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AB-425 Milk and other dairy products: Dairy Council of California Law: producer-handlers. (2021-2022)

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Assembly Bill No. 425

CHAPTER 371

An act to amend Sections 32912.5, 61384, 62660, 64007, 64042, 64072, 64101, 64103, 64118, 64221, 64223, 64301, 64301.5, 64302, 64303, 64304, 64308, 64320, 64321, 64321.5, and 64322 of, to add Section 32921 to, and to repeal Sections 62095.1 and 64016 of, the Food and Agricultural Code, relating to milk.

[Approved by Governor September 28, 2021. Filed with Secretary of State September 28, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 425, Mathis. Milk and other dairy products: Dairy Council of California Law: producer-handlers.

(1) The Dairy Council of California Law (dairy law), establishes the Dairy Council of California within the state government and prescribes the membership of the council to be appointed by the Secretary of Food and Agriculture as including 12 members that are producers and 12 members that are handlers or producer-handlers, as defined. The dairy law also sets forth various requirements applicable to producers, handlers, and producer-handlers, including the payment of certain assessments on milk and participating in certain referendum procedures.

This bill would remove producer-handlers from operation of the provisions of the dairy law by revising the provisions of the dairy law to delete the definition of, and all references to, producer-handlers.

(2) Existing law makes the payment by a handler of less than the minimum producer price established under the applicable stabilization and marketing plan an unlawful trade practice.

This bill would delete this provision.

(3) Existing law requires the secretary to collect, as prescribed, from each producer \$0.0033 per hundredweight of all eligible milk to defray the reasonable costs of administering the law relating to milk, as specified.

This bill would instead require the secretary to collect \$0.0033 per hundredweight of all milk.

(4) Existing law establishes labeling and quality standards for milk and milk products, makes it a crime to violate those provisions, and authorizes the secretary to enforce those provisions.

This bill would authorize the secretary to adopt, by regulation, official final action methods of testing for the determination of the components of milk and products of milk for purposes of compliance with these laws. The bill would provide that the secretary's authority to enforce federal milk labeling requirements shall not be construed to supersede or negate certain state-imposed standards of identity or compositional requirements for milk fat, milk solids-not-fat, or total milk solids for milk products. By authorizing the secretary to adopt regulations establishing official final action methods of testing for milk quality, the violation of which would be a crime, this bill would create new crimes or expand the definition of existing crimes and thereby impose a state-mandated local program.

(5) Existing law makes it an unlawful practice for a retailer, wholesale customer, manufacturer, or distributor, as defined, to sell milk, cream, or any dairy product at less than cost.

This bill would revise the definition of "total consideration paid or exchanged for raw product" in the case of market milk or market cream for purposes of application of this prohibition.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 32912.5 of the Food and Agricultural Code is amended to read:

32912.5. (a) The secretary shall enforce the labeling requirements established under the Federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) and Title 21 of the Code of Federal Regulations in the review of labels to be used in connection with advertising and retail sales of milk, frozen and cultured dairy products, cheese, and products resembling milk products and for all dairy products sold in the state.

(b) Sample copies of all labels to be used in connection with advertising and consumer sales of milk, milk products, frozen desserts, cheeses, and products resembling milk products shall be submitted to the secretary for approval before the use of those labels.

(c) Nothing in this section shall be construed to supersede or negate the standards of identity or compositional requirements for milk fat, milk solids-not-fat, or total milk solids for milk products defined in Sections 35784, 38181, 38191, 38211, and 38221.

SEC. 2. Section 32921 is added to the Food and Agricultural Code, to read:

32921. The secretary may, by regulation, adopt official final action methods of testing for the determination of the components of milk and products of milk as required to meet a legal compositional requirement of this division.

SEC. 3. Section 61384 of the Food and Agricultural Code is amended to read:

61384. (a) The sale by any retailer, wholesale customer, manufacturer, or distributor, including any producer-distributor or nonprofit cooperative association acting as a distributor, of milk, cream, or any dairy product at less than cost is an unlawful practice. This subdivision applies to finished products, and does not apply to sales of bulk milk between handlers.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Cost," as applied to manufacturers and distributors, means the total consideration paid or exchanged for raw product, plus the total expense incurred for manufacturing, processing, handling, sale, and delivery.

(2) "Cost," as applied to wholesale customers, means the invoice price charged to the wholesale customer, or the expense of replacement, whichever is lower, plus the wholesale customer's cost of doing business.

(3) "Cost of doing business," as applied to wholesale customers, means a wholesale customer's total operating expense divided by the customer's total sales income.

(4) "Total consideration paid or exchanged for raw product," in the case of market milk or market cream used in the manufacture of Class I products as defined pursuant to Sections 1051.40 and 1051.42 of Title 7 of the Code of Federal Regulations means the current announced regulated minimum price of Class I milk, skim, or cream, payable by handlers to producers as provided in Sections 1051.50, 1051.51, and 1051.52 of Title 7 of the Code of Federal Regulations.

(c) Proof of cost, based on audits or surveys conducted in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, and modified, if necessary, to satisfy the requirements of this section, shall establish a rebuttable presumption of that cost at the time of the transaction of any sale. This presumption is a presumption affecting the burden of proof, but it does not apply in a criminal action.

(d) Nothing in this section shall be deemed to prohibit any of the following activities:

(1) The meeting, in good faith, of a lawful competitive price or a lawful competitive condition.

(2) A distributor's action in making conditional sales of equipment or other property, extending credit for merchandise purchased, or paying a customer's obligations not otherwise prohibited by this chapter to another distributor in connection with the transfer of the customer's business from the latter to the former.

(e) The secretary shall establish, by regulation pursuant to Section 61341, the procedures that shall be used to make the determinations required by this section, including the following:

(1) Any modifications to the generally accepted accounting principles described in subdivision (c) necessary to satisfy the requirements of this section.

(2) Procedures for evaluating efforts to meet lawful competitive prices or conditions.

(3) Other procedures necessary or appropriate to facilitate the application or enforcement of this section.

SEC. 4. Section 62095.1 of the Food and Agricultural Code is repealed.

SEC. 5. Section 62660 of the Food and Agricultural Code is amended to read:

62660. (a) The secretary shall collect from each producer three and three-tenths mills (\$0.0033) per hundredweight of all milk, whether pooled or nonpooled, to defray the reasonable costs of administering this chapter, except costs for which the fund is liable, as provided for in Section 62569.

(b) The secretary may fix the rate of the assessment authorized pursuant to subdivision (a) at a lesser or greater amount and may adjust the rate of the assessment as the secretary determines necessary to defray the reasonable costs of administering this chapter.

(c) Moneys collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund, created pursuant to Section 221, and shall be continuously appropriated to the department pursuant to Section 62571.

SEC. 6. Section 64007 of the Food and Agricultural Code is amended to read:

64007. "Handler" means any person that, as owner, agent, or broker, purchases, or otherwise acquires from a producer or another handler, possession or control of milk, skim milk, or cream, in the form of unprocessed milk, skim milk, or cream, or in any other unprocessed form, for the purpose of processing it, and includes any person who secures custom processing services on an ongoing basis.

SEC. 7. Section 64016 of the Food and Agricultural Code is repealed.

SEC. 8. Section 64042 of the Food and Agricultural Code is amended to read:

64042. The purposes of this chapter are as follows:

(a) To enable the dairy industry, with the aid of the state, to develop, maintain, and expand the state, national, and international markets for dairy products that are produced, processed, or manufactured in the state, and the use and consumption of those dairy products in the state.

(b) In aid, but not in limitation, of this purpose, to authorize and enable the secretary to formulate and effectuate, directly or in cooperation with other agencies and instrumentalities specified in this chapter, consumer, or other, educational programs designed to encourage the use and consumption of milk and other dairy products as part of balanced human nutrition.

(c) To provide funds for the administration and enforcement of this chapter by assessments to be paid by producers and handlers in the manner prescribed in this chapter.

SEC. 9. Section 64072 of the Food and Agricultural Code is amended to read:

64072. The secretary shall, from records of the department or any other reliable source, maintain a list of producers and handlers.

SEC. 10. Section 64101 of the Food and Agricultural Code is amended to read:

64101. There is in the state government the Dairy Council of California, which shall consist of no less than 24, nor more than 26, members. All members of the council shall be appointed by the secretary and may hold office at the pleasure of the secretary. The membership of the council shall be as follows:

(a) There shall be 12 members that are actually engaged in the production of milk. These 12 members are the producer members of the council.

(b) There shall be 12 members that are handlers. These 12 members are the handler members of the council.

(c) Upon the recommendation of the council, the secretary may appoint one person as a voting member who is not a producer or handler, and who shall represent the public.

(d) Upon the recommendation of the council, the secretary may appoint up to two people as nonvoting ex officio members of the council who have expertise that is beneficial to the council.

SEC. 11. Section 64103 of the Food and Agricultural Code is amended to read:

64103. Officials or members, otherwise qualified, of corporations, associations, and other business units, that are actually engaged in business as producers or handlers are eligible to be members of the council.

SEC. 12. Section 64118 of the Food and Agricultural Code is amended to read:

64118. It is hereby declared, as a matter of legislative determination, that producers and handlers appointed to the council 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 the council, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

SEC. 13. Section 64221 of the Food and Agricultural Code is amended to read:

64221. Every handler shall keep complete and accurate records of all milk in unprocessed form that the handler purchases, or possession or control of which it acquires from any producer or other handler. Every handler that produces milk shall include its own production in these records. Every handler shall also keep complete and accurate records of all milk that it utilizes for processing.

SEC. 14. Section 64223 of the Food and Agricultural Code is amended to read:

64223. The secretary may, by order or regulation, require every handler subject to the recordkeeping requirements in Section 64221 to file with the secretary the information, or any part of the information, in the records, that the first handlers are required to keep pursuant to this article. The information shall be on forms that are prescribed and furnished by the secretary.

SEC. 15. Section 64301 of the Food and Agricultural Code is amended to read:

64301. (a) Annually before the beginning of the fiscal year, the secretary shall, upon the recommendation of the council, establish and announce the assessments to be paid by producers and handlers for the coming fiscal year.

(b) These assessments shall be established at levels sufficient to finance the budget for the coming fiscal year as approved by the secretary pursuant to Sections 64153 and 64154.

(c) The rate structure of the assessments shall be as follows:

(1) The following assessments for handlers of milk:

(A) No more than 17.0 mills (\$0.0170) per hundredweight for Class I milk.

(B) No more than 8.5 mills (\$0.0085) per hundredweight for all other usages of milk.

(C) The relationship between the handler assessment rates per hundredweight established for Class I milk and for all other usages shall be at a ratio of 2 to 1.

(2) For producers of milk if a stand-alone quota program established pursuant to Section 62757 is operative, the assessments shall be as follows:

(A) No more than 2.0 mills (\$0.0020) per pound for quota solids-not-fat, within the meaning given that term for purposes of the Quota Implementation Plan established pursuant to Section 62757.

(B) No more than 1.0 mills (\$0.0010) per pound for all other solids-not-fat.

(C) The relationship between the producer assessment rates per pound quota solids-not-fat and per pound for all other solids-not-fat shall be at a ratio of 2 to 1.

(3) For producers of milk if a stand-alone quota program established pursuant to Section 62757 is not operative, the assessments shall be as follows:

(A) No more than 10.4 mills (\$0.0104) per hundredweight of milk produced and delivered to a handler.

(B) The producer assessment shall be without regard to the milk's usage and shall be at a level between the two handler rates.

(d) The handler and producer assessment rates established pursuant to this section shall be set at levels so that the total projected handler revenue for the year and the total projected producer revenue for the year to be generated from those assessments shall be as close to equal as reasonably possible.

SEC. 16. Section 64301.5 of the Food and Agricultural Code is amended to read:

64301.5. Maximum allowable assessments greater than those provided in Section 64301 shall not be established unless approved by producers and handlers with at least 40 percent of all producers and handlers on record with the department submitting valid ballots during the referendum period, and either of the following:

(a) A majority of producers and handlers voting in the referendum support the increase in the proposed higher maximum assessment allowed, and those producers and handlers voting in favor represent at least 65 percent of the total voted volume represented by each category.

(b) At least 65 percent of producers and handlers voting in the referendum support the increase in the proposed higher maximum assessment allowed, and those producers and handlers voting in favor represent a majority of the total voted volume represented by each category.

SEC. 17. Section 64302 of the Food and Agricultural Code is amended to read:

64302. (a) The producer assessments shall be collected by the first handler that purchases, or otherwise acquires possession or control of, the milk by deducting the assessment from any payment that is due to the producer for the milk. Each handler shall pay the assessment on the handler's own production. For the purposes of this article, a handler that sells unprocessed milk, of which the handler has the right to possession or control by contract or otherwise, to another handler, and delivers this milk in unprocessed form to the other handler or causes this milk to be delivered to the other handler directly from the producer, is the first handler of this milk.

(b) (1) When the stand-alone quota program, provided pursuant to Section 62757, is in effect, the assessment of each producer for all milk shall be determined on the total solids-not-fat of milk produced and delivered.

(2) When the stand-alone quota program, provided pursuant to Section 62757, is not in effect, the assessment of each producer for all milk shall be determined on the total hundredweight of milk produced and delivered.

(c) The collection of assessments to be paid by handlers pursuant to Section 64303 shall be used for the handler portion of council assessments only, and shall not affect payments of producers, nor in any way change the method of producer payment for milk.

SEC. 18. Section 64303 of the Food and Agricultural Code is amended to read:

64303. Each handler shall pay to the secretary the assessments established for all milk used in the plant of the handler in the processing and manufacture of milk and milk products.

SEC. 19. Section 64304 of the Food and Agricultural Code is amended to read:

64304. The assessments established and assessed as prescribed in this chapter shall be billed monthly to the handler and shall be paid to the secretary no later than the 15th day of the second month following the month during which the milk was received.

SEC. 20. Section 64308 of the Food and Agricultural Code is amended to read:

64308. If any handler does not provide the information necessary to determine the amount of assessments due, when required, the secretary shall estimate the amount due from the records of the department or from any other source of information that is available. In any action by the secretary to recover assessments pursuant to this chapter, a certificate of the secretary that shows

the amount determined by the secretary to be required to be paid by the person that is required to pay the assessments is prima facie evidence of the delinquency of the amount that is shown. The presumption established by this section is a presumption affecting the burden of proof.

SEC. 21. Section 64320 of the Food and Agricultural Code is amended to read:

64320. (a) Between July 1 and December 31 of each year ending in the number three or eight, the secretary shall, by the public hearing procedure, and if appropriate, the referendum procedure, provided for in this article, determine whether the council program provided for in this chapter shall continue in effect.

(b) If the secretary finds from evidence received at the hearing that a substantial question exists as to whether the council program is contrary to or does not effectuate the declared purposes or provisions of this chapter, the council program shall be submitted to referendum as provided in subdivision (c).

(c) If the secretary determines that a referendum procedure is appropriate, the secretary shall establish a referendum period of not to exceed 30 days during which period ballots shall be submitted to all producers and handlers on a statewide basis. If the secretary determines that the referendum period does not provide sufficient time for the balloting, the secretary may extend the referendum for an additional period not to exceed 30 days. The ballots shall provide a "yes" or "no" voting alternative to the question:

"Shall the Dairy Council of California be continued for the next five fiscal years beginning July 1 following this referendum?"

SEC. 22. Section 64321 of the Food and Agricultural Code is amended to read:

64321. If the council program is submitted to a referendum, the secretary shall find that producers and handlers statewide have assented to the council program if the secretary finds both of the following:

(a) Sixty-five percent or more of the total number of handlers voting approve the council program.

(b) (1) No less than 51 percent of the total number of eligible producers in the state voted in the referendum.

(2) Sixty-five 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 during the second calendar month preceding the month of the beginning of the referendum period by all producers who voted in the referendum approve the council program, or 51 percent or more of the total number of eligible producers who voted in the referendum and who produced 65 percent or more of the total amount of fluid milk produced during the second calendar month preceding the month of the beginning of the referendum period by all producers who voted in the referendum, approve the council program.

SEC. 23. Section 64321.5 of the Food and Agricultural Code is amended to read:

64321.5. If the secretary finds that producers and handlers have not assented to the council program pursuant to Section 64321, the council program may be resubmitted to a referendum as prescribed in this article within a period of no less than 60 days and no more than 180 days after the secretary announces the plan was not approved.

SEC. 24. Section 64322 of the Food and Agricultural Code is amended to read:

64322. (a) If the secretary finds that producers and handlers have not assented to the council program pursuant to Section 64321 or, if the council program is resubmitted, Section 64321.5, operation of the provisions of this chapter and of the council shall be suspended beginning on July 1 following the referendum or, in the case of resubmission, referendums.

(b) After the effective date of suspension of the operation of the provisions of this chapter and of the council, the operations of the council shall be wound up, and any real and personal property held in the name of the council shall be liquidated and the proceeds, along with any and all remaining money held by the council, collected by assessment and not required to defray the expenses of winding up and terminating operations of the council, shall be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding three months. However, if the secretary finds that the amounts returnable pursuant to this subdivision are so small as to make impractical the computation and remitting of the pro rata refund to these persons, any moneys remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into the State Treasury as unclaimed trust moneys.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.