

CHAPTER 32B

DAIRY PROMOTION ACT

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32B.01 CITATION. Sections 32B.01 to 32B.13 may be cited as the "dairy promotion act of Minnesota".

[1969 c 851 s 1]

32B.02 PURPOSE. It is hereby declared that the product development, marketing, and promotion of milk and milk products in Minnesota is important to the general welfare of the people of the state of Minnesota; that it is in the public interest that better methods of production, processing, and marketing of milk and milk products produced in Minnesota be fostered, encouraged, developed, and improved so that the milk industry within the state of Minnesota, the people employed by said industry, directly and indirectly, and the people of the state of Minnesota shall be benefited thereby, the accomplishment of which requires and demands provision for the establishment of a Minnesota dairy association council for the purpose and with the objectives of contributing to the stabilization and improvement of the agricultural economy of this state. The provision of sections 32B.01 to 32B.13 shall not be construed to abrogate or limit in any way the rights, powers, duties, and functions of the office of the commissioner of agriculture or any other agency of the state, but shall be supplementary thereto and in aid and cooperation therewith.

[1969 c 851 s 2; 1976 c 149 s 62:subd 5]

32B.03 DEFINITIONS. Subdivision 1. For the purpose of sections 32B.01 to 32B.13 the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. "Milk" is defined as the whole, fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows excluding that obtained within 15 days before or five days after calving or such longer period as may be necessary to render the milk practically colostrum free. The name "milk" unqualified means, cows' milk.

Subd. 3. "Commissioner" means the commissioner of agriculture.

Subd. 4. "Council" means the dairy research and promotion council of 22 producer members who direct and assist the commissioner of agriculture in administration of sections 32B.01 to 32B.13.

Subd. 5. "Producer" means any person or persons, partnership, corporation or cooperative, in the state of Minnesota, which produces milk as defined above and sells this milk or cream into commercial channels either for fresh or processing purposes.

Subd. 6. "Private processor" means a privately owned dairy processor legally constituted under the laws of Minnesota for the purposes of buying or marketing milk and milk products, whether domiciled within the state or without.

Subd. 7. "Producer-processor" means a producer as herein defined, who processes and markets his own production. For the purpose of collecting the check-off he becomes the "first buyer" as herein defined.

Subd. 8. "Qualified voter" means any producer as defined herein.

Subd. 9. "Promotional order" means an order issued by the commissioner of agriculture pursuant to sections 32B.01 to 32B.13 which establishes a program for marketing, advertising, research and development in the processing, distributing, sale of, or handling of milk and milk products and providing for the collection of fees for financing any such program.

Subd. 10. "Cooperative" means a nonprofit association of dairy farmers legally constituted under the laws of Minnesota or the laws of other states who have gathered together for purposes of bargaining for a price of marketing their milk and milk products. This will affect all cooperatives buying milk from Minnesota producers, whether domiciled within the state or without.

Subd. 11. "First buyer" means any person who purchases milk from the producer in the first instance.

[1969 c 851 s 3; 1976 c 149 s 15]

32B.04 COUNCIL; CREATION, MEMBERSHIP. Subdivision 1. Upon the petition of 1000 or more producers, the commissioner of agriculture shall proceed to hold the election for the 22 area producer members of the council and these elections must be held within six months of the date the petition is presented to the commissioner. The commissioner shall divide the state into 11 equal areas, in accordance with the milk production, and so far as is possible these districts shall follow county lines and shall provide for the election of two producer members residing in each district.

The commissioner shall be an ex officio nonvoting member of the council.

The council shall elect annually from its membership a chairman and vice chairman and such other officers as it may deem appropriate.

The commissioner shall appoint a nominating committee of producers in each district, to nominate members for election to represent its district.

Subd. 2. In the election of council members the producer receiving the highest vote shall serve for a period of two years and the producer with the next highest vote for a period of one year and as their terms expire, there shall be an election each year and a producer member of the council shall be elected for a period of two years in each area. The term of the council member shall terminate when the election in that area is held to name his successor. When a vacancy occurs for any reason, the council shall appoint a successor to fill the unexpired term. This successor shall be from the same district in which the vacancy occurs.

Subd. 3. In the administration of sections 32B.01 to 32B.13, the commissioner, but always with the assistance of the council, shall have and may exercise any of the administrative powers conferred by chapter 17, sections 17.101 and 17.03, to be exercised in the manner as provided in chapter 15, section 15.0412.

Subd. 4. The council shall meet within 15 days after their election has been certified by the commissioner. The commissioner and council shall formulate a promotional order establishing a program for research and development to promote the marketing of milk and milk products including but not limited to marketing, research, processing, distribution and advertising. The order shall provide for the method of collecting fees from milk producers in Minnesota to finance the proposed activities and the fees shall not exceed one percent of the market value of the product sold by the producer. The exact fee must be stated in the promotional order and can be changed only by a referendum vote, conducted in the same manner as the promotional referendum. For the first two years of this promotional order, the fee shall not exceed one-half of one percent of market value of the product sold by the producer. The commissioner, with the advice and consent of the council shall hold a public hearing on the promotional order and shall thereafter conduct a referendum on the final promotional order. For purposes of voting in a referendum on a final order, the vote in the name of a cooperative association of producers shall be deemed the vote of all producer-members of that cooperative association. The commissioner with the advice and consent of the council shall schedule and specify procedures for the referendum. A ballot prepared by the council and the commissioner of agriculture shall be sent by each cooperative to its member and non-member producers with a return envelope addressed to the commissioner of agriculture. The ballot shall indicate that the cooperative association intends to vote in favor or in opposition to the question. In the case of member-producers the ballot shall indicate expiration date of the ballot and state that if not returned by said date, the ballot shall be considered to be the vote of the association. The ballot shall be returned to the commissioner of agriculture. A cooperative association shall not be required to bloc vote its producers but in such event it shall inform each producer of its decision and provide each producer with an individual referendum ballot with a return envelope addressed to the commissioner of agriculture.

Each private processor shall file a list of producers who market their production with said private processor with the commissioner. The commissioner of agriculture will mail each producer who markets through a private processor an individual ballot with a return envelope addressed to the commissioner of agriculture. These ballots shall be returned to the commissioner. The commissioner shall count and tabulate all ballots. The promotional order shall become effective if approved by a majority of those voting in the referendum. The promotional order shall provide amongst other things for the collection of fees from producers by the first buyer. Fees collected shall be expended only for the specific purpose for which collected.

Each cooperative and private processor shall file with the commissioner a list of producers, who market the bulk of their production with said cooperative or private processor.

Subd. 5. No member of the council shall receive a salary as such but shall be entitled to a reasonable per diem not to exceed \$25 per day while attending council meetings as well as actual expenses incurred while engaged in the duties herein authorized. The council may appoint an attorney for the council and the commissioner, and they shall fix the compensation of the attorney who shall act for the council and the commissioner in all manners. The provisions of chapter 8, shall not apply to this attorney. The commissioner, with the advice and consent of the council, may (a) enter into contracts or agreements with the Minnesota department of agriculture, (b) employ such agencies and personnel, public or private, as deemed necessary and fix their compensations and terms of employment, (c) appoint industry and university personnel to serve the council in an advisory capacity. In addition to other powers and duties of the council, as herein set forth, they shall have the following additional duties and powers: (a) to draft and administer the promotional order, (b) to recommend to the commissioner of agriculture the administrative rules and regulations relating to the promotional order, (c) to recommend amendments to the order, (d) to submit to the commissioner an estimated budget for the operation and implementation of the order, (e) to assess producers and provide the procedure for the collection of funds to finance the promotional order and to collect such necessary information and data as the commissioner and council may deem necessary to the proper administration of sections 32B.01 to 32B.13, (f) to provide for an annual audit of funds to be made by a qualified auditing firm, (g) to coordinate and report on the programs of the promotional order. Said report is to be available to producers through their processors.

All records of the council shall be public records and shall be accessible for inspection as provided for by section 15.17, subdivision 4.

[1969 c 851 s 4; 1973 c 751 s 1; 1976 c 149 s 62 subd 5]

32B.05 MEETINGS, QUORUM. A majority of the voting members of the council shall constitute a quorum for the transaction of all business in carrying out the duties of the council.

[1969 c 851 s 5; 1976 c 149 s 62 subd 5]

32B.06 SUSPENSION OR TERMINATION OF MILK PROMOTIONAL ORDER.

Subdivision 1. The commissioner, with the advice and consent of the council shall suspend or terminate a promotional order whenever he finds, after a public hearing, that an order is contrary to or does not tend to effectuate the declared purposes or provisions of sections 32B.01 to 32B.13 provided that such suspension or termination shall not become effective until the expiration of the then current calendar year.

Subd. 2. A subsequent referendum, using initial voting procedures, shall be held prior to January 1, 1980, and each five years thereafter. The order shall terminate at the end of the calendar year, if a majority referendum vote is negative.

Subd. 3. Any funds remaining with the council after the termination of an order under this section shall be expended to meet the existing obligations of the council. Any surplus remaining shall be expended for market research purposes in Minnesota, or other lawful purposes under sections 32B.01 to 32B.13, at the discretion of the council.

[1969 c 851 s 6; 1973 c 751 s 2; 1976 c 149 s 62 subd 5]

32B.07 PROSPECTIVE FEES; MILK MARKETING PROGRAM. Fees collected pursuant to sections 32B.01 to 32B.13 shall be deposited in a bank or banks or other depository approved by the commissioner of banks and shall be disbursed by such of-

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ficers and employees as may be approved by the commissioner of agriculture with the advice and consent of the council for the necessary expenses incurred with respect to sections 32B.01 to 32B.13. All persons authorized to control, handle, or deposit these fees shall be bonded. The amount, manner and payment of such bonds shall be the responsibility of the council. All fees collected by the first buyer of milk must be remitted within 30 days of collection of same.

[1969 c 851 s 7; 1976 c 149 s 62 subd 5]

32B.08 PRIORITY OF LIEN. All rights and obligations created under sections 32B.01 to 32B.13 shall have priority to all other liens, security interests or rights created by chapter 336, provided that this section shall not impair any security interests which have been perfected prior to May 29, 1969.

[1969 c 851 s 8]

32B.09 REFUND OF FEES; MILK MARKETING PROGRAM. Any producer may by the use of forms furnished by the commissioner of agriculture have the fee paid pursuant to sections 32B.01 to 32B.13 refunded to him, provided such request for refund is received in the office of the commissioner within six months following the payment of such fee. The date of payment of such fee shall be defined as the date of producer settlement by the first buyer to the producer.

[1969 c 851 s 9; 1973 c 751 s 3]

32B.10 MISDEMEANOR TO VIOLATE PROVISIONS OF THIS CHAPTER. Any person who violates any provision of sections 32B.01 to 32B.13 or rule or regulation of the commissioner promulgated pursuant hereto, is guilty of a misdemeanor.

[1969 c 851 s 10]

32B.11 GROSS MISDEMEANOR TO VIOLATE PROVISIONS OF SECTION 32B.07. Any processor who violates section 32E.07 is guilty of a gross misdemeanor.

[1969 c 851 s 11]

32B.12 ACCEPTANCE OF FUNDS; APPROPRIATION. The commissioner of agriculture may accept funds, private and public, for the purpose of conducting a referendum or doing any other act or thing required under the terms and provisions of sections 32B.01 to 32B.13, and any moneys so received by the commissioner shall be deposited in the state treasury and are hereby appropriated annually for the purpose set forth herein.

[1969 c 851 s 12]

32B.13 NONLIABILITY OF STATE; SEVERABILITY. Subdivision 1. No liability shall be imposed upon the state of Minnesota for any acts or omissions of the commissioner or of the dairy association council established pursuant to sections 32B.01 to 32B.13.

Subd. 2. If any section, subdivision or other portion of sections 32B.01 to 32B.13 shall be adjudged unconstitutional by a court of competent jurisdiction, such adjudication shall not impair the validity of the remaining sections, subdivisions or portions of sections 32B.01 to 32B.13.

[1969 c 851 s 13; 1976 c 149 s 62 subd 5]