

CHAPTER 126
DAIRY INDUSTRY COMMISSION
H.F. 692

AN ACT relating to the Iowa dairy industry commission.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 179.1, subsection 3, Code 1985, is amended to read as follows:

3. ~~The term "producer" shall mean and include every~~ "Producer" means a person who produces milk or cream from cows and thereafter sells the same as milk, cream, or other dairy products.

Sec. 2. Section 179.1, subsection 4, Code 1985, is amended by striking the subsection and inserting in lieu thereof the following:

4. "First purchaser" means a person who buys milk from a producer and resells that milk or products made from the milk to another person.

Sec. 3. Section 179.1, subsection 5, Code 1985, is amended to read as follows:

5. "Collection period" means a calendar ~~month~~ year.

Sec. 4. Section 179.1, Code 1985, is amended by adding the following new subsections:

NEW SUBSECTION. 6. "Nutrition education" means activities intended to broaden the understanding of sound nutritional principles including the role of milk in a balanced diet.

NEW SUBSECTION. 7. "Promotion" means actions including but not limited to advertising, sales, promotion, and publicity to advance the image and sales of and demand for milk.

NEW SUBSECTION. 8. "Research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and to product utilization, and other related efforts to expand demand for milk.

Sec. 5. Section 179.2, unnumbered paragraph 1, Code 1985, is amended to read as follows:

1. There is created an Iowa dairy industry commission, referred to in this chapter as the commission. The commission shall be composed of the head of the dairy science department and the head of the food technology department of Iowa State University of science and technology, the secretary of agriculture or the secretary's designee, the dean of agriculture at Iowa state university of science and technology or the dean's designee, and nine sixteen members appointed by the secretary of agriculture as provided in this section.

Sec. 6. Section 179.2, unnumbered paragraphs 2 and 3, Code 1985, are amended by striking the paragraphs.

Sec. 7. Section 179.2, unnumbered paragraphs 4, 5, 6, and 7, Code 1985, are amended to read as follows:

2. Commissioners shall serve until their successors are duly appointed and qualify. Vacancies occurring in the membership of the commission resulting from removal from the district, death, inability or refusal to serve, or failure to meet the definition of a producer, shall be filled within three months of the time the vacancy occurs in the manner provided in this section by the commission. Vacancy appointments shall be only for the remainder of the unexpired term. A commissioner shall not serve more than two consecutive full terms.

3. Appointive members of the commission shall receive forty dollars for each day spent on official business of the commission, not to exceed six hundred dollars per annum, and their actual necessary expenses, while engaged in commission activity.

4. When a national promotional order is established by the United States department of agriculture pursuant to the ~~dairy product stabilization~~ Dairy Product Stabilization Act of 1983, collection of the excise tax in section 179.5 shall be suspended for the period in which the national order is in effect. The commission shall continue to operate thereafter for only ~~such~~ the period of time as is necessary to pay refunds and disburse the funds remaining in the dairy industry fund for the purposes enumerated in this chapter. Upon completion of these acts, the existence of the Iowa dairy industry commission shall be suspended. The secretary of agriculture shall certify the suspension of the commission as of a date certain to the Iowa dairy industry commission and the Iowa state dairy association. When the existence of the commission is suspended, the terms of office being served by individual commissioners shall also be ~~suspended terminate~~.

5. When the national promotional order expires, the period of suspension of the excise tax in section 179.5 shall terminate and the secretary of agriculture shall take ~~such~~ the steps as are necessary to collect that excise tax and otherwise fulfill the duties of the commission, except that of expending funds collected under the excise tax, until those duties can be resumed by the reactivated commission. When the national promotional order expires, the period of suspension of the commission shall terminate and the terms of office of the individual commissioners shall continue and the period of the suspension shall not be counted to determine the time left in the terms of office. ~~Vacancies occurring in the commission during the period of suspension shall be filled when the suspension is terminated.~~ The secretary of agriculture shall call the first meeting of the reactivated commission. Upon reactivation, the commission shall reimburse the secretary of agriculture for any expenses incurred in carrying out the duties provided in this paragraph.

Sec. 8. Section 179.2, Code 1985, is amended by adding the following new subsections:

NEW SUBSECTION. 6. When the national dairy promotion program expires and the suspension of the Iowa dairy industry commission terminates pursuant to subsection 5, all first purchasers shall, in a manner designed to reflect their proportionate contributions to the national dairy promotion program in its most recently completed fiscal year, nominate two resident producers for each of the sixteen offices of the commission. The secretary of agriculture shall then appoint one nominee from each set of two nominees as commissioners of the reactivated Iowa dairy industry commission. The secretary of agriculture shall stagger the terms of the reactivated commission resulting in as nearly as possible one third of the commissioners serving for one year, one third of the commissioners serving for two years, and one third of the commissioners serving for three years. After the initial staggering of terms by the secretary, commissioners shall be appointed to three-year terms.

NEW SUBSECTION. 7. After the reactivated commission has been formed, nominations for commissioners shall be made by first purchasers in a manner designed to reflect their proportionate contributions to the Iowa dairy industry commission in its most recently completed fiscal year.

Sec. 9. Section 179.3, subsection 8, Code 1985, is amended to read as follows:

8. To keep accurate books, records, and accounts of all its dealings, which books, records, and accounts shall be open to inspection and audit by the board of directors of the Iowa state dairy association or its representatives, and shall be audited annually by the auditor of state.

Sec. 10. Section 179.4, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

179.4 EXPENDITURE OF FUNDS.

Funds collected through the excise tax are to be used for purposes of advertising and promotion, product, process, and nutrition, dietetics, and physiology research, nutrition education, public relations, research and development, and for other activities that contribute to producer efficiency and productivity. In addition, the commission shall use these funds to maintain existing markets, to make contributions to organizations working toward the purposes of this section, and to assist in the development of new or enlarged markets for milk, both domestic and foreign. The primary purpose for use of these funds is to increase consumption of milk. The commission may contract for advertising, publicity, sales promotion, research, and educational services the committee deems appropriate to further the objectives of this section.

Sec. 11. Section 179.5, Code 1985, is amended to read as follows:

179.5 EXCISE TAX.

1. ~~Except as otherwise provided in section 179.13, there~~ There is hereby levied and imposed an excise tax on all producers within the state of one cent per pound or fraction thereof upon all butterfat in cream and four cents per hundredweight or fraction thereof in three fourths of one percent of the gross value of milk produced in the state during the period beginning May 1 and terminating June 30, annually; provided, however, that the provisions of this section shall not apply to butterfat in milk and cream produced outside the state.

2. ~~All taxes levied and imposed under this chapter shall be deducted from the price charged received by the producer and shall be collected by the first dealer; provided, however, that purchaser, except as follows:~~

a. ~~Where If the producer produces milk or cream from cows and thereafter sells the same as milk, cream, or other dairy products, directly to the consumer, the taxes aforesaid shall be remitted by such that producer.~~

b. ~~Where If the producer sells milk, cream or other dairy products to any dealer a first purchaser outside the state, the taxes aforesaid shall be are due and payable by such that producer before the shipment is made, except that the commission may make such agreements with extra state dealers purchasers for the keeping of records and the collection of the taxes aforesaid as are necessary to secure the payment of the said taxes within the time fixed by this chapter.~~

All taxes levied and imposed under this chapter and ~~any voluntary other~~ contributions made to the dairy industry commission, shall be paid to and collected by the ~~secretary of the commission who~~ within thirty days after the end of the month during which the milk was marketed. The commission shall remit the taxes and other contributions to the treasurer of the state, quarterly each quarter, and at the same time render to the state comptroller an itemized and verified report showing the source from which said the taxes and voluntary contributions were obtained. All such taxes and voluntary contributions received, collected and remitted shall be placed in a special fund by the treasurer of state, and the state comptroller, to be known as the "Dairy Industry Fund" to be used by the Iowa dairy industry commission for the purposes set out in this chapter and to administer and enforce the laws relative thereto to this chapter. Funds deposited in the dairy industry fund are appropriated for the purpose of carrying out the provisions of this chapter.

~~Any~~ A person from whom the excise tax provided in this chapter is collected may, by application filed with ~~this the~~ commission within thirty days after the collection of ~~said the~~ tax, have ~~said the tax remitted refunded~~ to that person by the commission.

Sec. 12. Section 179.6, Code 1985, is amended to read as follows:

179.6 PRODUCERS' RECORDS.

Every producer shipping milk, ~~cream or other dairy products~~ to any dealer a first purchaser outside of Iowa who is not by agreement with the commission collecting the tax imposed by this chapter, and every first dealer purchaser within the state and every producer distributing milk, ~~cream, or other dairy products~~ directly to the consumer, shall keep a complete and accurate record of all ~~butterfat taxed by this chapter in milk or cream produced, bottled, processed or distributed~~ by the person during any the period for which an excise tax levy is imposed under the provisions of this chapter. ~~Such~~ The records shall be in ~~such the~~ form and contain ~~such the~~ information as prescribed by the commission, ~~shall by rule prescribe and~~ shall be preserved by the person charged with their making for a period of two years, and shall be offered or submitted for inspection at any time upon written or oral request by the commission or its duly authorized agent or employee.

Sec. 13. Section 179.7, Code 1985, is amended to read as follows:

179.7 RETURNS FILED WITH COMMISSION.

Every person charged by this chapter or by agreement with the commission with the keeping of records provided for in this chapter shall at ~~such the~~ times as the commission may by rule require, file with the commission a return on forms to be prescribed and furnished by the commission ~~stating~~. Producers shall state the quantity of dairy products milk produced. First purchasers shall state the quantity of milk handled, bottled, processed, or distributed, and butterfat content of all milk or cream produced by, delivered to, or purchased by such the person from the various producers of dairy products or their agents in the state ~~during the collection period prescribed in section 179.5, subsection 1, and as a result of any a referendum~~. ~~Such return~~ Returns shall contain ~~such other~~ information as the commission may require, and shall be made in triplicate, one copy of which shall be for the files of the person making the return, ~~and one copy available at the office of such the person, for the use of his the person's patrons,~~ and the original filed with the commission.

Sec. 14. Section 179.8, Code 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. No more than five percent of the excise tax collected and received by the commission pursuant to section 179.5 shall be utilized for administrative expenses of the commission.

Sec. 15. Section 179.10, Code 1985, is amended to read as follows:

179.10 REPORT.

The commission shall on or before the first day of March of each year make a full and complete report of its doings for the previous calendar year ~~to the board of directors of the Iowa state dairy association, which to the secretary of agriculture.~~ The report shall show the amount of money received and the expenditures ~~thereof~~, and shall be printed in the annual agricultural year ~~book~~ yearbook issued by the secretary of agriculture of the state.

Sec. 16. Section 179.13, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

179.13 REFERENDUM.

At a time designated by the commission within eighteen months after termination of the national promotional order made pursuant to the Dairy Product Stabilization Act of 1983, the commission shall conduct a referendum under administrative procedures prescribed by the department of agriculture.

Upon signing a statement certifying to the department that the person is a bona fide producer as defined in this chapter, each producer is entitled to one vote in each referendum. When the secretary is required to determine the approval or disapproval of producers under this section, the secretary shall consider the approval or disapproval of a cooperative association of producers, engaged in a bona fide manner in marketing milk, as the approval or disapproval of the producers who are members of or contract with the cooperative association of producers. If a cooperative association elects to vote on behalf of its members, the cooperative association shall provide each producer on whose behalf the cooperative association is expressing approval or disapproval with a description of the question presented in the referendum together with a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership. The information shall inform the producer of procedures to follow to cast an individual ballot if the producer chooses to do so within the period of time established by the secretary for casting ballots. The notification shall be made at least thirty days prior to the referendum and shall include an official ballot. The ballots shall be tabulated by the secretary and the vote of the cooperative association shall be adjusted to reflect the individual votes.

The department shall count and tabulate the ballots filed during the referendum within thirty days of the close of the referendum. If from the tabulation the department determined that a majority of the total number of producers voting in the referendum favors the proposal, the excise tax provided for in this chapter shall be continued. The ballots cast pursuant to this section constitute complete and conclusive evidence for use in determinations made by the department under this chapter.

The secretary may conduct a referendum at any time after the Iowa dairy industry commission is reactivated, and shall hold a referendum on request of a representative group comprising ten percent or more of the number of producers eligible to vote, to determine whether the producers favor the termination or suspension of the excise tax. The secretary shall suspend or terminate collection of the excise tax within six months after the secretary determines that suspension or termination of the excise tax is favored by a majority of the producers voting in the referendum, and shall terminate the excise tax in an orderly manner as soon as practicable after the determination.

Approved May 15, 1985