

LEGISLATIVE BILL 275

Approved by the Governor February 26, 1992

Introduced by Wehrbein, 2; Rogers, 41

AN ACT relating to milk; to adopt the Dairy Industry Development Act; and to provide operative dates.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 17 of this act shall be known and may be cited as the Dairy Industry Development Act.

Sec. 2. For purposes of the Dairy Industry Development Act:

(1) Board shall mean the Nebraska Dairy Industry Development Board;

(2) Commercial use shall mean sale for retail consumption or sale for resale, for manufacture for resale, or for processing for resale;

(3) First purchaser of milk shall mean a person who buys milk from a producer and resells to another person the milk or products manufactured or processed from the milk;

(4) Milk shall mean any class of cow's milk produced in the State of Nebraska;

(5) Milk production unit shall mean any producer licensed by the Department of Agriculture;

(6) Producer shall mean any person engaged in the production of milk for commercial use;

(7) Producer-processor shall mean a producer who processes and markets the producer's own milk; and

(8) Qualified program shall mean any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153, as amended. Such program shall: (a) Conduct activities as defined in 7 C.F.R. 1150.114, 1150.115, and 1150.116 intended to increase consumption of milk and dairy products generally; (b) except for programs operated under the laws of the United States or any state, have been active and ongoing before November 29, 1983; (c) be financed primarily by producers, either individually or through cooperative associations; (d) not use any private brand or trade name in advertising and promotion of dairy products unless the National Dairy Promotion and Research Board established pursuant to 7 C.F.R. 1150.131 and the United States Secretary of

Agriculture concur that such requirement should not apply; (e) certify to the United States Secretary of Agriculture that any request from a producer for a refund under the program will be honored by forwarding that portion of such refund equal to the amount of credit that otherwise would be applicable to the program pursuant to 7 C.F.R. 1150.152(c) to either the National Dairy Promotion and Research Board or a qualified program designated by the producer; and (f) not use program funds for the purpose of influencing governmental policy or action.

Sec. 3. The Legislature declares it to be in the public interest that producers in Nebraska be permitted and encouraged to maintain and expand domestic sales of milk and dairy products, develop new products and new markets, improve methods and practices relating to marketing or processing of milk and dairy products, and inform and educate consumers of sound nutritional principles including the role of milk in a balanced diet. It is the purpose of the Dairy Industry Development Act to provide the authorization and to prescribe the necessary procedures by which the dairy industry in Nebraska may finance programs to achieve the purposes expressed in this section. The Nebraska Dairy Industry Development Board shall be the agency of the State of Nebraska for such purpose.

Sec. 4. The Nebraska Dairy Industry Development Board is hereby created. Members of the board shall (1) be residents of Nebraska, (2) be at least twenty-one years of age, (3) have been actually engaged in the production of milk in this state for at least five years, and (4) derive a substantial portion of their income from the production of milk in Nebraska. Members shall be nominated and appointed as provided in section 5 of this act.

Sec. 5. (1) Within thirty days after the operative date of this section, each first purchaser of milk shall give written notice to each producer from whom the purchaser purchases milk of the nomination of candidates for appointment to the board. The notice shall provide that each producer is entitled to nominate producers who sell milk to such first purchaser of milk. All such nominations shall be in writing, shall contain an acknowledgment and consent by the person being nominated, and shall be returned to the first purchaser of milk within fifteen days after expiration of such thirty days.

(2) Each first purchaser of milk shall, within thirty days after expiration of the fifteen-day period

stated in subsection (1) of this section, submit to the Governor the names of two nominees for each one hundred milk production units from which the purchaser purchases milk, which nominees shall meet the qualifications provided in section 4 of this act. A first purchaser of milk which purchases milk from less than one hundred milk production units may combine those units with the units of any one or more other first purchasers of milk, and such combination shall be entitled to nominate two candidates for each one hundred milk production units so combined, except that if the combined number of milk production units of such combined first purchasers of milk is still less than one hundred, such combination shall be entitled to nominate two candidates.

(3) The Governor shall, within thirty days after the expiration of the thirty-day period provided in subsection (2) of this section, appoint the members of the board as provided in section 6 of this act.

Sec. 6. (1) The Governor shall appoint to the board a number of members equal to one-half the number of nominees submitted by first purchasers of milk. Members of the board shall, as nearly as possible, be representative of the nominees submitted by all first purchasers of milk in the state. The Governor may choose the members of the board from among the nominees submitted under section 5 of this act or reject all nominees. If the Governor so rejects all nominees, names of nominees shall again be provided to the Governor pursuant to such section.

(2) The terms of the members of the board shall be three years, except that the terms of the initial members of the board shall be staggered so that one-third of the members are appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. Once duly appointed and qualified, no member's term shall be shortened or terminated by any subsequent certification by the Department of Agriculture of milk production units from which a first purchaser of milk purchases milk.

(3) The Director of Agriculture or his or her designee and a designee of the Nebraska Dairy Industry Association or its successor may participate in the activities of the board as ex officio members.

(4) Members of the board shall elect from among the members a chairperson, a vice-chairperson, and such other officers as they deem necessary and appropriate.

Sec. 7. (1) As the terms of the initial

members of the board expire, their successors shall be nominated and appointed in the same manner as initial members. Members whose terms have expired shall continue to serve until their successors are appointed and qualified.

(2) A vacancy on the board shall exist in the event of the death, disability, or resignation of any member, when a member ceases to be a resident of Nebraska, or when a member ceases to be a producer in Nebraska.

(3) In the event of a vacancy, the board shall certify to the first purchasers of milk who nominated the member that such a vacancy exists and shall request nominations in accordance with section 5 of this act of candidates who meet the qualifications provided in section 4 of this act to fill the vacancy for the remainder of the unexpired term. Appointment shall be by the Governor as provided in section 6 of this act.

(4) Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 8. (1) The board shall meet at least once every six months at a time and place fixed by the board. Special meetings may be called by the chairperson and shall be called by the chairperson upon request of at least twenty-five percent of the members of the board. Written notice of the time and place of all meetings shall be mailed in advance to each member of the board. A majority of members of the board shall constitute a quorum for the transaction of business. The affirmative vote of a majority of all members of the board shall be necessary for the adoption of rules and regulations.

(2) The board shall at each regular meeting review all expenditures made since its last regular meeting.

(3) The board shall keep minutes of its meetings and other books and records which shall clearly reflect all of the acts and transactions of the board. Such records shall be open to examination during normal business hours.

Sec. 9. The board may contract for the necessary office space, furniture, stationery, printing, and personnel services useful or necessary for the administration of the Dairy Industry Development Act. The total administrative costs and expenses of the board shall not exceed five percent of the annual assessments collected in accordance with section 11 of this act.

Sec. 10. The board shall:

(1) Arrange or contract for administrative and audit services which are necessary for the proper operation of the Dairy Industry Development Act;

(2) Procure and evaluate data and information necessary for the appropriate distribution of funds collected;

(3) Direct the distribution of funds collected;

(4) Prepare and approve a yearly budget;

(5) Adopt and promulgate rules and regulations to carry out the act;

(6) Establish a means by which all producers are informed annually on board members, policy, expenditures, and programs for the preceding year;

(7) Authorize the expenditure of funds to conduct activities provided for by the act;

(8) Bond such persons as necessary to ensure adequate protection of funds;

(9) Make refunds to other qualified programs in other states and disburse as directed by producers pursuant to subdivision (8)(e) of section 2 of this act;

(10) Require that all books and records which clearly reflect all the transactions of its funded qualified programs be made available for audit by the board;

(11) Initiate appropriate enforcement of the act and the rules, regulations, and orders promulgated under the act;

(12) Accept remittances or credits and apply for and accept advances, grants, contributions, and any other forms of assistance from the federal government, the state, or any public or private source for administering the act and execute contracts or agreements in connection therewith;

(13) When necessary, appoint committees and advisory committees, the membership of which reflects the different funding regions of the United States and of the State of Nebraska in which milk is produced and delegate to such committees the authority reasonably necessary to administer the act under the direction of the board and within the policies determined by the board; and

(14) Exercise all incidental powers useful or necessary to carry out the act.

Sec. 11. (1) There shall be paid to the board a mandatory assessment of ten cents per hundredweight on all milk produced in the State of Nebraska for commercial use.

(2) The board may audit financial and other

records of first purchasers of milk, producers, and their agents pertaining to the assessment provided for in this section and otherwise ensure compliance with the Dairy Industry Development Act.

(3) For purposes of the act, when milk is sold to an out-of-state purchaser, the sale shall be deemed to have occurred in Nebraska if the milk was otherwise produced within Nebraska immediately prior to such sale and such sale is the first purchase of the milk for commercial use.

(4) For purposes of the act, when milk is produced out-of-state but sold to a first purchaser of milk in Nebraska, the assessment provided for in this section may be assessed and retained in Nebraska only if the producer consents.

Sec. 12. The assessment prescribed in section 11 of this act shall be paid by producers at the time of first sale or delivery of milk for commercial use and shall be collected by the first purchaser of milk except as provided in this section. The first purchaser of milk shall remit the assessment to the board when the first purchaser of milk issues the milk payroll to producers. When milk is sold by producers to nonresident first purchasers of milk, the nonresident first purchaser of milk shall remit the assessments to the board. Producer-processors shall remit the assessments to the board. All assessments shall be remitted to the board not later than the last day of the month following the month in which the milk was commercially used, and a report shall be filed by the person responsible for remitting the assessment at the time that the assessment is remitted. The board shall make proper refunds to producers pursuant to subdivision (8)(e) of section 2 of this act at least quarterly. The board shall promulgate rules and regulations concerning the payment, remittance, refunding, and reporting of assessments. All money collected by the board shall be remitted to the State Treasurer for credit to the Nebraska Dairy Industry Development Fund.

Sec. 13. The Nebraska Dairy Industry Development Fund is hereby created. Money in the fund shall be used for the administration of the Dairy Industry Development Act, including advertising and promotion, market research, nutrition and product research and development, and nutrition and educational programs. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 14. The board shall not set up programs

or agencies of its own but shall fund active, ongoing, qualified programs as stated in section 114 of the Dairy Production Stabilization Act of 1983, Public Law 98-180, as amended, and the regulations promulgated pursuant thereto. Funds may be used by qualified programs to jointly sponsor projects with any private or public organization to meet the objectives of the Dairy Industry Development Act.

Sec. 15. The board shall prepare a report on or before October 1 of each year setting forth the income received from the assessments collected in accordance with section 11 of this act for the preceding fiscal year, and the report shall include:

(1) The expenditure of funds by the board during the year for the administration of the Dairy Industry Development Act;

(2) A brief description of all contracts requiring the expenditure of funds by the board;

(3) The action taken by the board on all such contracts;

(4) An explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of dairy products and the direct expense associated with each program;

(5) The name and address of each member of the board; and

(6) A brief description of the rules, regulations, and orders adopted and promulgated by the board.

Such report shall be available to the public upon request.

Sec. 16. (1) Any person violating any of the provisions of the Dairy Industry Development Act shall be guilty of a Class III misdemeanor.

(2) Any unpaid assessment shall be increased one and one-half percent each month beginning with the day following the date such assessment was due. Any remaining amount due, including any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each succeeding month until paid.

(3) For purposes of this section, any assessment that was determined at a date later than prescribed by section 12 of this act because of the failure to submit a report to the board when due shall be considered to have been payable on the date it would have been due if the report had been timely filed. The timeliness of a payment to the board shall be based on the applicable postmarked date or the date actually

received by the board, whichever is earlier. Any assessments and late payment fees may be recovered by action commenced by the board.

(4) The remedies provided in this section shall be in addition to and not exclusive of other remedies that may be available by law or in equity.

Sec. 17. Sections 1 to 7 and 17 of this act shall become operative on their effective date. The other sections of this act shall become operative on the date as of which the Dairy Production Stabilization Act of 1983, Public Law 98-180, as amended, is repealed or on the date as of which the Advertising and Promotion Program and Agency, as provided in accordance with 7 C.F.R. 1065.110, as amended, is repealed, rescinded, or otherwise terminated.