk fat, or gallons of market milk, unless the price which is to be paid for such class 1 market milk is established separately for the market milk fat and market skim milk contained in such market milk. If it is, the quantity to be paid for as class 1 shall be stated in pounds of market milk, pounds of market milk fat, or gallons of market milk, or both in pounds of market milk fat and pounds of market skim milk separately.

The minimum quantity of market milk to be paid for as class 1 shall not be less than 70 percent of the total quantity provided in the contract to be purchased at a milk products plant, and not less than 60 percent of the total quantity of market milk fat, or the total quantity of market skim milk components, but not necessarily both, provided in the contract to be purchased at a country plant, as defined by the director in stabilization and market plans.

(c) The price to be paid for all market milk received.

(d) The date and method of payment for such market milk, which shall be that payment shall be made for approximately one-half of the market milk delivered in any calendar month not later than the first day of the next following month and the remainder not later than the 15th day of that month.

(e) The charges for transportation if hauled by the handler.

(f) A proviso that no market milk received within the total quantity provided by the contract to be purchased for any period shall be paid for at less than the minimum price for market milk used for class 2.

The contract may contain such other provisions as are not in conflict with this chapter. A signed copy of such contract shall be filed by the handler with the director within five days from the date of its execution.

Subdivisions (b), (d), and (f) shall not be applicable if an equalization pool, as provided for under Chapter 3 (commencing with Section 62700) is in effect for the area in which the purchase of the market milk occurs.

62097. The production of market milk in excess of amounts provided to be purchased under contracts executed pursuant to Section 62096 shall be voluntary on the part of the producer and shall not be a condition, oral or written, of execution or renewal of any such contract.

62098. Section 62096 does not apply to the purchase of market milk which is necessary to meet an unanticipated increase in demand or an unanticipated shortage in the supply of a handler if both:

(a) The quantity of market milk so purchased from any one producer does not exceed 1,000 gallons in any one month.

(b) A complete record of all such purchases is kept by the handler and the price paid for such milk by the handler is not less than the price which is established in the applicable stabilization and marketing plan for the usage to which such milk is applied.

62099. The payment by a handler to any producer, including any nonprofit cooperative association acting as a producer, or the receipt by a producer, including any nonprofit cooperative association acting as a producer, from a handler of a lesser price for any market milk, distributed to any person, including any agency of federal, state, or local government, for less than the minimum prices established by the director to be paid by handlers to producers for market milk for the marketing area is an unlawful trade practice.

62100. The failure of any handler to pay for market milk delivered to him at the time and in the manner specified in the contract with the producer is an unlawful trade practice.

62101. The provisions of this article apply regardless of the form in which market milk is received by the handler, and regardless of the area of origin of such market milk.

Article 11. Sales to the United States

62121. The director may require that each person that submits a bid for the sale to an agency of the United States government of market milk or any milk product which utilizes class 1 market milk shall file with the director, at the same time such bid is submitted, a complete copy of such bid and the following certification:

"The undersigned certifies that in sales by the undersigned to agencies of the United States Government, pursuant to the attached bid, for market milk or milk products utilizing class 1 market milk, as such class 1 market milk is defined in Chapter 2 (commencing with Section 61801), Part 3, Division 21 of the Food and Agricultural Code, the undersigned is complying with all California statutes and regulations pertaining to the establishment and enforcement by the Director of Food and Agriculture of minimum prices to be paid producers for such class 1 market milk."

All bids and certifications filed pursuant to this section shall be confidential and shall not be divulged except when necessary for the proper determination of any court proceeding or hearing before the director.

Article 12. Handlers' Licenses

62141. The licenses provided for in this article are required for each handler. For the purposes of this article, each subsidiary milk plant or branch milk plant, whether under one ownership or not, shall be considered as an individual handler.

62142. For the purposes of this article, "handler" shall include any person defined as a handler under Section 61826 or any person defined as a distributor under Section 61306 that purchases or handles market milk or market cream for processing, manufacture, or sale.

62143. A handler shall not deal in market milk unless such handler first obtains a license from the director for each milk plant owned or operated by the handler. The license provided for in this article is in addition to any license which is required by Division 15 (commencing with Section 32501), or by any law or ordinance of any county or municipality of this state.

Notwithstanding the provisions of Section 61832, "milk plant" as used in this article, means any place, structure, or building where a handler receives market milk and weighs, tests, standardizes, pasteurizes, homogenizes, separates, bottles or packages such milk. "Milk plant" does not include a place, structure, or building which is used for the purpose of receiving, weighing, or testing milk to be diverted or delivered to a licensed milk plant of the handler.

62144. Applications for the license provided by this article shall be made on forms prescribed by the director, shall be accompanied by an application fee of three dollars (\$3), and shall state the name

and address of the applicant and such details as to the nature of the applicant's business as the director may require. Such applicant shall further satisfy the director of his or its character, responsibility, and good faith in seeking to carry on the business stated in the application.

62145. Licenses shall be issued for a period of 12 months from the first day of each year or for the remainder of the calendar year from the date of issuance. Application for renewal of a license for the following year by a licensee, together with the application fee of three dollars (\$3), shall be made prior to the expiration date of the license held. If it is not so made, the applicant shall pay an additional sum equal to 100 percent of the application fee before such license shall be issued.

62146. The director may refuse to grant or renew any license if he is satisfied that any applicant, or any person connected with the applicant, either directly, or indirectly has violated any of the following:

(a) This chapter or any stabilization and marketing plan or other regulation adopted under this chapter.

(b) The unlawful trade practices provisions set forth in Article 5 (commencing with Section 61371) of Chapter 1 of this part.

(c) Chapter 3 (commencing with Section 62700) or any pooling plan established thereunder.

62147. The director may also refuse to grant or renew any license to a handler if he is satisfied that the handler has failed to pay for any market milk delivered to him at the time and in the manner specified in the contract with the producer.

62148. The proceedings to determine whether or not the director shall refuse to grant or renew a license shall be conducted in accordance with Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code, and the director shall have all of the powers granted in such chapter.

62149. The decision may include an order refusing to grant or renew the license applied for, or affixing such other conditional and probationary orders as may be proper for the enforcement of any of the following:

(a) This chapter or any stabilization and marketing plan formulated pursuant to this chapter.

(b) The unlawful trade practices provisions set forth in Article 4 (commencing with Section 61371) of Chapter 1 of this part.

(c) Any regulation duly adopted by the director pursuant to Section 61891.

62150. After any decision in favor of the issuance or renewal of a license which includes any conditional or probationary orders, if the person to whom the license is issued does not comply with any such orders, the director may suspend or revoke the license in accordance with the procedure provided in Sections 62151, 62152, 62153, 62154, and 62155.

62151. The director may revoke or suspend, as the case may require, any license which is issued pursuant to this chapter, if he is satisfied that any licensee or any person who is connected with the licensee has violated any provision of any of the following:

(a) This chapter or any stabilization and marketing plan which is formulated pursuant to the provisions of this chapter.

(b) Any regulation which is adopted by the director pursuant to Section 61891.

(c) The unlawful trade practices provisions set forth in Article 4 (commencing with Section 61371) of Chapter 1.

(d) Chapter 3 (commencing with Section 62700) or any pooling plan adopted thereunder.

The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code, and the director shall have all the powers which are granted in such chapter.

62152. The director may also revoke or suspend any license of a handler if he is satisfied that the handler has not paid for any market milk delivered to him at the time and in the manner specified in the contract with the producer.

62153. The decision may include an order revoking or suspending the license held by the licensee, or affixing such other conditional and probationary orders as may be proper for the enforcement of this chapter or any provision of any stabilization and marketing plan formulated pursuant to the provisions of this chapter or of any regulation adopted by the director pursuant to Section 61891.

62154. After any decision, which includes any conditional or probationary orders, if the respondent does not comply with any such orders, the director may suspend or revoke the license in accordance with the procedure which is provided in this article.

62155. Whenever the director is satisfied, either by investigation or after a hearing, that a handler is unable to pay for any market milk purchased from any producer, and is further satisfied that to permit the handler to continue to purchase and receive any market milk from producers would be likely to cause serious and irreparable loss to producer-creditors and other producers, the director may thereupon and forthwith shorten the time for hearing that is provided for in Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code, and thereupon may issue an order to show cause why the license of such handler should not be forthwith suspended or revoked. The time of notice of the hearing shall not, however, be less than five days. At such hearing the handler that is proceeded against shall be ordered to show cause why the license should not be suspended or revoked, or continued under such conditions and provisions, if any, as the director may consider just and proper and for the protection of the best interests of the producer-creditors and producers from whom the handler has been and is receiving any market milk. Following such hearing, the

decision of the director shall become effective at his discretion.

The hearing, in the case of such emergency, may be called upon written notice which is served personally or by mail on the handler that is involved. It may be held at the nearest office of the director or at such place as may be most convenient in the discretion of the director for the attendance of all of the parties that are involved.

Article 13. Handlers' Bonds

62181. The bonds provided for in this article are required for each handler. For the purposes of this article, each subsidiary milk plant or branch milk plant, whether under one ownership or not, shall be considered as an individual handler.

62182. Every handler before purchasing any market milk from a producer shall execute and deliver to the director a surety bond, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The minimum amount of the bond shall be based upon the average daily quantity of market milk purchased by the handler during any calendar month during a license year.

The minimum amount of the bond shall be as follows:

(a) One thousand dollars (\$1,000) for any handler that purchases an average daily quantity of market milk of less than 100 gallons.

(b) Two thousand dollars (\$2,000) for any handler that purchases an average daily quantity of at least 100 gallons but less than 200 gallons.

(c) Three thousand dollars (\$3,000) for any handler that purchases an average daily quantity of at least 200 gallons but less than 300 gallons.

(d) Five thousand dollars (\$5,000) for any handler that purchases an average daily quantity of 300 gallons or more.

62183. If any handler so increases his purchases of market milk during the license year that such purchases exceed the amount for which the handler is bonded, such handler shall forthwith post such additional bond as may be required to comply with this article.

62184. The bonds required by Sections 62182 and 62183 shall be upon a form approved by the director, and shall be conditioned upon the payment in the manner that is required by this chapter, of all amounts due to producers for market milk purchased by such licensee or applicant during the license year. It shall be to the state in favor of every producer of market milk.

62185. If a handler fails to pay any producer or producers for market milk in the manner that is required by this chapter, the director shall proceed forthwith to ascertain the names and addresses of all the producers that the handler has failed to pay, together with the amounts due and owing to them and each of them by such handler, and shall request all such producers to file a verified statement of their respective claims with the director. The producer

need only verify that he is owed an amount by the handler. The actual amount in such case may be ascertained by the director.

62186. After determining the claims of such producers, the director shall bring an action on the bond on behalf of such producers.

Any producer not satisfied with the amount of such producer's claim as determined by the director, or with the ratio such producer's claim bears to all claims against the bond as determined by the director, may intervene in such an action so that the correct amount of his claim and the ratio it bears to all the claims may be adjudicated.

62187. Upon any action being commenced upon the bond, the director may require the filing of a new bond in such amount as determined by the director as will be sufficient to satisfy claims for payment of producers thereafter supplying market milk to such handler, and immediately upon a recovery in any such action upon such bond, the failure of a handler to have filed a new bond within 10 days after notice from the director constitutes grounds for the revocation or suspension of the license of such handler.

62188. If recovery upon the bond is not sufficient to pay all of the claims as finally determined and adjudged by the court, any such amount recovered shall be divided pro rata among the producer-creditors.

62189. The failure of any handler that purchases market milk from producers to execute and deliver the bond as provided and required in this article is a violation of this chapter. The failure of any such handler to post any additional bond as may be required to comply with any provision of this chapter is also a violation of this chapter.

62190. Payments by a handler to a producer, for the purposes of any action on a handler's bond or bonds for any year or years, shall be credited first to interest and then to principal due, owing, and unpaid. Amounts to be applied to principal shall be applied first to the amount due for the most recent deliveries and then successively, in descending order, to the amounts due to the next most recent deliveries.

Article 14. Administrative Fees

62211. Every handler subject to the provisions of any stabilization and marketing plan, including a producer-handler, shall deduct as an assessment from payments made to producers for market milk, including the handler's own production, the sum of one and six-tenths cents (\$0.016) per hundredweight of market milk.

The amount of the assessments so deducted shall be paid to the director on or before the 45th day following the last day of the month during which such market milk was received.

Every handler subject to the provisions of any stabilization and marketing plan that purchases or handles market milk from producers, including the handler's own production, if any, shall pay

a fee of eight-tenths of one cent (\$0.008) per hundredweight of market milk.

The amount of such fee shall be paid to the director on or before the 45th day following the last day of the month in which such market milk was received.

62212. The director may fix the rates of assessments or fees required by Section 62211 at lesser amounts, and may adjust such rates of assessments or fees from time to time, whenever he finds that the cost of administering the provisions of this chapter can be defrayed from revenues derived from such lower rates, provided that the rate of assessments deducted from payments to producers for market milk, including the handler's own production, and the rate of fees paid by handlers shall at all times be in the ratio of two to one.

62213. Any assessment or fee or either of them payable pursuant to any provision of this article is a debt of the person by whom such assessment or fee or either of them is payable and shall be due and payable to the director upon the date set forth in Section 62211. If such person does not pay such assessment or fee or either of them upon the required date, the director may file a complaint against such person in a state court of competent jurisdiction for the collection of such assessment or fee or either of them.

If any such person does not pay to the director the assessments or fees or either of them provided for in this article, on or before the date specified in Section 62211, the director may add to such unpaid assessments or fees or either of them an amount not exceeding 10 percent of such unpaid assessment or fees or either of them to defray the cost of enforcing the collection of such unpaid assessments or fees or either of them.

Article 15. Reports and Statistics

62241. All handlers shall make and file with the director at least once each month such reports as the director may require to enable him to enforce the provisions of this chapter.

62242. Every handler that purchases market milk shall make and keep for one year a correct record which shows in detail all of the following with reference to the handling, sale, or storage of such market milk:

- (a) The name and address of the seller.
- (b) The date the market milk was received.
- (c) The amount of market milk received.
- (d) The official tests of the market milk purchased.
- (e) The usage of the market milk.
- (f) Evidence of payment for the market milk purchased.
- (g) Such further records as the director may require.

62243. Any record or report made to the director pursuant to the provisions of this article is confidential and shall not be divulged,

except if necessary for the proper determination of any court proceedings or hearing before the director.

Article 16. Testing, Weighing, and Sampling

62271. The director shall supervise the milk fat and milk solids not fat testing and the weighing and sampling of market milk delivered to handlers.

62272. The director may allocate from the funds which are derived pursuant to Article 14 (commencing with Section 62211) of this chapter such sum for any fiscal year, not exceeding ninety-five thousand dollars (\$95,000) which shall be used exclusively for the supervision and checking the correctness of the milk fat, milk solids not fat, and bacteriological tests and the weighing and sampling of all market milk delivered to handlers in accordance with the stabilization and marketing plans established pursuant to the provisions of this division.

Article 17. Local and Regional Producer Advisory Boards

62301. Except as otherwise provided in Section 62303, the director may, if he deems such board necessary or advisable, appoint:

(a) A local advisory board for any marketing area established as prescribed in this chapter to assist and advise him in matters which pertain to the production and marketing of market milk or to the operation of a stabilization and marketing plan.

(b) A regional advisory board, if he deems such board necessary or advisable to represent several marketing areas adjacent to each other and wherein production conditions and costs are reasonably uniform.

62302. Except as otherwise provided in Section 62303, the director shall appoint:

(a) A local advisory board, if a majority of the producers individually, or through any nonprofit agricultural cooperative marketing association which is authorized by its members to so petition, request the establishment of such board.

(b) A regional advisory board, if in each marketing area which is involved a majority of producers that supply such marketing areas individually, or through any nonprofit agricultural cooperative marketing association which is authorized by its members to so petition, requests that such a board be established.

62303. The director shall not establish any local or regional advisory board pursuant to this article if he finds that the assessments or fees which are collected pursuant to Article 14 (commencing with Section 62211) of this chapter from the marketing area are insufficient to cover the costs of such local or regional advisory board.

No regional advisory board shall be set up to include any marketing area which on September 7, 1955, was operating under a

local advisory board, unless by petition as provided for in this article or through public hearing, producers of such marketing area request that they be represented by a regional advisory board.

62304. If the director receives a qualified petition for a local advisory board, he may investigate the possibility of establishing a regional advisory board covering the marketing area from which the petition was received and the adjacent marketing areas, by holding one or more public hearings for the purpose of establishing whether or not a majority of producers supplying the marketing areas proposed to be included in such region desire such regional advisory board.

62305. A local advisory board established pursuant to this article shall consist of seven members who shall be producers that supply market milk to the particular marketing area. A regional advisory board may consist of any number of members who are producers that supply market milk to any of the marketing areas in the region, but shall consist of not less than one member from each such marketing area in the region.

62306. The term of office of each member of a regional advisory board or a local advisory board shall be two years.

62307. The director may remove any member from a local or a regional advisory board if he finds, after a hearing, that such member is guilty of nonfeasance or malfeasance in office.

62308. The director may appoint a member to fill any vacancy on a local or a regional advisory board.

62309. Each regional advisory board and each local advisory board may meet in regular session each month, and each member shall be allowed twenty dollars (\$20) per diem and mileage at the rate of fifteen cents (\$0.15) per mile for attending such regular meetings, and any other meeting or conference which is called or authorized by the director within or outside of the boundaries of this state.

62310. Any regional or local advisory board may, with the previous approval of the director, employ such personnel as may be necessary in the performance of its duties and shall adopt regulations for its conduct. Each such board shall submit a budget of its expenses to the director for his approval.

The funds to be used for the maintenance of each such board shall be paid from the proceeds of assessments and licenses which are paid to the director under the plan of any area which is represented upon verified claims that are presented by the board to the director. A regional or local advisory board shall not incur any expenses except those for per diem and mileage, unless the expenses are approved by the director.

62311. Regional and local advisory boards shall review with the director the methods which are to be used in determining producer costs, and aid the director in the selection of the level of production which is necessary to meet the requirements of Section 62062 with respect to producer price minimums.

62312. For purposes of developing uniformity of administration as between marketing areas in which producer advisory boards have been appointed, the director shall call together representatives of regional and local advisory boards from time to time to advise him as to the relationships in producer costs among the marketing areas, and may designate such representatives as the statewide committee of producer advisory boards.

62313. It is hereby declared, as a matter of legislative determination, that producers of market milk appointed to the regional advisory boards pursuant to this article are intended to represent and further the interest of a particular agricultural industry concerned, and that such representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are appointed to such advisory boards, the particular industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

Article 18. Actions and Penalties

62401. The violation of any provision of this chapter, or of any provision of any stabilization and marketing plan, or of any regulation adopted under this chapter, is a misdemeanor which is punishable by a fine of not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment. The amount of penalty which is assessed pursuant to this section on each count of violation shall be based upon the nature of the violation and the seriousness of the effect of such violation upon effectuation of the purposes and provisions of this chapter.

62402. Any person that violates any provision of this chapter, any provision of any stabilization and marketing plan, or any regulation adopted under this chapter, is liable civilly in an amount not less than one hundred dollars (\$100) and not to exceed one thousand dollars (\$1,000) for each and every violation. Such penalty is to be recovered by the director in any court of competent jurisdiction. The amount of penalty which is assessed pursuant to this section on each count of violation shall be based upon the nature of the violation and the seriousness of the effect of such violation upon effectuation of the purposes and provisions of this chapter. Any sum which is recovered under this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

62403. The director may bring an action to enjoin the violation, or the threatened violation, of any provision of this chapter, any provision of any stabilization and marketing plan, or any regulation adopted under this chapter in the superior court in the county in which such violation occurs or is about to occur. There may be enjoined in one proceeding any number of defendants alleged to be

violating the same provisions, orders, or regulations, although their properties, interests, residences, or places of business may be in several counties and the violations separate and distinct. Any proceeding which is brought pursuant to this section shall be governed in all other respects by the provisions of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure.

SEC. 6. Section 62702.1 is added to the Food and Agricultural Code, to read:

62702.1. It is recognized by the Legislature that the provisions for equalization of usages among producers and entry of new producers contained in the Gonsalves Milk Pooling Act, as originally enacted, and the pooling plan adopted thereunder, tended to achieve the purposes of that act; however, the provisions for more rapid equalization and additional new entry would more rapidly and effectively achieve the purposes of this chapter.

It is also recognized that some holders of pool quota and production base initially issued under the Gonsalves Milk Pooling Act have waited for several years for equalization, and that equalized producers have for a number of years not shared in any of the benefits of new quota created by new usage.

It is further recognized that it is necessary to promote and to attempt to assure more rapid equalization of the holders of pool quota issued subsequent to the initial allocation of production bases and pool quota pursuant to this chapter, and to provide for a program for entry and for equalization of new producers.

It is the purpose of the amendments to this chapter to provide a reasonable and equitable mechanism to permit more accelerated equalization, to equalize the holders of pool quota and production base initially issued under the Gonsalves Milk Pooling Act and who are not yet equalized, and to legislatively allocate in a fair and reasonable manner a share of new pool quota created by new usage to existing pool quota holders who are not equalized, to new producers, and to equalized pool quota holders who have not shared in the benefits of the growth of new usage since the original enactment of the Gonsalves Milk Pooling Act and the pooling plan thereunder.

SEC. 7. Section 62705 of the Food and Agricultural Code is amended to read:

62705. After the director, with the advice and assistance of the formulation committee, has formulated the proposed plan, which shall be within 90 days of the effective date of this chapter, he shall hold one or more public hearings in each proposed pooling area to be affected by the proposed plan for the purposes of considering modification of the proposed boundaries and formulating the pooling plan which will best accomplish the purposes of this chapter. Notice of such public hearings shall be given to each producer, including each member of cooperative marketing associations, who ships fluid

milk to a distributor and to each distributor who receives fluid milk from producers. The procedures for the giving of notice and the conducting of such hearings shall be the same as those provided in Chapter 2 (commencing with Section 61801) of this part for public hearings on stabilization and marketing plans.

SEC. 8. Section 62707 of the Food and Agriculture Code is amended to read:

62707. The formulation committee shall make recommendations to the director for inclusion in the pooling plan, and the director shall include in the pooling plan, the following:

- (a) The establishment of one or more pools throughout the state.
- (b) The base period to be used in determining the production and class 1 usage bases of each producer directly affected by the pooling plan. Such base period shall, at the producers option, be his fluid milk production and usage in the pool area during the calendar year 1967 on an average daily basis or his production and usage in the pool area during the last six months of 1966 on an average daily basis.

As to a producer south and east of San Geronio Pass, his production base may at his option, be four times his production in the months of December, 1966, and January and February, 1967.

If a producer, during any such base period, had a valid contract with a distributor, or as a member of a cooperative association had an allocation, which provided that the distributor or cooperative association was required to accept a larger amount of fluid milk from such producer than the producer actually produced during such period, on proof satisfactory to the director of such contract or allocation, the producer may, at his option, have the amount specified in the contract or allocation established as his production base.

- (c) The establishment of a class 1 usage for each producer, which shall be the amount of his production of fluid milk accounted for as class 1, and any fluid milk sold for use as class 1 to a United States military installation but which was not accounted for as class 1.

- (d) The allocation to each producer within any pool of a pool quota, which, initially, shall be 110 percent of that producer's class 1 usage, as determined in subdivision (c) of this section.

- (e) The determination of new class 1 usage and the allocation of pool quota based thereon in a manner consistent with effectuating the purposes of this chapter.

All producers who have not reached the equalization point shall share in such allocation of pool quota on the basis of a formula which shall give substantial weight to each producer's production base, but which at the same time shall allocate a larger percentage to hardship cases and low class 1 usage producers.

Such allocations shall be made on the basis of each individual producer, with each cooperative association considered as a single producer. The cooperative associations of producers shall reassign any new quota to their own members subject to the provisions of

Section 62710.

Annually, within not more than four months after August 31 of each year, the pool quota shall be adjusted by each component to reflect any such additional pool quota. It is intended that such increase shall generally reflect the increased class 1 usage which developed during the preceding year, adjusted for the director's estimate of class 1 requirements for the succeeding year, allocated in the manner specified in the pool plan. There shall be no downward adjustment of pool quota below the quota initially established pursuant to this chapter.

- (f) The establishment of production bases and pool quotas for new fluid milk producers who wish to enter the pooling plan after the effective date of the plan. The recommendations of the committee shall be reasonably equitable to both such new producers and to participating producers and consistent with effectuating the purposes of this chapter.

- (g) The transfer of production bases and pool quotas from one fluid milk producer to another under conditions so designed as to prevent abuses in such transfers and to avoid the development of excessive values for such bases and quotas.

- (h) Any and all other matters necessary and desirable to effectuate the provisions of this chapter.

The recommendations of the formulation committee and the pooling plan may provide exceptions from the plan's general application for individual cases of hardship.

SEC. 9. Section 62707.1 is added to the Food and Agriculture Code, to read:

62707.1. (a) The director, on July 1, 1978, shall issue new pool quota sufficient to bring all holders of production base and pool quota as of that date (excluding any production base and pool quota issued pursuant to subdivision (f) of Section 62707), to the equalization point both on the fat and the solids-not-fat components.

- (b) Subsequent to July 1, 1978, all allocations of new class 1 usage determined under subdivision (e) of Section 62707, shall be made as follows:

- (1) Forty percent to producers whose total production base and pool quota are below the equalization point, to be allocated according to provisions adopted by the director in the applicable pooling plan;

- (2) Forty percent to producers whose total production base and pool quota are equal to or above the equalization point, such allocation to each such producer to be in the same ratio to the total allocation under this subdivision as that producer's total holdings of quota bears to the total quota holdings of all equalized producers;

- (3) The remaining 20 percent shall be utilized for new producer allocations under subdivision (f) of Section 62707, according to the provisions in the then applicable pooling plan.

The terms "total production and pool quota" and "total quota"

shall for the purposes of this subdivision, include allocations of production base and pool quota issued pursuant to subdivision (f) of Section 62707.

SEC. 10. Section 62708 of the Food and Agricultural Code is repealed.

SEC. 11. Section 62708 is added to the Food and Agricultural Code, to read:

62708. "Producer-handler" for purposes of this chapter is any person that is both a producer and a handler of fluid milk or fluid cream. For the purposes of this chapter, a producer-handler is a producer in any transaction which involves the delivery of bulk fluid milk or bulk fluid cream which was produced by him to a handler, or any nonprofit cooperative association of producers and is a handler in any transaction which involves the purchase by him of fluid milk or fluid cream, the pasteurization or packaging of fluid milk or fluid cream, or the sale or delivery of packaged fluid milk or packaged fluid cream to any person.

A producer-handler, including partnerships or corporations with common ownership, where the ownership of the producing entity is substantially proportionate to the ownership of the handling entity, shall have the option, at the time of the adoption of the initial pooling plan under this chapter, to have a production base and pool quota established as a part of the pooling plan provided for in this chapter, or to elect to operate entirely outside of the pool for producer payment purposes. This option is available only in such cases where the producer-handler on January 1, 1968, exercised complete and exclusive control over the operation and management of a plant at which he processes milk received from his own milk production facilities, except for purchases in bulk or packaged fluid milk, fluid skim milk or fluid cream which do not exceed an annual average of 50 gallons per day or 5 percent of his total fluid milk sales, whichever is greater, and only in such case as the producer-handler had retail sales for its own account of not less than 66 2/3 percent of its total class 1 sales.

Any producer-handler electing to be excluded from the pool may at any later time be admitted to the pool, but with only the production base and pool quota to which he would have originally been entitled or his average daily production and class 1 usage during the 12 months preceding his entry into the pool, whichever is less.

SEC. 12. Section 62708.1 is added to the Food and Agricultural Code, to read:

62708.1. Any producer-handler who qualified and elected an exemption under Section 62708 and continued eligibility for such exemption by complying with the requirements of that section shall be entitled after January 1, 1978, to continue such exemption provided that such producer-handler maintains retail sales for his own account of not less than 50 percent of his total class 1 sales and his purchases do not exceed 25 percent of his total fluid milk sales,

except that any purchases exceeding 5 percent of such sales shall be from pool sources.

Any producer-handler qualifying for and electing an exemption under Section 62708, and maintaining such exemption under Section 62708 and this section, may, after January 1, 1978, elect during the 61-day period of August 1 through September 30 of any year to obtain a production base and pool quota under Section 62708 and enter the pool subject to the option provision of Section 62708.5.

SEC. 13. Section 62708.5 of the Food and Agricultural Code is repealed.

SEC. 14. Section 62708.5 is added to the Food and Agricultural Code, to read:

62708.5. A producer-handler for the purposes of this chapter shall also include, as a separate and distinct category of producer-handlers, any producer and any handler who purchases or handles fluid milk or fluid cream produced by such producer if they meet the requirement that all of the ownership of the handler and all of the ownership of the producer is owned by the same person or persons and their ownership in the producer or handler is at least 95 percent identical for each person with their ownership in the handler or producer. Such ownership shall not exceed 10 individual persons or owners of equitable interest in a partnership, corporation, or other legally constituted business association.

The ownership required by this section may be through a partnership, corporation or other legally constituted business association so long as the entities are owned by the same person or persons, and there is at least 95-percent identity of ownership for each person with their ownership in the handler or producer. For the purposes of this section a "person" or "persons" includes the spouse, or other persons of lineal consanguinity of the first or second degree or collateral consanguinity to the fourth degree as defined in the Probate Code, and their spouses, and includes an adopted child the same as a natural child and kindred of the half blood equally with those of the whole blood of the owner and ownerships by persons so related shall be considered single ownership by one person. For the purposes of this section, property pledged or hypothecated in any manner to others shall be considered "owned" so long as equitable ownership with management and control remain with the producer-handler.

Ownership as provided in this section shall have existed at the time of the base period selected by the producer under Section 62707 and at all other times thereafter.

Any such producer-distributor shall have the option within 90 days of the enactment of this section at the 1969 Regular Session:

(a) To join and operate wholly within such pool, or

(b) To have its entire original production base and pool quota determined during the base period it selected as a producer pursuant to Section 62707, established as a part of such pooling plan, and,

nevertheless elect to operate entirely outside of the pool to the extent of provisions of this section.

Any producer-handler who qualifies under this section and elects to operate outside the pool, to the extent of the authority granted, shall have the right to make deductions as follows from its own class 1 sales, excluding sales to a handler, whether in bulk or packaged, before being required to account to the pool:

(1) If it has not sold production base and pool quota subsequent to February 9, 1977, it may deduct its original quota, and quota purchased prior to January 1, 1978, plus a daily deduction of 150 pounds milk fat and 375 pounds solids not fat.

(2) If it has sold production base and pool quota subsequent to February 9, 1977, it may only deduct its original pool quota, and quota purchased prior to January 1, 1978.

(3) The deductions from class 1 sales authorized pursuant to this section may be made irrespective of the fact that the average class 1 usage in the pool for that month may be less than 100 percent of the pool quota in that pool.

Any production subject to this section from the producer-handler selecting this option shall not have the right to participate in the quota pool, irrespective of the fact that the producer-handler did not sell all of the quota as class I, and will participate in either the base pool or the overbase pool depending upon whether the total production base of the producer is sufficient to cover the milk delivered in excess of the class I usage exempted hereunder, otherwise the production in excess of the exempt producer-handler's own class I sales as herein defined shall be accounted for as overbase milk.

The fact that a producer-handler qualifies as to one of its milk production operations under this section does not prevent it from operating on an entirely separate nonqualifying basis (and therefore subject to pooling) at other milk production facilities, and with other nonqualifying persons at such other milk production facilities. A producer-handler can neither buy nor sell pool quota and transfer therewith the option granted under this division but this shall not prevent him from purchasing or selling pool quota or production base as otherwise provided in this chapter.

If at any time ownership as defined in this section ceases, the producer-handler shall no longer be eligible for the options in this section and shall account to the pool as a separate handler and shall be entitled to reentry into producer participation in the pool on the same basis as a producer-handler may under the last paragraph of Section 62708.

SEC. 15. Section 62712 of the Food and Agricultural Code is amended to read:

62712. (a) The director may require handlers, including cooperative associations acting as handlers, to make reports at such intervals and in such detail as he finds necessary for the operation of

the pool. In conjunction with the pools authorized by this chapter, the director may require handlers to make payments into a settlement fund for fluid milk received and the director may provide for the disbursement of moneys from the settlement fund in the course of administering such pools. The director may employ a pool manager to operate each pool and may permit such pool manager to employ such other necessary personnel and incur such expenses incidental to the operation of the pool as the director finds are necessary.

Handlers who have a financial obligation to the pool resulting from the operation of the pooling plan shall pay such obligations to the pool manager each month as requested. All of such moneys shall be deposited in a bank or banks approved by the director, and shall be paid out by the pool manager to handlers who have pool credits resulting from the operation of the pooling plan. All financial operations of each pool shall be audited by the Department of Agriculture at least once annually. The director may require handlers to make such deductions from amounts due to producers as he finds are necessary to establish a reserve fund to insure prompt payment to producers.

(b) The pool manager shall effectuate the purposes of Section 62711 by designating the percentage of each price class (i.e., classes 1, 2, 3, and class 4) to be paid within each pool settlement classification (i.e., quota pool, production pool, and overproduction pool), and in so doing he shall allocate the highest usage available, first to the quota pool, next to the production pool, and last to the overproduction pool.

(c) All pool quotas initially determined pursuant to Section 62707, except as modified pursuant to Section 62709, shall be recognized and shall not in any way be diminished.

SEC. 16. Section 62717 of the Food and Agricultural Code is amended to read:

62717. If the director finds that producers on a statewide basis have assented in writing to the proposed pooling plan submitted to them for assent, the director shall place the proposed pool plan into effect. The director shall find that producers have assented to the plan if he finds on a statewide basis that:

(a) Not less than 51 percent of the total number of eligible producers in the state shall have voted in the referendum; and

(b) Sixty-five percent or more of the total number of eligible producers who voted in the referendum who produced 51 percent or more of the total amount of fluid milk produced in the state during the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in referendum approve the plan; or

(c) Fifty-one percent or more of the total number of eligible producers who voted in the referendum who produced 65 percent or more of the total amount of fluid milk produced in the state during

the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in the referendum, approve the plan.

If the plan is not approved, the director may resubmit the plan, or submit a new plan, at any time after six months from the date the director announces the pool plan was not approved.

The director may amend the plan, after notice and public hearing has been given in the same manner as is provided in Chapter 2 (commencing with Section 61801) of this part for stabilization and marketing plans, if he finds that the amendment is necessary to effectuate the purposes of this chapter. After the hearing, the director upon his own motion may make nonsubstantive amendments to the plan. The director may make substantive amendments to the plan only if producers assent to the proposed amendments at a referendum conducted in the same manner and in the same number as provided for the referendum approving the pooling plan.

The director may terminate the plan on a statewide basis after notice and public hearing has been given in the same manner as is provided in Chapter 2 (commencing with Section 61801) of this part for stabilization and marketing plans, if he finds that the plan is no longer in conformity with the standards described in, or will not tend to effectuate the purposes of, this chapter. Such hearing may be held upon the motion of the director, and shall be held upon receipt of a petition signed by producers representing not less than 25 percent of the total number of all producers and not less than 25 percent of the total production of all producers.

The director shall submit the termination of the plan on a statewide basis in a referendum conducted in the same manner as provided for initial approval of such plan if, after notice and public hearing has been given in the same manner as is provided in Chapter 2 (commencing with Section 61801) of this part for stabilization and marketing plans, he finds that a substantial question exists as to whether or not producers desire the plan to continue and shall submit the plan for termination upon receipt of a petition requesting termination signed by producers representing not less than 25 percent of the total number of all producers and not less than 25 percent of the total production of all producers. The plan shall be terminated if termination is favored by the same percentage of producers producing the same amount of fluid milk as required to initiate the plan.

SEC. 17. Section 62719 of the Food and Agricultural Code is amended to read:

62719. The director shall, from nominations submitted by producers, appoint a review board composed of no less than 12 members to advise him in the administration of the pool plan. The director shall appoint three members of the first board for a one-year term, three members for two-year terms, three members for

three-year terms, and three members for four-year terms. Thereafter all appointments shall be for a term of four years and no member may be appointed to more than two four-year terms. The board members shall be producers and not more than three may be producer-managers of associations and not more than two shall be producer-handlers. The board members shall give proportionate representation to all areas of the state, with due regard to the relative production and usage of fluid milk in the various areas of the state. Each member of the review board shall be paid not less than twenty-five dollars (\$25) or more than thirty-five dollars (\$35) per day plus travel expenses, including expenses for lodging and meals, which are incurred in the attendance at board meetings or in conducting the business of the board; all per diem and expenses being subject to approval by the director.

SEC. 18. Section 62722 of the Food and Agricultural Code is repealed.

SEC. 19. Section 62722 is added to the Food and Agricultural Code, to read:

62722. Pooling plans shall not apply to the production of goats milk or producer-handlers who produce and sell less than 500 gallons of fluid milk used for class I purposes per day unless they specifically request entry into the pool at the time of the adoption of the initial pooling plan for that area. Producers of certified milk or guaranteed raw milk shall have the option, at the time of the adoption of the initial pooling plan under this chapter, to be subject to such plan, and accordingly to have a production base and pool quota established for such producer, or to be excluded from such plan.

(a) Any such producer of less than 500 gallons of fluid milk per day, or any such producer of certified milk, or any such producer of guaranteed raw milk, electing to be excluded from such plan, may at any later time be admitted to the pool, but with only the production base and pool quota to which he would have originally been entitled or his existing production and average daily class I usage during the 12 months preceding his entry into the pool, whichever is less.

(b) Any producer claiming exemptions from the provision of any pooling plan by reason of the provisions of Section 62708, 62708.1, or this section, who loses his exemption by failure to meet the requirements for exemptions set forth in those sections shall automatically be deemed to have applied for and become a part of a producer pool on September 1st following any year ended August 31st during which the director determines he is no longer entitled to exemption, and his admittance into such a pool shall be on the basis of the production base and pool quota calculations as set forth in those sections.

SEC. 20. Section 62723 of the Food and Agricultural Code is amended to read:

62723. Unless otherwise defined in this chapter, the definitions

contained in Chapter 2 (commencing with Section 61801) of this part govern the construction of this chapter.

For the purposes of this chapter, the following definitions shall apply:

(a) The terms "distributor" and "processor" shall have the same definition as the term "handler" contained in Section 61826 of this code.

(b) "Equalization point" shall mean that point at which pool quota held is equal to 95 percent of production base held.

(c) "Fluid cream" shall have the same definition as the term "market cream" contained in Section 61827 of this code.

(d) "Fluid milk" shall have the same definition as the term "market milk" contained in Section 61828 of this code.

(e) "Fluid skim milk" shall have the same definition as the term "market skim milk" contained in Section 61829 of this code.

SEC. 21. Section 62727 is added to the Food and Agricultural Code, to read:

62727. It is the intent of the Legislature that the power conferred in this chapter shall be liberally construed. The provisions of this chapter or subsequent amendment are severable. If any section, subdivision, paragraph, sentence, clause, or phrase of this chapter should be declared or held unconstitutional or invalid for any reason, such unconstitutionality or invalidity shall not affect the validity of any other provision of this chapter. The Legislature hereby declares that it would have enacted each other such section, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of the fact that one or more sections, subdivisions, paragraphs, sentences, clauses, or phrases has been declared unconstitutional or invalid. Provided further that any such finding of invalidity or unconstitutionality shall not invalidate, affect or impair pool quotas and production bases heretofore issued under the Gonsalves Milk Pooling Act or pooling plan promulgated thereunder.

SEC. 22. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be an appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local governmental entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

EXHIBIT B-2

B-2

Legislative Analyst
June 10, 1977

ANALYSIS OF ASSEMBLY BILL NO. 1110 (Keene)
As Amended in Assembly May 16, 1977
1977-78 Session

AB 1110 (Am. 5/16/77)

Fiscal Effect:

<u>Cost:</u>	<u>State:</u> None.
	<u>Local:</u> Possible minor enforcement costs, not reimbursable.
<u>Revenue:</u>	Authorizes increases in fees which could produce a <u>maximum</u> increase in Department of Agriculture Fund revenues of \$1.6 million annually.

Analysis:

This bill would restructure and rewrite existing provisions of the milk stabilization and marketing law as administered by the Director of the Department of Food and Agriculture. Generally, the bill would:

- (a) Repeal the authority of the director to establish minimum prices for retail and wholesale milk;
- (b) Revise factors to be considered in establishing minimum (actual) prices to be paid by handlers (processors) to producers for "producer milk" (formerly market milk);
- (c) Revise the basis of the fees paid by handlers, which are deducted as assessments from payments made to producers for enforcement of the Milk Stabilization Act;
- (d) Expand the dairy products which can be manufactured from market milk;
- (e) Make a variety of other changes, including changes related to (1) unfair practices provisions applicable to distributors, (2) penalties for violating milk marketing and stabilization provisions, (3) terminology and (4) various procedures.

AB 1110 (continued)

The department states that there would be no increases in its costs due to this bill. Because the establishing of both wholesale and retail prices has been suspended administratively and corresponding program and staff reductions have already been made, removal of the director's authority to set these minimum prices would not result in further savings in this program.

The department estimates the revenue generated from the current fee schedule for 1976-77 at \$1.7 million. The department indicates that a maximum of \$3.3 million could be generated under the fee schedule proposed by this bill. Less revenue would be generated if the director sets the fees below the maximums allowed.

Mandated Local Program. The bill disclaims reimbursement of possible minor local costs, such as enforcement and court costs.

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EXHIBIT B-3

B-3

DEPARTMENT OF FOOD AND AGRICULTURE



1220 N Street
Sacramento
95814

June 29, 1977

Mr. Joe Gonsalves
Park Executive Bldg., Suite 205
925 L Street
Sacramento, California 95814

Dear Mr. Gonsalves

I'm concerned about the legislative impasse which seems to have developed with respect to AB 1110.

It's the Department's position that certain provisions in AB 1110 are vital to the continued administration of California's milk stabilization and milk marketing statutes. If we are to maintain an orderly milk marketing program in California, it is essential that interested producer groups sit down together and put their common interests ahead of other considerations.

To assist the industry in resolving the differences which have arisen, and in the hopes that we can reach some general agreement before the Legislature returns from recess, I have scheduled a meeting with representatives of various producer groups in the Director's Conference Room 102, here in the Department of Food and Agriculture building, 1220 N Street, Sacramento, for Thursday, July 14, 1977, at 10:00 a.m.

I hope you can attend.

Sincerely

A handwritten signature in cursive script, appearing to read 'R. E. Rominger'.

R. E. Rominger
Director
(916) 445-7126

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EXHIBIT B-4

(B-4)

SENATE COMMITTEE ON AGRICULTURE AND WATER RESOURCES	A
	B
ASSEMBLY BILL 1110	
(Keene)	1
	1
as amended in the Senate	1
August 1, 1977	0

RE: Milk and dairy products: marketing, pricing, and pooling.

SUMMARY:

In Part 3 of Division 21 of the Food and Agricultural Code there are three chapters which comprise the main body of law regarding milk pricing, milk marketing, and milk pooling. The three chapters generally encompass the following:

Chapter 1: includes the definitions and provisions regulating the activities of milk distributors. Various unfair practices and actions and penalties are described.

Chapter 2: includes the definitions and provisions relating to producer pricing of the four classes of milk, wholesale and retail pricing, unfair practices, and actions and penalties.

Chapter 3: includes the provisions for the producer milk pooling program.

ANALYSIS:

This bill would delete, revise and restate various provisions in Chapter 1, Chapter 2, and Chapter 3. It would do all of the following:

1. Chapter 2 is repealed and reinstated in a reorganized format. Five articles do not appear in the revised chapter including the minimum wholesale and retail pricing authority. The other four articles repealed deal with advisory boards, sales stimulation programs, and outdated provisions regarding frozen milk and cream.

-more-

2. Key definitions are rewritten and reinstated in all three chapters either by direct statement of the terms or by reference. The major revisions include redefinition of the term "market milk" (Sec. 1), which replaces a plethora of terms including fluid milk, fluid cream, fluid skim milk, and includes all dairy products made from market milk.

In addition, the present term "distributor" is restated as "handler" in Chapter 2. (Sec. 5).

3. Minimum resale prices: repeals the Director's present authority to establish minimum wholesale and retail milk prices and attendant provisions.

4. Temporary resale pricing authority: would allow the Director to reinstate, after public hearing, minimum resale prices for a 90-day period. This period may be extended one or more additional 90-day periods following another public hearing (Sec. 3).

5. Distributors: revises the definition of "distributor" in Chapter 1. (Sec. 2). Various entities are presently included in this category for the purposes of enforcing unfair trade practices and identifying persons to be licensed. In addition, certain entities are specifically excluded from the definition.

This bill would combine and change the excluded entities titles to that of "wholesale customer".

6. Establishment of minimum producer prices: existing law includes various provisions and factors the Director must consider in setting prices. This bill would revise those provisions and require the Director to consider milk production costs, return on investment, cost of management, the demand for all milk products, and the maintenance of adequate milk supplies at fair and reasonable prices to consumers in the establishment of such prices. (Sec. 5).

-more-

7. Handler services: would allow the Director to establish minimum charges for handler services, the handling of irregular deliveries of bulk milk, and plant standby services. The factors to be considered in establishing such charges are also enumerated.

8. Unlawful trade practices: makes revisions in the unlawful trade practices applicable to handlers.

9. Handler licenses: extends the grounds for revocation of licenses to include violations of Chapter 1 and Chapter 3.

10. Handler bonds: revises the procedures for recovering the claims of producers against a bond.

11. Administrative fees: revises the rate of assessment to be paid by producers and handlers for the administration of Chapter 2.

12. Milk testing program: increases the annual funding for this program from \$85,000 to \$95,000.

13. Actions and penalties: revises the misdemeanor fine schedule and the civil liability for violations of this chapter.

14. Equalization of producers under the pooling program (Chapter 3): existing law provides that additional pool quota may be allocated annually to producers provided that Class 1 usage increases. The Director may also estimate future Class 1 requirements in determining how much pool quota will be allocated.

This bill would require that the Director, on July 1, 1978, issue new pool quota sufficient to equalize the producers who were originally allocated production bases and pool quotas at the start of the pooling program in 1969. After July 1, 1978, the Director will allocate new pool quotas based on new Class 1 usage as follows:

-more-

40% to any producers not at the equalization point.

40% to any producers at or above the equalization point.

20% to new producers, as defined.

15. Producer-handler revisions: existing law contains provisions regarding producer-handlers, a class of persons who both produce and handle market milk. Under certain conditions they are exempted from participation in the pooling program but they may elect to participate at any time.

This bill would do all of the following:

a. Purchases of supplemental milk supplies: a producer-distributor may presently purchase supplemental milk supplies up to 5% of his total Class 1, or fluid, milk sales. This bill would increase this maximum allowance to 25% of sales. In addition, any purchase beyond 5% of his fluid sales, and up to the 25% maximum, must be pool milk. (Sec. 12).

b. Producer-distributors' retail sales: in order to remain exempt from the pooling program, a producer-distributor must have direct retail sales that comprise at least $66\frac{2}{3}\%$ of his total Class 1 fluid sales. This bill would reduce this requirement to 50%, thus allowing up to 50% of his total sales to be wholesale in nature. (Sec. 12).

c. Entry into the pool: present law allows a producer-distributor to join the pool at any time. This bill would specify that such entry may only be accomplished during the 61-day period of August 1 through September 30. (Sec. 12).

d. Operation outside the pool: present law allows a producer-distributor to operate outside the pool to the extent of the quota he holds as originally assigned to him. Since these original assignments

-more-

were made, many producer-distributors have purchased additional quota. Purchased quota cannot be added to his original totals for operation outside the pool. This bill would allow a producer-distributor to deduct his original quota plus his purchased quota plus make a daily deduction of 150 pounds milk fat and 375 pounds solids-not-fat. The daily deduction could only be made if he had not sold any quota after February 9, 1977. (Sec. 14).

An example can illustrate this situation. A producer-distributor that presently holds original quota on 50% of his total Class 1 sales receives \$10.67 per hundredweight, or the Class 1 price, on this milk. For the remaining 50% he receives, at most, \$10.40, which is the quota pool price. For the portion of his milk covered by original quota, he receives \$10.67, less the quota price of \$10.40, a minimum benefit of at least \$0.27 per hundredweight. In the meantime, all other producers in the pool can only receive a maximum of \$10.40 for their quota milk because, under the pooling concept, there is no way a producer can directly take home the Class 1 price on his milk.

It follows that the proposed amendments regarding further operation outside the pool would allow a producer-distributor to earn the \$0.27 per hundredweight benefit on a greater portion of his present fluid milk sales. For example, if he had added 20% purchased quota to his original 50% allocation, he could earn the benefit on 70% of his fluid sales. This 70% figure would increase by approximately another 8% when the effects of the daily deduction are considered. In addition, to the extent that his purchased quota is exempt, a producer-distributor would realize a net gain of \$1.69 per hundredweight.

e. Small producer-distributor pooling exemption: the pooling program does not presently include producer-distributors who produce and sell 200 gallons of fluid milk or less for Class 1 uses unless he requests participation. This bill would increase this exemption level to 500 gallons per day.

-more-

16. Definitions: various words and phrases of Chapter 3 are defined as being the same as those found in Chapter 2. (Sec. 20).

STAFF COMMENTS:

1. This bill does not require that a producer referendum be held on any of these proposed changes. If, however, the Director should propose substantive changes in the pooling regulations at some later date, then a referendum would be required as per existing law.

2. Less than 5% of the total milk supply is Grade B milk. For this reason and where existing pricing and marketing standards rely on a Grade B milk supply to be operative, the proposed standards are based on Grade A milk as being the predominant supply entity.

3. Certain portions of this bill include the provisions presently stated in AB 418 (Fazio), AB 444 (Knox), and AB 756 (Vicencia).

FISCAL COMMITTEE: YES.

STATE MANDATED LOCAL PROGRAM.

#

FIRST HEARING: AUGUST 2, 1977

EXHIBIT B-5



B-5

Joe A. Gonsalves

PROFESSIONAL LEGISLATIVE REPRESENTATION • PARK EXECUTIVE BLDG • SUITE 205 • 925 L ST. • SACRAMENTO, CA 95814 • 916 • 441-0597

TO: All members of the Senate Finance Committee ..
RE: AB 1110-Keene
FROM: Joe A. Gonsalves
DATE: August 9, 1977

The Milk Producers Council and the California Producer Handler Association, which I represent, are in support of AB 1110. We are opposed to any substantive changes that may be proposed by anyone.

This bill and the compromise that it represents, came about at a meeting called by Director Rominger in his office and in his presence. It is a welcome relief from the disagreements that have been going on in the industry over the past two and one-half years and we urge your support.

EXHIBIT C-1

C-1

Senate Bill No. 688

CHAPTER 1112

An act to amend Sections 61802, 62062, and 62708.5 of, and to add and repeal Chapter 3.5 (commencing with Section 62750) of Part 3 of Division 21 of, the Food and Agricultural Code, relating to food.

[Approved by Governor October 10, 1993. Filed with
Secretary of State October 11, 1993.]

LEGISLATIVE COUNSEL'S DIGEST

SB 688, McCorquodale. Milk.

(1) Existing law provides for stabilization and marketing plans pursuant to which the Director of Food and Agriculture establishes minimum prices to be paid by handlers to producers for market milk. Those plans may contain provisions that authorize any handler to pool the milk for producer payment purposes.

This bill would set forth the amount that each producer shall be paid for pool quota production and production in excess of pool quota between January 1, 1994, and January 1, 1995.

(2) Existing law permits a producer-handler to operate outside a milk pooling plan, and to deduct from its class 1 sales before being required to account to the plan its original quota and quota purchased prior to January 1, 1978, plus a daily deduction of 150 pounds milk fat and 375 pounds solids not fat if it has not sold production base and pool quota subsequent to February 9, 1977; or if it has sold production base and pool quota subsequent to February 9, 1977, it may only deduct its original pool quota, and quota purchased prior to January 1, 1978.

This bill would permit every producer-handler to deduct from its class 1 sales before being required to account to the plan its original quota and any quota subsequently purchased plus a daily deduction of 150 pounds milk fat and 375 pounds solids not fat without regard to whether it has sold production base and pool quota subsequent to February 9, 1977.

The people of the State of California do enact as follows:

SECTION 1. Section 61802 of the Food and Agricultural Code is amended to read:

61802. The Legislature hereby declares all of the following:

(a) Market milk is a necessary article of food for human consumption.

(b) The production and maintenance of an adequate supply of healthful market milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare, and the production, transportation, processing, and storage of market milk in

this state is an industry affecting the public health.

(c) Because of the perishable quality of milk, the nature of milk production, the varying seasonal production and demand factors, and other economic factors affecting the milk industry, the potential exists for economic disruption, in the absence of regulation, in the production, marketing, and sale of market milk which may constitute a menace to the health and welfare of the inhabitants of this state and may tend to undermine sanitary regulations and standards of content and purity, however effectually the sanitary regulations may be enforced.

(d) Health regulations alone are insufficient to prevent economic disturbances in the production of milk which may disrupt the future supply of market milk and to safeguard the consuming public from future inadequacy of a supply of this necessary commodity.

(e) It is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including market milk, and to eliminate economic waste, destructive trade practices, and improper accounting for market milk purchased from producers.

(f) It is recognized by the Legislature that the economic factors concerning the production, marketing, and sale of market milk in California may be affected by the national market for milk for manufacturing purposes.

(g) It is recognized by the Legislature that in recent years the supply of manufacturing milk in California, as defined in Section 32509, has consistently declined and continues to decline, and that market milk has virtually supplanted manufacturing milk for manufacturing purposes in this state, and that it is therefore necessary to conform the pricing standards governing minimum producer prices for market milk established under this chapter to current economic conditions.

(h) It is recognized by the Legislature that the levels of retail prices of milk and milk products paid by consumers are affected by a large number of economic and other factors apart from minimum producer prices for market milk established under this chapter, many of which factors are not within the power of the director to regulate or control, particularly since the Legislature repealed provisions concerning establishment of minimum wholesale and retail prices. It is further recognized by the Legislature that, in order to accomplish the purposes of this chapter and to promote the public health and welfare, it is essential to establish minimum producer prices at fair and reasonable levels so as to generate reasonable producer incomes that will promote the intelligent and orderly marketing of market milk in the various classes, and that minimum producer prices established under this chapter should not be unreasonably depressed because other factors have affected the levels of retail prices paid by consumers.

SEC. 2. Section 62062 of the Food and Agricultural Code is

amended to read:

62062. Each stabilization and marketing plan shall contain provisions whereby the director establishes minimum prices to be paid by handlers to producers for market milk in the various classes. The director shall establish the prices by designating them in the plan, or by adopting methods or formulas in the plan whereby the prices can be determined, or any combination of the foregoing. If the director directly designates prices in the plan, the prices shall be in reasonable and sound economic relationship with the national value of manufactured milk products. If the director adopts methods or formulas in the plan for designation of prices, the methods or formulas shall be reasonably calculated to result in prices that are in a reasonable and sound economic relationship with the national value of manufactured milk products.

In establishing the prices, the director shall take into consideration any relevant economic factors, including, but not limited to, the following:

(a) The reasonableness and economic soundness of market milk prices for all classes, giving consideration to the combined income from those class prices, in relation to the cost of producing and marketing market milk for all purposes, including manufacturing purposes. In determining the costs, the director shall consider the cost of management and a reasonable return on necessary capital investment.

(b) That prices established pursuant to this section shall insure an adequate and continuous supply, in relation to demand, of pure, fresh, wholesome market milk for all purposes, including manufacturing purposes, at prices to consumers which, when considered with relevant economic criteria, are fair and reasonable.

(c) That prices, including the prices of components of milk, established by the director for the various classes of market milk bear a reasonable and sound economic relationship to each other.

In establishing the prices, the director shall also take into consideration all the purposes, policies, and standards contained in Sections 61801, 61802, 61805, 61806, 61807, 62076, and 62077.

SEC. 3. Section 62708.5 of the Food and Agricultural Code is amended to read:

62708.5. (a) A producer-handler, for purposes of this chapter, shall also include, as a separate and distinct category of producer-handlers, any producer and any handler who purchases or handles fluid milk or fluid cream produced by this producer if all of the ownership of the handler and all of the ownership of the producer is owned by the same person or persons and their ownership in the producer or handler is at least 95 percent identical for each person with their ownership in the handler or producer. This ownership shall not exceed 10 individual persons or owners of equitable interest in a partnership, corporation, or other legally constituted business association.

(b) The ownership required by this section may be through a partnership, corporation, or other legally constituted business association if the entities are owned by the same person or persons, and there is at least 95 percent identity of ownership for each person with their ownership in the handler or producer. For purposes of this section a "person" or "persons" includes the spouse, or other persons of lineal consanguinity of the first or second degree or collateral consanguinity to the fourth degree, and their spouses, and includes an adopted child the same as a natural child and kindred of the half blood equally with those of the whole blood of the owner and ownerships by persons so related shall be considered single ownership by one person. For purposes of this section, property pledged or hypothecated in any manner to others shall be considered "owned" if equitable ownership with management and control remain with the producer-handler.

(c) Ownership as provided in this section shall have existed at the time of the base period selected by the producer under Section 62707 and at all other times thereafter.

(d) Any such producer-distributor may, until August 6, 1969, do either of the following:

(1) Join and operate wholly within the pool.

(2) Have its entire original production base and pool quota determined during the base period it selected as a producer pursuant to Section 62707, established as a part of the pooling plan, and, nevertheless elect to operate entirely outside of the pool to the extent authorized by this section.

(e) Any producer-handler who qualifies under this section and elects to operate outside the pool, to the extent of the authority granted, may deduct from its own class 1 sales, excluding sales to a handler, whether in bulk or packaged, its original quota and any quota subsequently purchased, plus a daily deduction of 150 pounds of milk fat and 375 pounds of solids not fat before being required to account to the pool.

(f) The deductions from class 1 sales authorized pursuant to this section may be made irrespective of the fact that the average class 1 usage in the pool for that month may be less than 100 percent of the pool quota in that pool.

(g) Any production subject to this section from the producer-handler selecting this option shall not have the right to participate in the quota pool, irrespective of the fact that the producer-handler did not sell all of the quota as class 1, and will participate in either the base pool or the overbase pool depending upon whether the total production base of the producer is sufficient to cover the milk delivered in excess of the class 1 usage exempted hereunder, otherwise the production in excess of the exempt producer-handler's own class 1 sales, as defined in this section, shall be accounted for as overbase milk.

(h) The fact that a producer-handler qualifies as to one of its milk

production operations under this section does not prevent it from operating on an entirely separate nonqualifying basis (and therefore subject to pooling) at other milk production facilities, and with other nonqualifying persons at these other milk production facilities. A producer-handler can neither buy nor sell pool quota and transfer therewith the option granted under this division but this shall not prevent him or her from purchasing or selling pool quota or production base as otherwise provided in this chapter.

(i) If at any time ownership, as defined in this section, ceases, the producer-handler shall no longer be eligible for the options in this section, shall account to the pool as a separate handler, and shall be entitled to reentry into producer participation in the pool on the same basis as a producer-handler may under the last paragraph of Section 62708.

SEC. 4. Chapter 3.5 (commencing with Section 62750) is added to Part 3 of Division 21 of the Food and Agricultural Code, to read:

CHAPTER 3.5. MILK POOLING

62750. Notwithstanding any provision of Chapter 3 (commencing with Section 62700) or any pooling plan for market milk in effect under that chapter, effective January 1, 1994, each producer shall be paid the amounts determined in accordance with this section for his or her pool quota production and for all production in excess of his or her pool quota.

(a) For all milk fat, whether or not equal to his or her pool quota, an amount determined by dividing the value of all milk fat in the pool by the amount of milk fat produced.

(b) Transportation allowances that are provided for in the pooling plan shall not be deducted from the quota milk of any region, but shall be deducted from the total solids not fat pool revenue before any price is determined for quota and nonquota solids not fat.

(c) Regional quota adjusters shall continue to be subtracted from the quota price in the established areas as specified in the pooling plan for market milk. However, the hundredweight price specified shall be converted to a solids not fat equivalent value, and the adjustments for the effect of those regional quota adjusters shall be applied to the solids not fat revenue.

(d) After taking into consideration the effect of the regional quota adjusters, the solids not fat announced quota price for those areas in which there is no regional quota adjuster shall be nineteen and one-half cents (\$0.195) per pound greater than the announced solids not fat price for all milk produced in excess of pool quota.

62751. This chapter shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

EXHIBIT C-2

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James L. Ashford
Harvey J. Foster
John T. Studebaker
Daniel A. Wertzman

David D. Alves
John A. Corzine
C. David Dickerson
Robert Cullen Duffy
Robert D. Gronke
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BION M. GREGORY

Sacramento, California
December 16, 1993

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Ellen Sward
Mark Franklin Terry
Jeff Thom
Richard Thomson
Elizabeth M. Wart
Richard B. Weisberg
Thomas D. Whelan
Jack G. Zorman

Deputies

Honorable Dan McCorquodale
4032 State Capitol

Milk: Stabilization and Marketing Plans - #32529

Dear Senator McCorquodale:

QUESTION

Is Section 62708.5 of the Food and Agricultural Code repealed on January 1, 1995, by Section 62751 of the Food and Agricultural Code?

OPINION

Section 62708.5 of the Food and Agricultural Code is not repealed on January 1, 1995, by Section 62751 of the Food and Agricultural Code.

ANALYSIS

Section 62708.5 of the Food and Agricultural Code¹ currently permits a producer-handler, among other things, to operate outside a milk pooling plan, and to make certain deductions from its own class 1 sales before accounting to the pool (see subd. (e), Sec. 62708.5). Section 62708.5 is in Chapter 3 (commencing with Section 62700) of Part 3 of Division 21.

Chapter 1112 of the Statutes of 1993 amends Section 62708.5 by changing the deductions that may be made by a producer-handler from its own class 1 sales (see subd. (e), Sec. 62708.5,

¹ All section references are to the Food and Agricultural Code.

as amended by Ch. 1112, Stats. 1993). The amendments made by Chapter 1112 of the Statutes of 1993 to Section 62708.5 will take effect January 1, 1994 (para. (1), subd. (c), Sec. 8, Art. IV, Cal. Const.).

Chapter 1112 of the Statutes of 1993 also added Chapter 3.5 (commencing with Section 62750) to Part 3 of Division 21. Section 62751 of Chapter 3.5 provides as follows:

"62751. This chapter shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date."

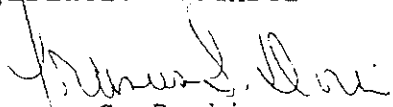
The appropriate rules of statutory construction were set forth in Moyer v. Workmen's Comp. Appeals Bd., 10 Cal. 3d 222 at page 230: "We begin with the fundamental rule that a court 'should ascertain the intent of the Legislature so as to effectuate the purpose of the law.' [Citation.] In determining such intent '[t]he court turns first to the words themselves for the answer.' [Citation.] We are required to give effect to statutes 'according to the usual, ordinary import of the language employed in framing them.' [Citations.]"

In Section 62751, the word "chapter" is modified and limited by the adjective "this," which means "the person, thing, or idea that is present or near in place, time, or thought or that has just been mentioned" (Webster's Third New International Dictionary, p. 2379). The phrase "this chapter" thus means the present chapter, the chapter in which Section 62751 is located. Consequently, Section 62751 repeals Chapter 3.5 (commencing with Section 62750) of Part 3 of Division 21 on January 1, 1995, but does not affect Section 62708.5 which, as noted earlier, is in Chapter 3 (commencing with Section 62700) of Part 3 of Division 21.

Therefore, it is our opinion that Section 62708.5 is not repealed on January 1, 1995, by Section 62751.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Frances S. Dorbin
Deputy Legislative Counsel

ASD:ljb

EXHIBIT C-3

(C3)

May 24, 1993

The Honorable Dan McCorquodale
State Capitol
Room 4032
Sacramento, CA 95814

Dear Dan:

I briefly talked to Peter Szego regarding an amendment that I am proposing to your Senate Bill 688. It is a bill that calls for a referendum on all Grade A milk producers in the state on a new pooling plan to determine the price for milk obtained by producers.

Anthony and I represent the California Producer-Handler Association. There are only six of them left in the State of California. They produce, process, and distribute their milk.

The six producer-handlers are Rockview Dairies in Downey, Producers Dairy in Fresno, Foster Farms in Modesto, Holandia Dairy in San Marcos, Royal Jersey in El Sobrante, and Scott Brothers in Pomona.

Under the present law, a producer-handler who has quota that he received when the milk-pooling act first passed and any quota he has purchased prior to January 1, 1978, is referred to as exempt quota. What we are asking in our amendment is that the January 1, 1978, date be removed and that any quota purchased by a producer-handler since January 1, 1978, and any quota that he may purchase at any time in the future also be exempt.

In addition, there is a provision in the law that was placed in there at the time of passage of the milk-pooling act that states that a producer-handler has the right to deduct an additional daily amount of 150 lbs. fat and 370 lbs. solid non-fat from it's Class 1 sales before being required to account to the pool. And the statute further says that if a producer-handler sells any quota after February 9, 1977, that he will lose the additional deduction that is provided for him under present law.

The Honorable Dan McCorquodale
May 24, 1993
Page 2

What our amendments would do would be to remove the penalty in the law that the producer-handler is faced if he sells quota after February 9, 1977.

I would appreciate hearing your consideration of our amendments.

Sincerely yours,

JOE A. GONSALVES

JAG/jv

EXHIBIT C-4

Date of Hearing: August 23, 1993

ASSEMBLY COMMITTEE ON AGRICULTURE

Rusty Areias, Chair

SB 688 (McCorquodale) - As Amended: August 16, 1993

fiscal

SUBJECT

Modifications to the state milk pooling system.

DIGEST

Existing law provides for California milk to be marketed under a milk stabilization plan that is separate and apart from the federal milk marketing plan under which most other states operate.

Existing law provides for the director of the California Department of Food & Agriculture (CDFA) to set minimum prices to be paid by milk handlers (processing plants) to milk producers (dairymen). The law provides that the price should be set at a level to ensure an adequate supply of milk and to provide the dairyman with a reasonable return on investment.

Existing law does not provide for prices to be set for wholesale or retail sale of milk.

Existing law requires the director to operate a milk equalization pool for the purposes of maintaining a stable and equitable system for distributing the revenues from milk sales among dairymen. The director receives all revenues paid by processors (thus, the term "milk pool") and distributes them among dairy farmers according to the formulas in the plan.

Existing law provides for variations in the price paid for milk based on the use of the milk and the special premium pricing rights, known as "quota", of the dairyman. The amount of "quota" owned by a dairyman (and thus the amount of milk he or she can sell at the premium price) varies between dairymen and "quota" can be traded and sold among dairymen. Below the premium price category of "quota milk" are "base milk" and "overbase milk". "Quota" refers to a pricing category, not to any actual distinction in the type or quality of the milk being sold. The amount of "quota" available in the system is controlled by a statutory formula. Further, "quota" is not distributed equally. Some dairy farmers own enough quota to cover all their milk, while others own no quota at all.

This bill would:

- 1) Modify the Milk Pooling Plan to provide for a fixed differential of \$1.70 between the "quota price" and the non-quota price during the calendar year 1994.

- continued -

- 2) Make minor technical amendments to the special provisions in current law relating to producer-handlers (those who both produce milk and also process it) by allowing them to keep more of their milk outside the milk pooling system.

FISCAL EFFECT

The Milk Pooling and Milk Stabilization programs are 100% industry funded and would have no effect on state revenues or costs.

COMMENTS

1) Effect on retail price of milk:

As a result of the August 16th amendments to this bill, SB 688 will no longer have a direct effect on retail prices of dairy products. The \$1.70 differential represents a change in the way the dairy payments are distributed from the milk pool. By establishing the differential of \$1.70 in statute, this bill will stabilize the percentage of milk pool monies paid for "quota", "base", and "overbase" milk. Currently the differential varies monthly, based on the selling price and the amount of production. However, the average over the past several months has been very near \$1.70.

2) Effect of recent amendments on CDFA opposition:

The August 16th version of the bill contains amendments which address the concerns expressed by the Department of Food & Agriculture in their July 8, 1993, letter to the Committee.

SUPPORT

Western United Dairymen (sponsor)
Agricultural Council of California
Milk Producers Council
Humbolt Creamery
Glenn Milk Producers
California Cooperative Creamery
San Joaquine Valley Dairymen
Danish Creamery
Dairymen's Cooperative Creamery
California Milk Producers Assoc.

OPPOSITION

Consumers Union

EXHIBIT C-5

(25)

UNFINISHED BUSINESS

SENATE RULES COMMITTEE

Bill No.

SB 688

Office of
Senate Floor Analyses
1020 N Street, Suite 524
445-6614

Author:

McCorquodale

Amended:

8/16/93

Vote Required: 21

SUBJECT: Milk: pooling referendum

SOURCE: Western United Dairymen

DIGEST: The bill establishes, for the pricing period starting August 1, 1994 and ending January 31, 1995 and for the pricing period starting February 1, 1995 and thereafter, the minimum Class 1 price for milk according to area.

Assembly Amendments delete the Senate provisions calling for a referendum of all Grade A milk producers in the state on a new pooling plan and, instead, modify the Milk Pooling Plan to provide for a fixed differential of \$1.70 between the "quota price" and the non-quota price during the calendar year 1994. Sunsets January 1, 1995.

ANALYSIS: California's System of Milk Pricing:

Next to Wisconsin, California is the largest milk producer in the U.S. Milk production in most of the country operates under federal marketing orders but California follows its own system. This is possible because very little fluid milk is shipped across California's boundaries.

Milk originates with "producers," also referred to as dairies or dairymen. It is picked up by "handlers" and transported to plants (i.e., production facilities or creameries). The output from production facilities finds its way, often through wholesalers or distributors, into the retail market. In many instances, these elements of the milk system are integrated vertically. For example, some major creameries are owned by producer cooperatives covering as many as two or three hundred producers.

At the present time, California does not seek to control the price of milk or milk products at the retail or wholesale level. The focus is on the price received by producers.

In 1935 the Legislature created the Milk Stabilization Act, which authorized the Director of Agriculture to establish minimum prices that producers would be paid for their milk. With some modifications, that system remains in place today.

The 1935 Act also established a code classifying milk and milk products by their use.

The detailed listing of what fits into each class is quite extensive, but a general characterization is as follows:

Class 1 - All fluid or drinking milk
Class 2 - Yogurt and cottage cheese
Class 3 - Frozen milk products
Class 4a - Butter and powdered milk
Class 5b - Hard cheese

Prior to 1969, producers competed fiercely to supply plants for output of Class 1 milk, since this commanded the highest price. In 1969, the Legislature created the Gonsalves Milk Pooling Act in order to stabilize the milk market.

Each producer was assigned a "quota" reflecting the amount of Class 1 milk sold in the two years before the Act became effective. The statewide total of quota was designed to approximately reflect the total market for fluid milk. A producer's quota determines the amount of Class 1 milk the producer can sell within the pooling system.

As the total market for milk expanded, new quota was assigned by the state in accordance with statutory rules and regulations. Additionally, milk producers are allowed to trade quota, provided they have operated under their quota for at least five years. The five-year rule is intended to dampen speculation. By adjusting this figure it is possible to encourage or discourage quota trading.

There is no limit on milk production but milk sold over quota receives the lowest (base) price, namely that for milk destined for Class 4b products.

Class 1 prices are arrived at by a formula involving a weighted average of milk production costs (43%), the Class 4a price (42%), and the average weekly earnings of California manufacturing employees (15%). The price for the other classes of milk is determined by specialized criteria for each class.

Statement of Problem:

In recent years, some difficulties have arisen with the pooling system. For example, although econometric models are difficult to apply in this field due to numerous uncertainties in the interaction of various factors, it has been observed empirically that there have been growing fluctuations in producer milk prices. These variations apparently are traceable to two influences. One is the growing dominance of products manufactured from milk relative to milk consumed in fluid form; the other is the fluctuation in the federal support price for hard cheese which sets the floor for milk pricing in California.

The large oscillations in producer milk prices are troublesome to producers because they make financial planning more difficult. They also result in undesired effects on consumer milk prices. It is observed that when producer prices go up, consumer prices follow rapidly; but when producer prices go down, consumer prices go down much more slowly. This ratchet effect gradually drives consumer milk prices in an upwards direction.

This bill sets forth the amount that each producer is to be paid for pool quota production and production in excess of pool quota between January 1, 1994 and January 1, 1995.

Existing law permits a producer-handler to operate outside a milk pooling plan, and to deduct from its class 1 sales before being required to account to the plan its original quota and quota purchased prior to January 1, 1978, plus a daily deduction of 150 pounds milk fat and 375 pounds solids not fat if it has not sold production base and pool quota subsequent to February 9, 1977; or if it has sold production base and pool quota subsequent to February 9, 1977, it may only deduct its original pool quota, and quota purchased prior to January 1, 1978.

This bill would permit every producer-handler to deduct from its class 1 sales before being required to account to the plan its original quota and any quota subsequently purchased plus a daily deduction of 150 pounds milk fat and 375 pounds solids not fat without regard to whether it has sold production base and pool quota subsequent to February 9, 1977.

Effect on Retail Price of Milk: As a result of the August 16th amendments to this bill, SB 688 will no longer have a direct effect on retail prices of dairy products.

The \$1.70 differential represents a change in the way the dairy payments are distributed from the milk pool. By establishing the differential of \$1.70 in statute, this bill will stabilize the percentage of milk pool monies paid for "quota", "base", and "overbase" milk. Currently the differential varies monthly, based on the selling price and the amount of production. However, the average over the past several months has been very near \$1.70.

Under the present law, a producer-handler who has quota that he received when the milk-pooling act first passed and any quota he has purchased prior to January 1, 1978 is referred to as "exempt quota." In addition, there is a provision in the law that was placed in there at the time of passage of the milk-pooling act that states that a producer-handler has the right to deduct an additional daily amount of 150 pounds fat and 370 pounds solid non-fat from its Class 1 sales before being required to account to the pool. And the statute further says that if a producer-handler sells any quota after February 9, 1977, he will lose the additional deduction that is provided for him under present law.

The bill sunsets on January 1, 1995.

FISCAL EFFECT: Appropriation: No Fiscal Committee. Yes Local: No

SUPPORT:

(Verified 9/7/93)

Western United Dairymen (source)
California Milk Producers
Milk Producers Council
California Producer-Handler Association
Agricultural Council of California

OPPOSITION:

(Verified 9/7/93)

Dairy Institute of California

Consumers Union
Department of Food and Agriculture

ARGUMENTS IN SUPPORT: Proponents indicate, "Enactment of SB 688 will have a positive effect in helping restore the economic stability of the dairy industry, and, as such will further the best public interest." The Agricultural Council of California states, "Milk is a highly perishable food item that requires strict government regulation to assure the public of a safe and healthy product. Farmers make significant investments in their dairy operations to efficiently comply with public health standards. Yet, since 1978 under the current pricing formula, dairy farmers have been unable to recover 42% of the costs of making these improvements. Compounded over a period of time this reduces the profit margin and results in operating losses making it difficult to stay in business.

"SB 688 addresses this problem by directing the Department of Food and Agriculture to revise the formula for establishing minimum fluid milk prices, beginning in August of 1994. It is intended to increase the pool from which producers are paid and help cover their costs of production. A different pricing formula could have the potential for minimal increases in the price of milk. However, the Department of Food and Agriculture concluded after a March 31st hearing on this subject that '(an) analysis does not support the conclusion that retail prices change with changes in raw product costs.' "

ARGUMENTS IN OPPOSITION: Consumers Union states, "In 1969 the State Legislature established a quota system which created price differentials between what quota and non-quota holding producers receive for the same milk product. Approximately half of the state's milk is produced under quota, sold at prices which, even at their lowest, have consistently exceeded those received by non-quota holders. In fact, many farmers "have quota" for just some of the milk their cows produce, the total of which is pooled and then sold for two distinct prices based on its classification as quota or non-quota. The pooling process itself best illustrates the phoniness of the classifications, showing that quota and non-quota milk is indistinguishable.

"The price differential between quota and non-quota milk is currently determined by the Department of Food and Agriculture's (DFA) bimonthly pricing procedure for Class 1, 2, 3, 4a and 4b milk products. SB 688 would put the current average of \$1.70 into statute as a minimum differential between quota and non-quota milk prices until January 1, 1995. This differential would be static despite bimonthly price fluctuations which would otherwise bring the quota/non-quota differential below or above that number.

"The quota system severely handicaps new producers who must pay a high price for quota, a traded but intangible commodity among the industry's producers. This bill would further appreciate the value of quota, guaranteeing quota holders at least \$1.70 more per hundredweight. The valuable but imaginary quota distinction is inevitably reflected in retail prices as an industry cost factor which sustains the profit buffer employed by roughly half the state's dairy producers. Consumers are paying into this system each time they purchase milk."

END OF REPORT

EXHIBIT C-6

C-6

SENATE THIRD READING

SB 688 (McCorquodale) - As Amended: August 16, 1993

SENATE VOTE: 25-7

ASSEMBLY ACTIONS:

COMMITTEE AGRI. VOTE 12-0 COMMITTEE W. & M. VOTE 21-0

DIGEST

Existing law:

- 1) Provides for California milk to be marketed under a milk stabilization plan that is separate and apart from the federal milk marketing plan under which most other states operate.
- 2) Provides for the director of the California Department of Food & Agriculture (CDFA) to set minimum prices to be paid by milk handlers (processing plants) to milk producers (dairymen).
- 3) Provides that the price should be set at a level to ensure an adequate supply of milk and to provide the dairyman with a reasonable return on investment.
- 4) Does not provide for prices to be set for wholesale or retail sale of milk.
- 5) Requires the director to operate a milk equalization pool for the purposes of maintaining a stable and equitable system for distributing the revenues from milk sales among dairymen. The director receives all revenues paid by processors (thus, the term "milk pool") and distributes them among dairy farmers according to the formulas in the plan.
- 6) Provides for variations in the price paid for milk based on the use of the milk and the special premium pricing rights, known as "quota", of the dairyman. The amount of "quota" owned by a dairyman (and thus the amount of milk he or she can sell at the premium price) varies between dairymen and "quota" can be traded and sold among dairymen. Below the premium price category of "quota milk" are "base milk" and "overbase milk." "Quota" refers to a pricing category, not to any actual distinction in the type or quality of the milk being sold. The amount of "quota" available in the system is controlled by a statutory formula. Further, "quota" is not distributed equally. Some dairy farmers own enough quota to cover all their milk, while others own no quota at all.

This bill:

- 1) Modifies the Milk Pooling Plan to provide for a fixed differential of \$1.70 between the "quota price" and the non-quota price during the calendar year 1994.
- 2) Makes minor technical amendments to the special provisions in

current law relating to producer-handlers (those who both produce milk and also process it) by allowing them to keep more of their milk outside the milk pooling system.

FISCAL EFFECT

The Milk Pooling and Milk Stabilization programs are 100% industry funded and would have no effect on state revenues or costs.

COMMENTS

None

Peter Cooley
445-1918

END OF REPORT

EXHIBIT D-1

D-1

Assembly Bill No. 1285

CHAPTER 601

An act to amend Section 62750 of, to add Sections 62062.1, 62752, 62753, 62754, 62755, and 62756 to, and to repeal and add Section 62751 of, the Food and Agricultural Code, relating to food.

[Approved by Governor September 15, 1994. Filed with
Secretary of State September 16, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1285, Cannella. Milk: pooling referendum.

Existing law provides for stabilization and marketing plans pursuant to which the Secretary of Food and Agriculture establishes minimum prices to be paid by handlers to producers for market milk. Until January 1, 1995, existing law also requires that producers be paid a specified amount for market milk.

This bill would delete the termination date of January 1, 1995, and instead continue in effect those provisions establishing a specified price for market milk until producers vote in a referendum to suspend them. The bill would require the secretary to hold public hearings for the purpose of considering whether to hold the referendum. The bill would require the secretary, following the hearing, to submit a ballot to producers in a statewide election, and would specify the procedures to be followed in conducting the referendum. If existing law is not continued in effect, the bill would require the secretary to continue in operation the pooling plan in effect on December 31, 1993. The bill would also require the statewide weighted average minimum price level for class 1 milk to bear a reasonable relationship to class 1 milk prices paid to producers in contiguous states.

The people of the State of California do enact as follows:

SECTION 1. Section 62062.1 is added to the Food and Agricultural Code, to read:

62062.1. Any designation of a class 1 price by any method or formula that is used to develop class 1 prices paid to producers in the various marketing areas, shall provide, on a calendar year basis, a statewide weighted average minimum price level for a hundred weight of milk testing 3.5 fat and 8.7 solids not fat that is in reasonable relationship with minimum class 1 milk prices paid to producers in contiguous states. If the statewide weighted average class 1 prices paid to producers are not in a reasonable relationship with the class 1 prices paid to producers in contiguous states, the secretary shall immediately hold a hearing to consider adjustments to the class 1 prices.

SEC. 1.5. Section 62750 of the Food and Agricultural Code is amended to read:

62750. Notwithstanding any provision of Chapter 3 (commencing with Section 62700) in conflict with this section or any pooling plan for market milk in effect under that chapter, effective January 1, 1994, each producer shall be paid the amounts determined in accordance with this section for his or her pool quota production and for all production in excess of his or her pool quota.

(a) For all milk fat, whether or not equal to his or her pool quota, an amount determined by dividing the value of all milk fat in the pool by the amount of milk fat produced.

(b) Transportation allowances that are provided for in the pooling plan shall not be deducted from the quota milk of any region, but shall be deducted from the total solids not fat pool revenue before any price is determined for quota and nonquota solids not fat.

(c) Regional quota adjusters shall continue to be subtracted from the quota price in the established areas as specified in the pooling plan for market milk. However, the hundredweight price specified shall be converted to a solids not fat equivalent value, and the adjustments for the effect of those regional quota adjusters shall be applied to the solids not fat revenue.

(d) After taking into consideration the effect of the regional quota adjusters, the solids not fat announced quota price for those areas in which there is no regional quota adjuster shall be nineteen and one-half cents (\$0.195) per pound greater than the announced solids not fat price for all milk produced in excess of pool quota.

SEC. 2. Section 62751 of the Food and Agricultural Code is repealed.

SEC. 3. Section 62751 is added to the Food and Agricultural Code, to read:

62751. Except as provided in Section 62756, this chapter shall remain operative until the secretary certifies to the Secretary of State that producers have voted in a referendum to suspend the operation of this chapter.

SEC. 4. Section 62752 is added to the Food and Agricultural Code, to read:

62752. The secretary may hold a public hearing at any time to consider whether this chapter shall be suspended, and shall hold a public hearing to review a petition requesting the suspension of this chapter signed by not less than 25 percent of the producers who produced not less than 25 percent of the total amount of fluid milk produced in this state during the preceding calendar month.

SEC. 5. Section 62753 is added to the Food and Agricultural Code, to read:

62753. The secretary shall establish a period of 60 days in which to conduct the referendum. The secretary may extend the referendum period an additional 30 days if he or she determines that an additional time is needed to adequately conduct the referendum,

and may prescribe additional procedures necessary to conduct the referendum.

SEC. 6. Section 62754 is added to the Food and Agricultural Code, to read:

62754. (a) Each producer shall have one vote and the vote shall be individually cast in order to prevent block voting. The secretary shall prepare a ballot. The ballot form shall be substantially as follows:

Ballot

Shall Chapter 3.5 (commencing with Section 62750) of Part 3 of Division 21 of the Food and Agricultural Code be continued in effect? Yes No

(b) In addition, the ballot shall include a statement of the voter's total production during the calendar month next preceding the month of the commencement of the referendum period, where and to whom that production was sold or otherwise disposed, and the producer's name and address and pooling numbers.

SEC. 7. Section 62755 is added to the Food and Agricultural Code, to read:

62755. (a) The secretary shall find that producers have assented to the continued operation of this chapter if the secretary finds on a statewide basis that not less than 51 percent of the total number of eligible producers in the state have voted in the referendum and that 51 percent or more of the total number of eligible producers who voted in the referendum and who produced 51 percent or more of the total amount of fluid milk produced in the state during the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in the referendum, approve the continued operation of this chapter.

(b) If the secretary finds that a vote favorable to the continued operation of this chapter has not been given, the secretary shall so certify to the Secretary of State and shall declare this chapter inoperative.

(c) The secretary may reveal the names of producers whose votes have been received to both proponents and opponents of the continued operation of this chapter. However, whether individual producers voted for or against the continued operation of this chapter shall be kept confidential.

SEC. 8. Section 62756 is added to the Food and Agricultural Code, to read:

62756. (a) If the continued operation of this chapter is not approved, the secretary shall continue in operation the pooling plan in effect on December 31, 1993.

(b) Notwithstanding Section 62751, this section shall remain operative notwithstanding a vote by producers to suspend the operation of this chapter.

EXHIBIT D-2

Hearing Date: 7/13/93

AB 1285

SENATE COMMITTEE ON AGRICULTURE AND WATER RESOURCES
Dan McCorquodale, Chair

AB 1285 (Carranza), as amended 7/6/93

Fiscal: Yes

PURPOSE OF BILL:

• Require the Director of Food and Agriculture, provided the Director determines specified findings regarding the price of class 1 milk in California as compared to the other Western states, to call a referendum of all Grade A milk producers in the state on a new pooling and stabilization plan to establish prices for milk obtained by producers.

• Establish, for the pricing period starting January 1, 1994 and ending June 30, 1994, and for the pricing period starting July 1, 1994, the minimum Class 1 prices for milk according to area.

PRIOR ACTION:

Assembly Agriculture Committee	9-0	4/19/93
Assembly Ways and Means Committee	21-0	6/02/93
Assembly Floor (consent)	75-0	6/09/93

BACKGROUND:

California's System of Milk Pricing

Next to Wisconsin, California is the largest milk producer in the U.S. Milk production in most of the country operates under federal marketing orders but California follows its own system. This is possible because very little fluid milk is shipped across California's boundaries.

Milk originates with "producers," also referred to as dairies or dairymen. It is picked up by "handlers" and transported to plants (i.e., production facilities or creameries). The output from production facilities finds its way, often through wholesalers or distributors, into the retail market. In many instances, these elements of the milk system are integrated vertically. For example, some major creameries are owned by producer cooperatives covering as many as two or three hundred producers.

At the present time, California does not seek to control the price of milk or milk products at the retail or wholesale level. The focus is on the price received by producers.

In 1935 the Legislature created the Milk Stabilization Act, which authorized the Director of Agriculture to establish minimum prices that producers would be paid for their milk. With some modifications, that system remains in place today.

The 1935 Act also established a code classifying milk and milk products by their use. The detailed listing of what fits into each class is quite extensive, but a general characterization is as follows:

D-2

- Class 1 - All fluid or drinking milk
- Class 2 - Yogurt and cottage cheese
- Class 3 - Frozen milk products
- Class 4a - Butter and powdered milk
- Class 5b - Hard cheese

Prior to 1969, producers competed fiercely to supply plants for output of Class 1 milk, since this commanded the highest price. In 1969, the Legislature created the Gonsalves Milk Pooling Act in order to stabilize the milk market.

Each producer was assigned a "quota" reflecting the amount of Class 1 milk sold in the two years before the Act became effective. The statewide total of quota was designed to approximately reflect the total market for fluid milk. A producer's quota determines the amount of Class 1 milk the producer can sell within the pooling system.

As the total market for milk expanded, new quota was assigned by the state in accordance with statutory rules and regulations. Additionally, milk producers are allowed to trade quota, provided they have operated under their quota for at least five years. The five-year rule is intended to dampen speculation. By adjusting this figure it is possible to encourage or discourage quota trading.

There is no limit on milk production but milk sold over quota receives the lowest (base) price, namely that for milk destined for Class 4b products.

Class 1 prices are arrived at by a formula involving a weighted average of milk production costs (43%), the Class 4a price (42%), and the average weekly earnings of California manufacturing employees (15%).

The price for the other classes of milk is determined by specialized criteria for each class.

Statement of Problem

In recent years, some difficulties have arisen with the pooling system. For example, although econometric models are difficult to apply in this field due to numerous uncertainties in the interaction of various factors, it has been observed empirically that there have been growing fluctuations in producer milk prices. These variations apparently are traceable to two influences. One is the growing dominance of products manufactured from milk relative to milk consumed in fluid form; the other is the fluctuation in the federal support price for hard cheese which sets the floor for milk pricing in California.

The large oscillations in producer milk prices are troublesome to producers because they make financial planning more difficult. They also result in undesired effects on consumer milk prices. It is observed that when producer prices go up, consumer prices follow rapidly; but when producer prices go down, consumer prices go down much more slowly. This ratchet effect gradually drives consumer milk prices in an upwards direction.

PROPOSED LAW:

Pricing Provisions

The bill establishes, for the pricing period starting January 1, 1994 and ending June 30, 1994 and for the pricing period starting July 1, 1994 and thereafter, the minimum Class 1 price for milk according to area, as set forth below. However, the current authority of the Director of Food and Agriculture to designate marketing areas and to establish uniform class 1 prices in two or more marketing areas is not superseded.

A. January 1, 1994 to June 30, 1994

(1) Northern California Marketing Area.

The minimum base prices for components used for class 1 shall be the following:

- (a) For all milk fat, \$0.7167 per pound.
- (b) For all solids not fat, \$0.7747 per pound.
- (c) For all fluid, \$0.0159 per pound.

(2) South Valley Marketing Area.

The minimum base price for components used in class 1 shall be as follows:

- (a) For all fat, \$0.7167 per pound.
- (b) For all solids not fat, \$0.7747 per pound.
- (c) For all fluid, \$0.0141 per pound.

(3) Southern California Marketing Area.

The minimum base price for components used in class 1 shall be the following:

- (a) For all fat, \$0.7217 per pound.
- (b) For all solids not fat, \$0.7747 per pound.
- (c) For all fluid, \$0.0184 per pound.

B. July 1, 1994 and Thereafter

(1) Northern California Marketing Area.

The minimum base prices for components used for class 1 shall be the following:

- (a) For all fat, \$0.6453 per pound.

(b) For all solids not fat, \$0.8147 per pound.

(c) For all fluid, \$0.0176 per pound.

(2) South Valley Marketing Area.

The minimum base prices for components used for class 1 shall be the following:

(a) For all fat, \$0.6453 per pound.

(b) For all solids not fat, \$0.8147 per pound.

(c) For all fluid, 0.0158 per pound.

(3) Southern California Marketing Area.

The minimum base prices for components used for class 1 shall be the following:

(a) For all fat, \$0.6503 per pound.

(b) For all solids not fat, \$0.8147 per pound.

(c) For all fluids, \$0.0201 per pound.

Referendum on Proposed Pooling Plan

This bill seeks to address problems with the current pooling system by authorizing the Director of Food and Agriculture to prepare a modified pooling plan (to include specific elements as outlined below), to hold a public hearing on the same, and thereafter, to submit the plan for approval or disapproval to a statewide referendum of milk producers.

Findings by Director. However, the Director is to proceed with the above steps only if the Director finds that class 1 milk price levels on a statewide average basis are not lower than five cents below the average for the states west of or on the continental divide. The comparison is to be made on a rolling four month period.

Sunset Provision. If the Director does not make such findings by July 1, 1996, class 1 milk prices revert to those in effect under milk stabilization plans in effect on December 31, 1993.

Referendum. If a referendum is held, each producer has one vote, which is to be cast individually to avoid block voting. The plan is deemed approved provided not less than 51 percent of the producers have voted and one of the following is true:

A. 65 percent or more of eligible producers who voted in the referendum, and who produce at least 51 percent of the total amount of

fluid milk produced in the state by producers who voted in the referendum, approve the plan.

B. 51 percent or more of the total number of eligible producers who voted in the referendum, and who produce 65 percent or more of the milk produced by producers who voted in the referendum, approve the plan.

If the plan is not approved, the current system remains in force.

Plan Elements. The specific elements which the plan must include are:

A. A modification of rules for changes in quota, in particular, changing from five to seven years the time quota that must be held before it is traded. There is an exception for lineal descendants of a producer.

B. A new procedure for calculating the quota price each month as being equal to \$1.70 per hundredweight above the announced non-quota price for milk which tests 3.5 percent fat and 87.8 percent fluid. The price may be adjusted for location and transportation charges.

Subsequent Adjustments

One year after a new plan is approved by referendum and implemented, and annually thereafter, the Director is required to review the previous year's class 1 prices.

If the Director finds that the projected statewide average class 1 price for the current year is not lower than five cents below the average price for the states west of or on the continental divide, the Director shall implement the system of payment for highest usage as specified in current law, and this system is to stay in effect until the Director makes findings as outlined above.

If the Director does not make findings as outlined above within 30 months of the annual review, class 1 prices are to revert to those in effect under milk stabilization plans which were in effect December 31, 1993.

Producer-Handler Exemption

Under the present law, a producer-handler, who holds quota which was originally received when the milk-pooling act was first passed plus any quota purchased before 1978, is considered to have "exempt quota."

In addition, there is a provision in current law giving a producer-handler the right to deduct daily 150 pounds fat and 370 pounds non-fat from Class 1 sales before being required to account to the pool. The statute also provides that if a producer-handler sells any quota after February 9, 1977, the right to the additional deductions will be lost.

These amendments remove the penalty facing a producer-handler who sells quota after February 7, 1977.

At the present time, there are six producer-handlers in California.

COMMENTS:

1. Arguments in support. The California Milk Producers state, "Essentially, this bill provides for a reasoned and balanced framework by the dairy industry, subject to producer referendum, to update and strengthen existing Milk Stabilization and Marketing Laws. Legislative policies and administrative procedures respond to the changing needs in the marketplace. This measure is the product of lengthy efforts by all major dairy organizations within the state to achieve a consensus to fully support the industry, in cooperation with the Department of Food and Agriculture, moving forward to effectively improve the current methods for the marketing of milk and other dairy products. Enactment of AB 1285 will have a positive effect in helping restore the economic stability of the dairy industry, and, as such will further the best public interest."

The Agricultural Council of California states, "Milk is a highly perishable food item that requires strict government regulation to assure the public of a safe and healthy product. Farmers make significant investments in their dairy operations to efficiently comply with public health standards. Yet, since 1978 under the current pricing formula, dairy farmers have been unable to recover 42% of the costs of making these improvements. Compounded over a period of time this reduces the profit margin and results in operating losses making it difficult to stay in business. This bill addresses this problem by directing the Department of Food and Agriculture to revise the formula for establishing minimum fluid milk prices, beginning in January of 1994. It is intended to increase the pool from which producers are paid and help cover their costs of production. A different pricing formula could have the potential for minimal increases in the price of milk. However, the Department of Food and Agriculture concluded after a March 31st hearing on this subject that "(an) analysis does not support the conclusion that retail prices change with changes in raw product costs."

2. Arguments in opposition. The Dairy Institute of California states, "This bill will result in increased costs to the state for school milk. The increased cost to the state reflects only 2% of the overall cost increases that will ultimately be borne by California consumers. Specifically, the provisions of AB 1285 will result in an annual increase of \$48.9 million in the cost of milk, or 6 cents a gallon. The principal intent of AB 1285 is to adjust the dairy producer quota system to provide a more equitable system for a greater number of the state's dairy farmers. While the aim of this legislation is admirable, reform of the quota system should not be paid for by processors and consumers."

The Institute indicated that the legislation would take some regulatory authority from the Director of Food and Agriculture in the

role of determining pricing for the public interest. They believe there should be some flexibility relating to pricing, rather than being placed in statute. They also are concerned that there is no linkage between quota reform provisions and price increases.

Consumers Union states that "The new pricing formula will increase milk prices for California consumers. Consumers Union believes that milk pricing, like pricing for all consumer goods, is best kept to the market place."

3. AB 1285 currently is substantially the same as SB 688 (McCorquodale) which was approved by this Committee on April 20, 1993, but in a somewhat different form.

SUPPORT:

Agricultural Council of California
California Milk Producers
California Producer-Handler Association
Milk Producers Council
Western United Dairymen

OPPOSED:

Consumers Union
Dairy Institute of California
Department of Food and Agriculture (unless amended)

Peter A. Szego
7/9/93

EXHIBIT D-3

(D-3)

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Chief Deputy
James L. Ashford
Harvey J. Foster
John T. Studebaker
Daniel A. Weitzman
David D. Alves
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Sacramento, California

June 21, 1994

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Deputies

Honorable Sal Cannella
5155 State Capitol

Milk Pooling Plans (A.B. 1285) - #19990

Dear Mr. Cannella:

You have asked us to discuss the effect that Assembly Bill No. 1285, as amended in Senate June 13, 1994 (hereafter A.B. 1285), if enacted, would have on Section 62708.5 of the Food and Agricultural Code.

Before we proceed to consider your question, we shall, by way of background, generally discuss the operation of milk pooling plans.

Pursuant to the provisions governing the stabilization and marketing of market milk (Ch. 2 (commencing with Sec. 61801), Pt. 3, Div. 21, F.& A.C.¹), the Secretary of Food and Agriculture (hereafter the secretary) is authorized to formulate stabilization and marketing plans for market milk (Sec. 61993). For the purposes of stabilization and marketing plans, market milk is classified as class 1, class 2, class 3, class 4a, and class 4b (see Art. 5 (commencing with Sec. 61931), Ch. 2, Pt. 3, Div. 21). The stabilization and marketing plans are required to contain minimum prices to be paid by handlers to producers for market milk in the various classes (Sec. 62062). Prior to 1967, producers competed fiercely to supply plants with class 1 milk, since class 1 milk commanded the highest price (see Senate Floor Analyses, S.B. 688, June 8, 1993).

¹ All section references are to the Food and Agricultural Code.

In 1967, the Legislature enacted the Gonsalves Milk Pooling Act (Ch. 3 (commencing with Sec. 62700), Pt. 3, Div. 21; (hereafter Chapter 3)) which contains a comprehensive scheme for milk pooling. Pursuant to Chapter 3, the secretary is authorized to develop a pooling plan (Sec. 62704) under which each producer is assigned a pool quota (subd. (d), Sec. 62707). A producer's quota determines the amount of class 1 milk the producer can sell to handlers within the pooling system. Milk sold in excess of quota receives the lowest base price, namely that price for milk destined for class 4b products (Sec. 62711). The handlers who have a financial obligation to the pool resulting from the operation of the pooling plan pay those obligations to the pool manager (subd. (a), Sec. 62712). Those funds are then in turn distributed to the producers (Secs. 62711 and 62713).

Section 62708.5 permitted certain producer-handlers² to elect, prior to August 6, 1969, to either join and operate wholly within the pool, or to elect to operate outside of the pool to the extent authorized by Section 62708.5. A producer-handler who elected, pursuant to Section 62708.5 to operate outside of the pool, is entitled to deduct a certain amount from its own class 1 sales (subd. (e), Sec. 62708.5). Chapter 1112 of the Statutes of 1993 amended Section 62708.5 by changing the deductions that may be made by a producer-handler from its own class 1 sales before accounting to the pool (see subd. (e), Sec. 62708.5, as amended by Ch. 1112, Stats. 1993).

Chapter 1112 of the Statutes of 1993 also added Chapter 3.5 (commencing with Section 62750) to Part 3 of Division 21 (hereafter Chapter 3.5). Section 62750 of Chapter 3.5 provides as follows:

"62750. Notwithstanding any provision of Chapter 3 (commencing with Section 62700) or any pooling plan for market milk in effect under that chapter, effective January 1, 1994, each producer shall be paid the amounts determined in accordance with this section for his or her pool quota

² For the purposes of Section 62708.5, "producer-handler" includes any producer and any handler who purchases or handles fluid milk or fluid cream produced by that producer if all of the ownership of the handler and all of the ownership of the producer is owned by the same person or persons and their ownership in the producer or handler is at least 95 percent identical for each person with their ownership in the handler or producer. This ownership may not exceed 10 individual persons or owners of equitable interest in a partnership, corporation, or other legally constituted business association (subd. (a), Sec. 62708.5).

production and for all production in excess of his or her pool quota.

"(a) For all milk fat, whether or not equal to his or her pool quota, an amount determined by dividing the value of all milk fat in the pool by the amount of milk fat produced.

"(b) Transportation allowances that are provided for in the pooling plan shall not be deducted from the quota milk of any region, but shall be deducted from the total solids not fat pool revenue before any price is determined for quota and nonquota solids not fat.

"(c) Regional quota adjusters shall continue to be subtracted from the quota price in the established areas as specified in the pooling plan for market milk. However, the hundredweight price specified shall be converted to a solids not fat equivalent value, and the adjustments for the effect of those regional quota adjusters shall be applied to the solids not fat revenue.

"(d) After taking into consideration the effect of the regional quota adjusters, the solids not fat announced quota price for those areas in which there is no regional quota adjuster shall be nineteen and one-half cents (\$0.195) per pound greater than the announced solids not fat price for all milk produced in excess of pool quota."

Section 62751 of Chapter 3.5 repeals Chapter 3.5 on January 1, 1995, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

A.B. 1285, if enacted, would make various changes to Chapter 3.5. First, A.B. 1285 would repeal Section 62751, thus deleting the date on which Chapter 3.5 would terminate in the absence of further legislation, and would instead provide that Chapter 3.5 shall remain operative until the secretary certifies to the Secretary of State that producers have voted in a referendum to suspend the operation of Chapter 3.5 (proposed Sec. 62751, as added to the Food and Agricultural Code by Sec. 3 of A.B. 1285). A.B. 1285, if enacted, would also contain provisions for conducting the referendum (see proposed Secs. 62752 to 62755, inclusive, as added to the Food and Agricultural Code by Secs. 4 to 7, incl., A.B. 1285). Proposed Section 62756 would provide that if the continued operation of Chapter 3.5 is not approved, the secretary would be required to continue in operation the

pooling plan in effect on December 31, 1993 (proposed Sec. 62756, as added to the Food and Agricultural Code by Sec. 8 of A.B. 1285).

Consequently, if enacted, A.B. 1285 would continue Section 62750 in effect until the secretary certifies to the Secretary of State that producers have voted in a referendum to suspend the operation of Chapter 3.5 (proposed Sec. 62751, as added to the Food and Agricultural Code by Sec. 3 of A.B. 1285).

Therefore, since A.B. 1285, if enacted, would continue Section 62750 in effect until the secretary certifies that producers have voted in a referendum to suspend the operation of Chapter 3.5, the critical issue, for the purposes of our discussion, is how Section 62750 would affect Section 62708.5 until that certification is made. If we consider the interpretation to be given Section 62750, the appropriate rules of statutory construction are set forth in Moyer v. Workmen's Comp. Appeals Bd., 10 Cal. 3d 222 at page 230: "We begin with the fundamental rule that a court 'should ascertain the intent of the Legislature so as to effectuate the purpose of the law.' [Citation.] In determining such intent '[t]he court turns first to the words themselves for the answer.' [Citation.] We are required to give effect to statutes 'according to the usual, ordinary import of the language employed in framing them.' [Citations.]"

On the other hand, regard is also to be had not so much to the exact phraseology in which the intent has been expressed, but in the general tenor and scope of the entire scheme embodied in the enactments; in such cases the manifest reason and obvious design of the law should not be sacrificed to a literal interpretation of the language (County of Los Angeles v. Frisbie, 19 Cal. 2d 634, 639).

The first sentence of Section 62750 provides, "Notwithstanding any provision of Chapter 3 (commencing with Section 62700) or any pooling plan for market milk in effect under that chapter, effective January 1, 1994, each producer shall be paid the amounts determined in accordance with this section for his or her pool quota production and for all production in excess of his or her pool quota (emphasis added)." If we consider the meaning of the first sentence of Section 62750, it evidences a clear intent by the Legislature to supersede any provision of Chapter 3, and not just the provisions of that chapter with which it is inconsistent.

However, we also point out that Chapter 3.5, unlike Chapter 3, does not provide a comprehensive scheme for milk pooling. For example, Chapter 3.5 does not provide for the

assignment of pool quota or make any provision for the settlement of, or accounting for, funds paid to the pool. Therefore, it would appear that it was the intent of the Legislature that Chapter 3 would continue to govern with respect to those matters.

Moreover, the legislative history of the bill that enacted Section 62750, Senate Bill No. 688 of the 1993-94 Regular Session, indicates that the purpose of Section 62750 is to modify the milk pooling plan to provide for a fixed differential between the quota price and the nonquota price during 1994 (see Assembly Analyses of Third Reading of S.B. 688, Aug. 16, 1993; and Senate Floor Analyses, S.B. 688, June 8, 1993).

Consequently, an argument can be made that Chapter 3 and Chapter 3.5 were intended to be read together and harmonized (see People v. Trieber, 28 Cal. 2d 657, 661), and that Chapter 3.5 was thus intended to supersede only those provisions of Chapter 3 with which it is inconsistent. Since Section 62708.5 is solely concerned with certain producer-handlers and the amount of class 1 sales those persons can make before they account to the pool, Section 62708.5 is not inconsistent with Section 62750. Thus, there is a reasonable basis upon which a court could conclude that Section 62708.5 is unaffected by Section 62750. Pursuant to this construction, Section 62708.5 would also be unaffected by any provision of A.B. 1285, if that bill is enacted. On the other hand, a court could also conclude, based on the plain meaning of the first sentence of Section 62750, that the Legislature intended by the enactment of Chapter 3.5, to supersede every provision of Chapter 3, including Section 62708.5. If a court so concluded, A.B. 1285, if enacted, would affect Section 62708.5 by superseding all of Chapter 3, including Section 62708.5, until the secretary certifies to the Secretary of State that producers have voted in a referendum to suspend the operation of Chapter 3.5.

Finally, any uncertainty that may exist with respect to whether the current language in Section 62750 accurately represents the intent of the Legislature can be resolved by appropriate amendments to that section.

Very truly yours,

Bion M. Gregory
Legislative Counsel

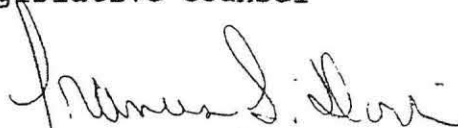
By 
Frances S. Dorbin
Deputy Legislative Counsel

EXHIBIT D-4



STATE CAPITOL
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California State Senate



KENNETH L. MADDY
SENATOR, FOURTEENTH DISTRICT
REPUBLICAN FLOOR LEADER

COMMITTEES:
CONSTITUTIONAL AMENDMENTS
GOVERNMENTAL ORGANIZATION
(VICE CHAIRMAN)
REVENUE & TAXATION

JOINT COMMITTEES:
ARTS
FAIRS ALLOCATION
AND CLASSIFICATION
LEGISLATIVE AUDIT
(VICE CHAIRMAN)

SELECT COMMITTEES:
BUSINESS DEVELOPMENT
CALIFORNIA'S BUSINESS CLIMATE
CALIFORNIA'S WINE INDUSTRY
NORTHRIDGE EARTHQUAKE
PACIFIC RIM

August 26, 1994

Governor Pete Wilson
State of California
State Capitol
Sacramento, California 95814

Dear Governor Wilson:

RE: AB 1285/Cannella

I would respectfully recommend your signature on AB 1285 by
Assemblyman Cannella.

This bill is a follow-up to SB 688, which you signed into law last
year. SB 688 contained a sunset clause which ends on January 1,
1995; therefore, there is a need for AB 1285.

The sunset provision was at the request of the Secretary of the
Department of Food and Agriculture, Mr. Henry Voss. He wanted to
experience the provisions of SB 688 for one year before enacting
it permanently.

This bill preserves a more equitable distribution of revenues
among the producers selling Grade A producer milk. Because of the
perishable quality of milk, the nature of milk production, the
varying seasonal production, demand factors and other economic
factors affecting the milk industry, it is recognized by the
Legislature that the Secretary must have the flexibility and all
the information necessary to establish fair and equitable producer
prices.

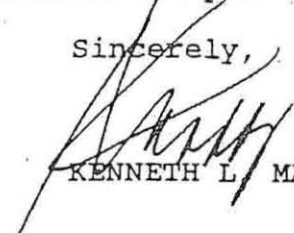
In SB 688, an old restriction placed on producer handlers, which
was provided for in the original Milk Pooling Act, was removed.
This restriction, which allowed producer handlers to purchase
quota but did not allow that quota to be exempt from reporting to
the pool, had once before been extended to January, 1978.

Governor Wilson
August 26, 1994
Page 2

This bill, AB 1285, reiterates the desire of the Legislature to continue the policies regarding producer distributors enacted in SB 688 by addressing the provisions in the bill regarding the referendum. If a referendum by the producers were to terminate, the method of producer pricing established in AB 1285, the section addressing the producer distributors, would remain in effect.

The passage of AB 1285 and your signature on this bill is a recognition by the Legislature and the Governor of this State that the powers that have been conferred upon the Secretary of the Department of Food and Agriculture are for the purposes of enabling the dairy industry to develop and maintain satisfactory marketing conditions, to bring about and maintain a reasonable amount of stability in the production of fluid milk and fluid cream; and particularly, to ensure that consumers within California will have an adequate and continuous supply of pure, fresh and wholesome milk at fair and reasonable prices.

Sincerely,



KENNETH L. MADDY

KLM:fms

EXHIBIT E-1

(E1)

SENATE BILL

No. 105

Introduced by Senator Kelley

January 12, 1995

An act to repeal and add Section 62708.5 of the Food and Agricultural Code, relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

SB 105, as introduced, Kelley. Milk: pooling plans.

Under the existing milk pooling law, a producer-handler may deduct from its class 1 sales, before being required to account to the milk pooling plan, its original quota, and any quota subsequently purchased plus a daily deduction of 150 pounds of milk fat and 375 pounds of solids not fat without regard to whether it has sold production base and pool quota.

This bill would permit a producer-handler to deduct from its class 1 sales, before being required to account to the plan, its original quota, and quota purchased prior to January 1, 1978, plus a daily deduction of 150 pounds of milk fat and 375 pounds of solids not fat if it has not sold production base and pool quota subsequent to February 9, 1977; or if it has sold production base and pool quota subsequent to February 9, 1977, to deduct its original pool quota, and quota purchased prior to January 1, 1978.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 62708.5 of the Food and
2 Agricultural Code is repealed.

1 ~~62708.5. (a) A producer handler, for purposes of this~~
2 ~~chapter, shall also include, as a separate and distinct~~
3 ~~category of producer handlers, any producer and any~~
4 ~~handler who purchases or handles fluid milk or fluid~~
5 ~~cream produced by this producer if all of the ownership~~
6 ~~of the handler and all of the ownership of the producer~~
7 ~~is owned by the same person or persons and their~~
8 ~~ownership in the producer or handler is at least 95~~
9 ~~percent identical for each person with their ownership in~~
10 ~~the handler or producer. This ownership shall not exceed~~
11 ~~10 individual persons or owners of equitable interest in a~~
12 ~~partnership, corporation, or other legally constituted~~
13 ~~business association.~~

14 ~~(b) The ownership required by this section may be~~
15 ~~through a partnership, corporation, or other legally~~
16 ~~constituted business association if the entities are owned~~
17 ~~by the same person or persons, and there is at least 95~~
18 ~~percent identity of ownership for each person with their~~
19 ~~ownership in the handler or producer. For purposes of~~
20 ~~this section a "person" or "persons" includes the spouse,~~
21 ~~or other persons of lineal consanguinity of the first or~~
22 ~~second degree or collateral consanguinity to the fourth~~
23 ~~degree, and their spouses, and includes an adopted child~~
24 ~~the same as a natural child and kindred of the half blood~~
25 ~~equally with those of the whole blood of the owner and~~
26 ~~ownerships by persons so related shall be considered~~
27 ~~single ownership by one person. For purposes of this~~
28 ~~section, property pledged or hypothecated in any~~
29 ~~manner to others shall be considered "owned" if~~
30 ~~equitable ownership with management and control~~
31 ~~remain with the producer handler.~~

32 ~~(c) Ownership as provided in this section shall have~~
33 ~~existed at the time of the base period selected by the~~
34 ~~producer under Section 62707 and at all other times~~
35 ~~thereafter.~~

36 ~~(d) Any such producer distributor may, until August~~
37 ~~6, 1969, do either of the following:~~

38 ~~(1) Join and operate wholly within the pool.~~

39 ~~(2) Have its entire original production base and pool~~
40 ~~quota determined during the base period it selected as a~~

1 producer pursuant to Section 62707, established as a part
2 of the pooling plan, and, nevertheless elect to operate
3 entirely outside of the pool to the extent authorized by
4 this section.

5 (e) Any producer-handler who qualifies under this
6 section and elects to operate outside the pool, to the
7 extent of the authority granted, may deduct from its own
8 class 1 sales, excluding sales to a handler, whether in bulk
9 or packaged, its original quota and any quota
10 subsequently purchased, plus a daily deduction of 150
11 pounds of milk fat and 375 pounds of solids not fat before
12 being required to account to the pool.

13 (f) The deductions from class 1 sales authorized
14 pursuant to this section may be made irrespective of the
15 fact that the average class 1 usage in the pool for that
16 month may be less than 100 percent of the pool quota in
17 that pool.

18 (g) Any production subject to this section from the
19 producer-handler selecting this option shall not have the
20 right to participate in the quota pool, irrespective of the
21 fact that the producer-handler did not sell all of the quota
22 as class 1, and will participate in either the base pool or the
23 overbase pool depending upon whether the total
24 production base of the producer is sufficient to cover the
25 milk delivered in excess of the class 1 usage exempted
26 hereunder, otherwise the production in excess of the
27 exempt producer-handler's own class 1 sales, as defined
28 in this section, shall be accounted for as overbase milk.

29 (h) The fact that a producer-handler qualifies as to one
30 of its milk production operations under this section does
31 not prevent it from operating on an entirely separate
32 nonqualifying basis (and therefore subject to pooling) at
33 other milk production facilities, and with other
34 nonqualifying persons at these other milk production
35 facilities. A producer-handler can neither buy nor sell
36 pool quota and transfer therewith the option granted
37 under this division but this shall not prevent him or her
38 from purchasing or selling pool quota or production base
39 as otherwise provided in this chapter.

~~(i) If at any time ownership, as defined in this section, ceases, the producer-handler shall no longer be eligible for the options in this section, shall account to the pool as a separate handler, and shall be entitled to reentry into producer participation in the pool on the same basis as a producer-handler may under the last paragraph of Section 62708.~~

SEC. 2. Section 62708.5 is added to the Food and Agricultural Code, to read:

62708.5. (a) A producer-handler, for purposes of this chapter, shall also include, as a separate and distinct category of producer-handlers, any producer and any handler who purchases or handles fluid milk or fluid cream produced by this producer if all of the ownership of the handler and all of the ownership of the producer is owned by the same person or persons and their ownership in the producer or handler is at least 95 percent identical for each person with their ownership in the handler or producer. This ownership shall not exceed 10 individual persons or owners of equitable interest in a partnership, corporation, or other legally constituted business association.

(b) The ownership required by this section may be through a partnership, corporation, or other legally constituted business association if the entities are owned by the same person or persons, and there is at least 95 percent identity of ownership for each person with their ownership in the handler or producer. For purposes of this section, a "person" or "persons" includes the spouse, or other persons of lineal consanguinity of the first or second degree or collateral consanguinity to the fourth degree, and their spouses, and includes an adopted child the same as a natural child and kindred of the half blood equally with those of the whole blood of the owner and ownerships by persons so related shall be considered single ownership by one person. For purposes of this section, property pledged or hypothecated in any manner to others shall be considered "owned" if equitable ownership with management and control remain with the producer-handler.

(c) Ownership as provided in this section shall have existed at the time of the base period selected by the producer under Section 62707 and at all other times thereafter.

(d) Any such producer-distributor may, until August 6, 1969, do either of the following:

(1) Join and operate wholly within the pool.

(2) Have its entire original production base and pool quota determined during the base period it selected as a producer pursuant to Section 62707, established as a part of the pooling plan, and, nevertheless elect to operate entirely outside of the pool to the extent authorized by this section.

(e) Any producer-handler who qualifies under this section and elects to operate outside the pool, to the extent of the authority granted, shall have the right to make deductions, as follows, from its own class 1 sales, excluding sales to a handler, whether in bulk or packaged, before being required to account to the pool:

(1) If it has not sold production base and pool quota subsequent to February 9, 1977, it may deduct its original quota, and quota purchased prior to January 1, 1978, plus a daily deduction of 150 pounds of milk fat and 375 pounds of solids not fat.

(2) If it has sold production base and pool quota subsequent to February 9, 1977, it may only deduct its original pool quota, and quota purchased prior to January 1, 1978.

(f) The deductions from class 1 sales authorized pursuant to this section may be made irrespective of the fact that the average class 1 usage in the pool for that month may be less than 100 percent of the pool quota in that pool.

(g) Any production subject to this section from the producer-handler selecting this option shall not have the right to participate in the quota pool, irrespective of the fact that the producer-handler did not sell all of the quota as class 1, and will participate in either the base pool or the overbase pool depending upon whether the total production base of the producer is sufficient to cover the

1 milk delivered in excess of the class 1 usage exempted
2 hereunder, otherwise the production in excess of the
3 exempt producer-handler's own class 1 sales, as defined
4 in this section, shall be accounted for as overbase milk.

5 (h) The fact that a producer-handler qualifies as to one
6 of its milk production operations under this section does
7 not prevent it from operating on an entirely separate
8 nonqualifying basis (and, therefore, subject to pooling) at
9 other milk production facilities, and with other
10 nonqualifying persons at these other milk production
11 facilities. A producer-handler can neither buy nor sell
12 pool quota and transfer therewith the option granted
13 under this section, but this shall not prevent him or her
14 from purchasing or selling pool quota or production base
15 as otherwise provided in this chapter.

16 (i) If at any time ownership, as defined in this section,
17 ceases, the producer-handler shall no longer be eligible
18 for the options in this section, shall account to the pool as
19 a separate handler, and shall be entitled to reentry into
20 producer participation in the pool on the same basis as a
21 producer-handler may under the last paragraph of
22 Section 62708.



EXHIBIT E-2

(E-2)

AMENDED IN SENATE MAY 4, 1995

AMENDED IN SENATE MARCH 30, 1995

AMENDED IN SENATE FEBRUARY 27, 1995

SENATE BILL

No. 105

Introduced by Senator Kelley

January 12, 1995

An act to amend Section 62750 of, to add Section 62750.1 to, and to repeal and add Section 62708.5 of, the Food and Agricultural Code, relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

SB 105, as amended, Kelley. Milk: pooling plans.

(1) Under the existing milk pooling law, a producer-handler may deduct from its class 1 sales, before being required to account to the milk pooling plan, its original quota, and any quota subsequently purchased plus a daily deduction of 150 pounds of milk fat and 375 pounds of solids not fat without regard to whether it has sold production base and pool quota.

This bill would permit a producer-handler to deduct from its class 1 sales, before being required to account to the plan, its original quota, and quota purchased prior to March 1, 1995, plus a daily deduction of 150 pounds of milk fat and 375 pounds of solids not fat if it has not sold production base and pool quota subsequent to February 9, 1977; or if it has sold production base and pool quota subsequent to February 9, 1977, to deduct its original pool quota, and quota purchased prior to March 1, 1995. However, the bill would also provide that no qualified

~~producer-handler may deduct these amounts of original quota and purchased quota from its class 1 sales until producers vote in a referendum to suspend certain milk pooling provisions, including those described in (2).~~

~~(2) Existing law sets forth the solids-not-fat announced quota price for those areas in which there is no regional quota adjuster.~~

~~This bill would revise those amounts.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 62708.5 of the Food and
2 Agricultural Code is repealed.
3 SEC. 2. Section 62708.5 is added to the Food and
4 Agricultural Code, to read:
5 62708.5. (a) A producer-handler, for purposes of this
6 chapter, shall also include, as a separate and distinct
7 category of producer-handlers, any producer and any
8 handler who purchases or handles fluid milk or fluid
9 cream produced by this producer if all of the ownership
10 of the handler and all of the ownership of the producer
11 is owned by the same person or persons and their
12 ownership in the producer or handler is at least 95
13 percent identical for each person with their ownership in
14 the handler or producer. This ownership shall not exceed
15 10 individual persons or owners of equitable interest in a
16 partnership, corporation, or other legally constituted
17 business association.
18 (b) The ownership required by this section may be
19 through a partnership, corporation, or other legally
20 constituted business association if the entities are owned
21 by the same person or persons, and there is at least 95
22 percent identity of ownership for each person with their
23 ownership in the handler or producer. For purposes of
24 this section, a "person" or "persons" includes the spouse,
25 or other persons of lineal consanguinity of the first or
26 second degree or collateral consanguinity to the fourth
27 degree, and their spouses, and includes an adopted child

1 the same as a natural child and kindred of the half blood
2 equally with those of the whole blood of the owner and
3 ownerships by persons so related shall be considered
4 single ownership by one person. For purposes of this
5 section, property pledged or hypothecated in any
6 manner to others shall be considered "owned" if
7 equitable ownership with management and control
8 remain with the producer-handler.

9 (c) Ownership as provided in this section shall have
10 existed at the time of the base period selected by the
11 producer under Section 62707 and at all other times
12 thereafter.

13 (d) Any such producer-distributor may, until August
14 6, 1969, do either of the following:

15 (1) Join and operate wholly within the pool.

16 (2) Have its entire original production base and pool
17 quota determined during the base period it selected as a
18 producer pursuant to Section 62707, established as a part
19 of the pooling plan, and, nevertheless elect to operate
20 entirely outside of the pool to the extent authorized by
21 this section.

22 (e) Any producer-handler who qualifies under this
23 section and elects to operate outside the pool, to the
24 extent of the authority granted, shall have the right to
25 make deductions, as follows, from its own class 1 sales,
26 excluding sales to a handler, whether in bulk or packaged,
27 before being required to account to the pool:

28 (1) If it has not sold production base and pool quota
29 subsequent to February 9, 1977, it may deduct its original
30 quota, and quota purchased prior to March 1, 1995, plus
31 a daily deduction of 150 pounds of milk fat and 375 pounds
32 of solids not fat.

33 (2) If it has sold production base and pool quota
34 subsequent to February 9, 1977, it may only deduct its
35 original pool quota, and quota purchased prior to March
36 1, 1995.

37 (f) The deductions from class 1 sales authorized
38 pursuant to this section may be made irrespective of the
39 fact that the average class 1 usage in the pool for that

1 month may be less than 100 percent of the pool quota in that pool.

(g) Any production subject to this section from the producer-handler selecting this option shall not have the right to participate in the quota pool, irrespective of the fact that the producer-handler did not sell all of the quota as class 1, and will participate in either the base pool or the overbase pool depending upon whether the total production base of the producer is sufficient to cover the milk delivered in excess of the class 1 usage exempted hereunder, otherwise the production in excess of the exempt producer-handler's own class 1 sales, as defined in this section, shall be accounted for as overbase milk.

(h) The fact that a producer-handler qualifies as to one of its milk production operations under this section does not prevent it from operating on an entirely separate nonqualifying basis (and, therefore, subject to pooling) at other milk production facilities, and with other nonqualifying persons at these other milk production facilities. A producer-handler can neither buy nor sell pool quota and transfer therewith the option granted under this section, but this shall not prevent him or her from purchasing or selling pool quota or production base as otherwise provided in this chapter.

(i) If at any time ownership, as defined in this section, ceases, the producer-handler shall no longer be eligible for the options in this section, shall account to the pool as a separate handler, and shall be entitled to reentry into producer participation in the pool on the same basis as a producer-handler may under the last paragraph of Section 62708.

~~SEC. 3. Section 62750 of the Food and Agricultural Code is amended to read:~~

~~62750. Notwithstanding any provision of Chapter 3 (commencing with Section 62700) in conflict with this section or any pooling plan for market milk in effect under that chapter, effective January 1, 1994, each producer, including producer-handlers as defined in Section 62708.5, shall be paid the amounts determined in accordance with this section for his or her pool quota~~

1 production and for all production in excess of his or her
2 pool quota.

3 (a) For all milk fat, whether or not equal to his or her
4 pool quota, an amount determined by dividing the value
5 of all milk fat in the pool by the amount of milk fat
6 produced.

7 (b) Transportation allowances that are provided for in
8 the pooling plan shall not be deducted from the quota
9 milk of any region, but shall be deducted from the total
10 solids-not-fat pool revenue before any price is
11 determined for quota and nonquota solids not fat.

12 (c) Regional quota adjusters shall continue to be
13 subtracted from the announced quota price in the
14 established areas as specified in the pooling plan for
15 market milk. However, the hundredweight price
16 specified shall be converted to a solids-not-fat equivalent
17 value, and the adjustments for the effect of those regional
18 quota adjusters shall be applied to the solids-not-fat
19 revenue.

20 (d) The solids-not-fat price for all milk produced that
21 is not entitled to receive a greater price as provided for
22 in paragraphs (1) and (2) shall be an amount determined
23 by dividing the value of all solids not fat in the pool after
24 adjustments for the effect of transportation allowance
25 and regional quota adjusters and the greater prices
26 provided for in paragraphs (1) and (2) by the total
27 amount of solids not fat produced. This shall be the
28 announced price for nonquota solids not fat.

29 (1) The announced solids-not-fat price for quota solids
30 not fat shall be nineteen and one-half cents (\$0.195) per
31 pound greater than the announced price for nonquota
32 solids not fat. In regions where there are regional quota
33 adjusters, the quota solids-not-fat price received by
34 producers in each such region shall be the announced
35 quota solids not fat price less any regional quota adjuster
36 for that region as specified in the plan.

37 (2) Producer handlers who continue to meet the
38 qualifying requirements of Section 62708.5 shall receive
39 the solids-not-fat price for quota effective in their region
40 as specified in paragraph (1) plus an additional eight and

1 one-half cents (\$0.085) on all solids-not-fat qualified
2 production. Any production that is entitled to receive this
3 price shall not be eligible to receive any transportation
4 allowances. The production qualified for this price shall
5 be that portion of the producer-handler's production
6 which, prior to March 1, 1995, the producer-handler
7 elected to have deducted from its own class 1 sales to the
8 extent authorized under Section 62708.5. The amount of
9 any quota so authorized shall be adjusted upward by any
10 new quota allocations as provided for in Section 62707.1.
11 Any current solids-not-fat production that would
12 otherwise be qualified for this price for which the
13 producer-handler does not currently have an adequate
14 amount of his or her own class 1 sales (after excluding
15 sales to another handler, whether in bulk or packaged);
16 shall only be entitled to receive the announced
17 solids-not-fat price for nonquota solids not fat on that
18 production.

19 SEC. 4. Section 62750.1 is added to the Food and
20 Agricultural Code, to read:

21 62750.1. Notwithstanding Section 62708.5, no
22 producer-handler who is qualified and continues to
23 qualify under that section to operate outside the pool and
24 elects to do so, in accounting to the pool, is entitled to
25 deduct from its own class 1 sales, either its original quota
26 or any quota subsequently purchased or acquired.

EXHIBIT E-3

E3

Senate Bill No. 105

CHAPTER 174

An act to repeal and add Section 62708.5 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor July 22, 1995. Filed with
Secretary of State July 24, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 105, Kelley. Milk: pooling plans.

Under the existing milk pooling law, a producer-handler may deduct from its class 1 sales, before being required to account to the milk pooling plan, its original quota, and any quota subsequently purchased plus a daily deduction of 150 pounds of milk fat and 375 pounds of solids not fat without regard to whether it has sold production base and pool quota.

This bill would permit a producer-handler to deduct from its class 1 sales, before being required to account to the plan, its original quota, and quota purchased prior to March 1, 1995, plus a daily deduction of 150 pounds of milk fat and 375 pounds of solids not fat if it has not sold production base and pool quota subsequent to February 9, 1977; or if it has sold production base and pool quota subsequent to February 9, 1977, to deduct its original pool quota, and quota purchased prior to March 1, 1995.

The people of the State of California do enact as follows:

SECTION 1. Section 62708.5 of the Food and Agricultural Code is repealed.

SEC. 2. Section 62708.5 is added to the Food and Agricultural Code, to read:

62708.5. (a) A producer-handler, for purposes of this chapter, shall also include, as a separate and distinct category of producer-handlers, any producer and any handler who purchases or handles fluid milk or fluid cream produced by this producer if all of the ownership of the handler and all of the ownership of the producer is owned by the same person or persons and their ownership in the producer or handler is at least 95 percent identical for each person with their ownership in the handler or producer. This ownership shall not exceed 10 individual persons or owners of equitable interest in a partnership, corporation, or other legally constituted business association.

(b) The ownership required by this section may be through a partnership, corporation, or other legally constituted business

association if the entities are owned by the same person or persons, and there is at least 95 percent identity of ownership for each person with their ownership in the handler or producer. For purposes of this section, a "person" or "persons" includes the spouse, or other persons of lineal consanguinity of the first or second degree or collateral consanguinity to the fourth degree, and their spouses, and includes an adopted child the same as a natural child and kindred of the half blood equally with those of the whole blood of the owner and ownerships by persons so related shall be considered single ownership by one person. For purposes of this section, property pledged or hypothecated in any manner to others shall be considered "owned" if equitable ownership with management and control remain with the producer-handler.

(c) Ownership as provided in this section shall have existed at the time of the base period selected by the producer under Section 62707 and at all other times thereafter.

(d) Any such producer-distributor may, until August 6, 1969, do either of the following:

(1) Join and operate wholly within the pool.

(2) Have its entire original production base and pool quota determined during the base period it selected as a producer pursuant to Section 62707, established as a part of the pooling plan, and, nevertheless elect to operate entirely outside of the pool to the extent authorized by this section.

(e) Any producer-handler who qualifies under this section and elects to operate outside the pool, to the extent of the authority granted, shall have the right to make deductions, as follows, from its own class 1 sales, excluding sales to a handler, whether in bulk or packaged, before being required to account to the pool:

(1) If it has not sold production base and pool quota subsequent to February 9, 1977, it may deduct its original quota, and quota purchased prior to March 1, 1995, plus a daily deduction of 150 pounds of milk fat and 375 pounds of solids not fat.

(2) If it has sold production base and pool quota subsequent to February 9, 1977, it may only deduct its original pool quota, and quota purchased prior to March 1, 1995.

(f) The deductions from class 1 sales authorized pursuant to this section may be made irrespective of the fact that the average class 1 usage in the pool for that month may be less than 100 percent of the pool quota in that pool.

(g) Any production subject to this section from the producer-handler selecting this option shall not have the right to participate in the quota pool, irrespective of the fact that the producer-handler did not sell all of the quota as class 1, and will participate in either the base pool or the overbase pool depending upon whether the total production base of the producer is sufficient to cover the milk delivered in excess of the class 1 usage exempted

hereunder, otherwise the production in excess of the exempt producer-handler's own class 1 sales, as defined in this section, shall be accounted for as overbase milk.

(h) The fact that a producer-handler qualifies as to one of its milk production operations under this section does not prevent it from operating on an entirely separate nonqualifying basis (and, therefore, subject to pooling) at other milk production facilities, and with other nonqualifying persons at these other milk production facilities. A producer-handler can neither buy nor sell pool quota and transfer therewith the option granted under this section, but this shall not prevent him or her from purchasing or selling pool quota or production base as otherwise provided in this chapter.

(i) If at any time ownership, as defined in this section, ceases, the producer-handler shall no longer be eligible for the options in this section, shall account to the pool as a separate handler, and shall be entitled to reentry into producer participation in the pool on the same basis as a producer-handler may under the last paragraph of Section 62708.

EXHIBIT E-4

E-4

MILK PRODUCERS COUNCIL

13545 Euclid Avenue - Ontario, CA 91761 - (909) 628-6018 - FAX (909) 591-7328

March 20, 1995

Senator Jim Costa, Chairman
Senate Ag. and Water Committee
State Capital, Sacramento

RE: SB 105 (Kelly) relative to Milk Pooling plans/producer-handlers

Dear Senator Costa,

Milk Producers Council is opposed to SB 105 in its current form.

In the existing Milk Pooling Law, a producer-handler may deduct from its class 1 sales its original quota, and quota purchased since the enactment of SB 688 and AB 1285 which were chaptered in 1993 - 1994 respectively.

SB 105 (Kelly), unless amended, is an open invitation to legal action by the producer-handlers if it becomes law in its current form. This could cause major damage and possible losses of pool quota held by producers state wide if the legal challenge is to be successful.

Milk Producers Council stands ready to work with the author of SB 105, Senator Dave Kelly, yourself and others to seek a solution which would be acceptable to the California dairy producer industry.

Please don't hesitate to call if you have any questions.

Respectfully yours,

Bob Feenstra
Executive Director

BPF/cja

MILK PRODUCERS COUNCIL

13545 Euclid Avenue - Ontario, CA 91761 - (909) 628-6018 - FAX (909) 591-7328

April 17, 1995

Milk Producers Council is opposed to SB 105 in its current legislative form.

Background Paper on SB 105

SB 105 totally removes the exempt status of the Producer Handlers own Quota production which was covered by their own class 1 sales.

The exempt status of the Producer Handler quota production was granted in the original pooling act for all existing sales that a P H had at that time.

In all federal milk marketing orders, a Producer Handler may exempt all his own milk production covered by his own class I milk sales without limit and without the need to purchase existing quota as is required in the California system. In the federal system, a P H may not purchase milk from the producer pool to cover his class one sales but must produce all of his own requirements.

This exempt status of the P H quota is not transferable. Therefore the total pounds of exempt quota held by all P H's in 1994 was half of the total exempt quota held by all P H's in the beginning year of pooling — 1969.

The exempt status was expanded to cover quota purchased up to 1978 by the passage of the equalization bill which allocated blue sky quota to many producers.

SB 688, which was signed into law in 1993, gave exempt status to all future quota purchased by any P H.

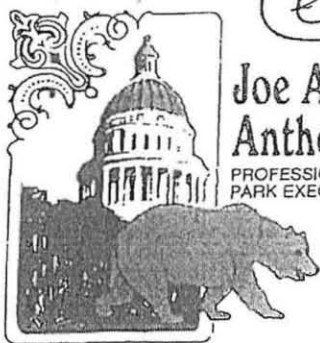
This action — SB 688 — was part of legislation sponsored by the proponents of SB 105 and was agreed to by all the active participants.

SB 105 not only limits recognition of P H quota to that quota purchased prior to March 1 of 1995, it also removes **the entire exempt status** of all the P H quota held even prior to 1978 and even 1969. In return it allocates a fixed amount of additional cents per pound to P H quota over that allocated to all producer quota.

SB 105 totally ignores the legislative action of past legislative bodies even as late as 1993. SB 105 ignores the historical status of the P H production covered by his own sales in all federal milk marketing orders. This bill ignores the Producer Handler's cost of marketing, cost of processing or the type of customer he serves.

MPC agrees the exempt status should be limited to quota purchased prior to January 1, 1996. We propose that SB 105 be amended back to the language of SB 105 as amended on February 27, 1995 with an additional change by amending the phrase "March 1,1995" where ever it appears to "**January 1, 1996**". This gives a warning time to end the unlimited time granted by SB 688 for allowing future quota purchases to become exempt quota but still maintains the historical exempt status for the P H quota acquired up to that time.

EXHIBIT E-5



Joe A. Gonsalves
Anthony D. Gonsalves

PROFESSIONAL LEGISLATIVE REPRESENTATION
PARK EXECUTIVE BLDG. • SUITE 250 • 925 L ST. • SACRAMENTO, CA 95814-3704 • 916 • 441-0597

TO: Members of the Senate Agriculture and Water Resources Committee

FROM: Joe and Anthony Gonsalves

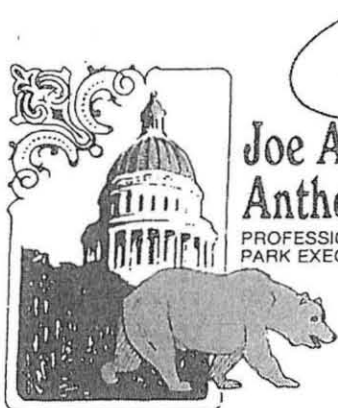
RE: SB 105 (Kelley) - OPPOSE

CLIENT: California Producer-Handler Association

- When the pooling bill was enacted in 1969, there were 86 producer-handlers in the State of California (now only six) who held daily pounds of quota fat. The total amount of daily pounds of quota fat exempt from the pool was 40,449.
- The reason that they were exempt from reporting to the pool was because the producer-handler owned the cows, owned the processing plant, and had Class I sales for that quota milk.
- The original pooling act stated, however, that in the future any Class I sales producer-handlers were able to acquire must have quota for those Class I sales, and instead of receiving the Class I price for that milk, the producer-handlers would have to share those new Class I sales with the pool. That meant that although they sold the milk for Class I, which is drinking milk, they would receive a quota blend price for that milk.
- What the pooling act did for producer-handlers was to say that you get what you have earned in the past, but in the future whatever you are able to develop, you will have to share with all the other dairymen in the State of California.
- In 1977, Assemblyman Barry Keene carried a bill, and in that legislation, the requirement that producer-handlers had to share in their Class I sales with the pool was removed and producer-handlers were allowed to purchase quota and receive Class I sales for their quota until January 1, 1978.
- Then again in 1993, under SB 688 by Senator McCorquodale and in 1994, AB 1285 by Assemblyman Cannella, the requirement that anytime after January 1, 1978, that producer-handlers would have to share their Class I sales with the pool was removed.

- The amendment to the McCorquodale bill was offered in a subcommittee of Appropriations and was accepted by producer representatives, and again during the passage of AB 1285 by Assemblyman Cannella in 1994, the legislation reiterated the desire of the Legislature that the producer-handler not be required to share their market with the pool by the passage of that bill.
- Subsequent to the adoption of the producer-handler amendment in 1993 to the McCorquodale bill, the proponents of SB 105 were involved in all of the committee hearings following that amendment's adoption, and in 1994, during the passage of the Cannella bill, and never once before any committee of the Legislature objected to the producer-handler amendment.
- The only thing that the producer-handlers are asking of the California Legislature is that they are allowed to continue to develop Class I sales for their quota milk, and that they continue to receive the monies that those Class I sales bring, and not have to share them with the pool.
- The reason that producer quota-holders receive less for quota milk than the producer-handlers do for Class I is because they have to take a blend of Class I, II, and III.
- The reason for receiving a quota-blend price is because producers do not have enough Class I sales for the quota that they hold. They hold too much quota, and as a result of that, the milk that they cannot sell for Class I must be sold for Class II and III, which means that they are for sales of butter, powder, and cheese.
- The thing to remember here is that producers do receive Class I price for their Class I sales. In 1994, producers received 854,644,353.60 for their Class I sales.
- This is not a producer-handler/producer fight, this is a move by the cooperatives and the vertically integrated markets who have to go out and compete with the producer-handlers for Class I sales, and what the co-ops have done is to enlist the support of the producers on the basis that it is an unfair advantage.
- There is no unfair advantage whatsoever, because the State of California does not regulate the retail price for milk, so in the retail market place there is competition for Class I sales. The co-ops would like to eliminate the producer-handlers that would reduce the competition and allow them to sell milk at a higher price at an increase cost to the consumer.
- We would respectfully request your NO vote on SB 105.

EXHIBIT E-6



Joe A. Gonsalves
Anthony D. Gonsalves

PROFESSIONAL LEGISLATIVE REPRESENTATION
PARK EXECUTIVE BLDG. • SUITE 250 • 925 L ST. • SACRAMENTO, CA 95814-3704 • 916 • 441-0597

TO: Members of the Senate
FROM: Joe and Anthony Gonsalves
RE: SB 105 (Kelley)
POSITION: **OPPOSED**
CLIENT: California Producer-Handler Association

We are opposed to SB 105 because the thrust of this bill is to amend a section of SB 688 (McCorquodale) of 1993 and AB 1285 (Cannella) of 1994.

Current law, which was changed in 1993 and 1994 in those two bills, allows producer-handlers to buy quota and receive Class I sales for that quota.

There are only six (6) producer-handlers in the State of California, and based on the law that was changed in 1993 by Senator McCorquodale, they invested over \$8 Million in the purchase of quota so they could get the benefit of their Class I sales. This bill repeals the action taken in 1993 and makes changes in what they are to receive for their quota purchases.

It is very unfair to pass legislation that would nullify what was signed by the Governor in 1993 and reiterated in 1994, and allow producer-handlers to make purchases based on that legislation. Then in 1995 to come back and reduce the amount of income they will receive by 67¢ on every hundred pounds of milk they sell, then turn around and give the 67¢ to producers who have nothing to do with the production and sale of that milk. It is blatantly unfair!

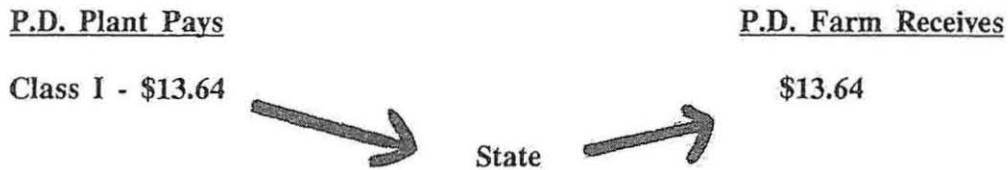
The producer-handlers are asking the California Legislature to be allowed to continue to develop Class I sales for their quota milk, continue to receive the monies those Class I sales bring and not have to share them with the pool.

We ask the Members of the Senate to reject this bill. Then we will meet with Senator Kelley and the proponents of this bill to suggest an amendment which will be fair to everyone concerned and not violate the integrity of the legislation that allowed producer-handlers to spend over \$8 Million in purchasing quota in 1994.

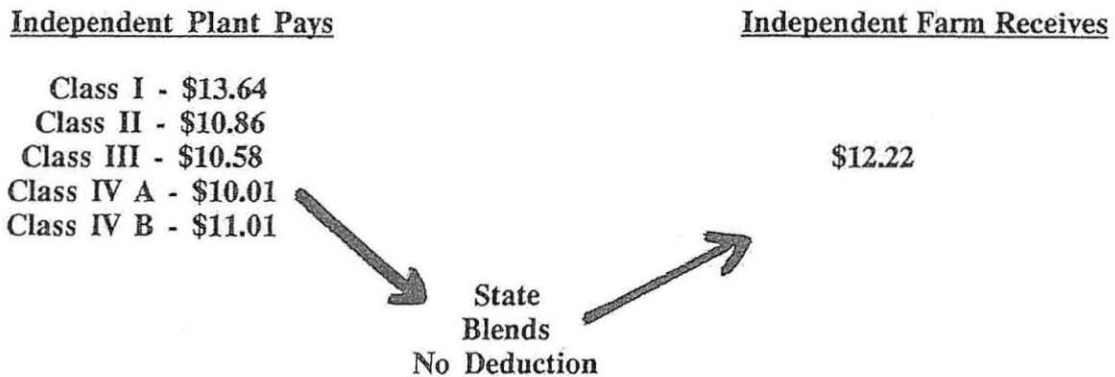
We respectfully ask for your NO vote.

- Milk Pooling requires the State to be the middle-man between the dairy farm and the plants.
- Producer-Distributors do not need the State to be the middle-man - they own farm and plant.
- The State sets the price of wholesale milk that the dairy farm receives.
- Class I milk receives the highest price because it is drinking milk.
- Classes II, III, and IV receive a lower price, depending on usage, because these classes are manufactured milk (i.e.: butter, powder, and cheese).

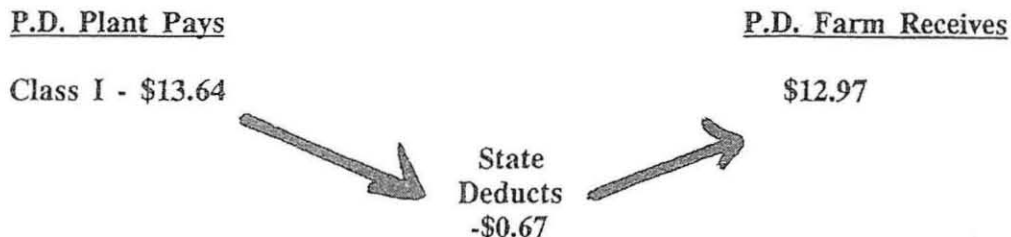
EXAMPLE I - CURRENT LAW
 Producer-Distributors Owning Farm and Plant
 Producer-Distributor Quota Only Class I



EXAMPLE II - CURRENT LAW
 Producers with Quota



EXAMPLE III - PROPOSAL UNDER SB 105
 Producer-Distributors Owning Farm and Plant
 Producer-Distributor Quota Only Class I



Why should the State take this money from the Producer-Distributors to enhance the other pool?

EXHIBIT E-7

E-7

VOTES - ROLL CALL

MEASURE: SB 105
AUTHOR: Kelley
TOPIC: Milk: pooling plans.
DATE: 05/11/95
LOCATION: SEN. FLOOR
MOTION: SENATE THIRD READING SB 105 KELLEY
(AYES 33. NOES 1.) (PASS)

AYES

Ayala	Beverly	Boatwright	Calderon	
Costa	Craven	Dills	Greene	
Haynes	Hughes	Hurt	Johannessen	
Johnston		Kelley	Killea	Kopp
Leonard	Leslie	Lockyer	Maddy	
Monteith		Mountjoy	O'Connell	Peace
Petris	Polanco	Rogers	Rosenthal	
Russell	Solis	Thompson	Watson	
Wright				

NOES

Hayden

ABSENT, ABSTAINING, OR NOT VOTING

Alquist	Campbell	Johnson	Lewis
Marks	Mello		

VOTES - ROLL CALL

MEASURE: SB 105

AUTHOR: Kelley

TOPIC: Milk: pooling plans.

DATE: 05/01/95

LOCATION: SEN. FLOOR

MOTION: SENATE THIRD READING SB 105 KELLEY AMEND - KELLEY
(AYES 10. NOES 20.) (FAIL)

AYES

Alquist	Beverly	Costa	Craven	
Johannessen		Johnston	Kelley	Monteith
Thompson		Wright		

NOES

Ayala	Boatwright	Campbell	Dills
Greene	Hayden	Haynes	Hughes
Kopp	Leonard	Maddy	Marks
Mello	Mountjoy	O'Connell	Peace
Polanco	Rosenthal	Solis	Watson

ABSENT, ABSTAINING, OR NOT VOTING

Calderon	Hurt	Killea	Leslie
Lewis	Lockyer	Petris	Rogers
Russell	Vacancy		

E-7

EXHIBIT E-8

E-Q

PRODUCER - DISTRIBUTOR EXEMPTION

When the Milk Pooling Plan was adopted in 1969, the Type 70 Producer-Distributors (PD's) had legislative language that gave them the option to deduct their quota allocated at the time of adoption of the plan from their Class I sales when accounting to the Pool. In 1978, the Type 70 PD exemption was expanded to cover all Quota purchased prior to 1978.

In 1978, the PD's only represented 3.96% of the total Class I sales in California. To date they even represent less, 3.64%. How much of an impact can they have with this small percentage?

The California Quota system is unique. Producers are allowed to purchase Quota to guarantee them a \$1.70 cwt more for their milk. What this gives them is a bigger percentage of Class I sales allocated to the Quota prices and blending the remaining sales of Class II, III, IVa and IVb among Quota and Overbase producers. California used to be a Class I state. Now it is more of a manufacturing state which has caused the dairymen's prices to go down.

A way of getting more for their milk, even a minimal amount, is to get credit for the Producer-Distributors' sales of Class I.

This raises a good question. Why should the PD's have to share their hard work in Class I sales? They don't sell for Class II, III, IVa and IVb products. Why should they have to take a blended price?