

AMENDED IN SENATE MAY 28, 2009

AMENDED IN SENATE MAY 20, 2009

SENATE BILL

No. 362

Introduced by Senator Florez

February 25, 2009

An act to amend Sections 62708.5 and 62722 of the Food and Agricultural Code, relating to milk.

LEGISLATIVE COUNSEL'S DIGEST

SB 362, as amended, Florez. Milk pooling: exemptions.

Existing law, the Gonsalves Milk Pooling Act (the act), provides for equalization pools and milk pooling to govern the production and distribution of fluid milk and fluid cream. The act authorizes the Secretary of Food and Agriculture to develop a pooling plan, with specified items required to be included in the pooling plan, under which producers of milk are assigned a pool quota that determines the amount of class 1 milk the producer can sell to handlers within the pooling system and the prices to be paid by handlers to producers.

The act permits a producer-handler, as specified, who elects to operate outside the pool to make certain prescribed deductions from its class 1 sales, excluding sales to a handler, before being required to account to the pool.

This bill would instead permit a producer-handler who elects or has elected to operate outside the pool to make deductions for all of its production from its class 1 sales before being required to account to the pool. The bill would also delete certain provisions relating to the participation of milk production of exempted producer-handlers in either the base pool or overbase pool and to the transfer by a producer-handler of the option to join or operate outside the pool.

The act provides that producers of certified milk or guaranteed raw milk have the option, at the time of the adoption of the initial pooling plan, to be subject to the plan or to be excluded from the plan.

This bill would ~~also include~~ *provide that, on or after January 1, 2010, a dairy farm that produces and processes raw milk, as defined, ~~within those provisions~~ shall have the option to be or continue to be subject to the pooling plan or to be prospectively excluded from the pooling plan.* The bill would make conforming and technical changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
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 Agricultural
2 Code is amended to read:
3 62708.5. (a) A producer-handler, for purposes of this chapter,
4 shall also include, as a separate and distinct category of
5 producer-handlers, any producer and any handler who purchases
6 or handles fluid milk or fluid cream produced by this producer if
7 all of the ownership of the handler and all of the ownership of the
8 producer is owned by the same person or persons and their
9 ownership in the producer or handler is at least 95 percent identical
10 for each person with their ownership in the handler or producer.
11 This ownership shall not exceed 10 individual persons or owners
12 of equitable interest in a partnership, corporation, or other legally
13 constituted business association.
14 (b) The ownership required by this section may be through a
15 partnership, corporation, or other legally constituted business
16 association if the entities are owned by the same person or persons,
17 and there is at least 95 percent identity of ownership for each
18 person with their ownership in the handler or producer. For
19 purposes of this section, a “person” or “persons” includes the
20 spouse, or other persons of lineal consanguinity of the first or
21 second degree or collateral consanguinity to the fourth degree, and
22 their spouses, and includes an adopted child the same as a natural
23 child and kindred of the half blood equally with those of the whole
24 blood of the owner and ownerships by persons so related shall be
25 considered single ownership by one person. For purposes of this
26 section, property pledged or hypothecated in any manner to others

1 shall be considered “owned” if equitable ownership with
2 management and control remain with the producer-handler.

3 (c) Ownership as provided in this section shall have existed at
4 the time of the base period selected by the producer under Section
5 62707 and at all other times thereafter.

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

8 (1) Join and operate wholly within the pool.

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

14 (e) Any producer-handler who qualifies under this section and
15 elects or has elected to operate outside the pool, to the extent of
16 the authority granted, shall have the right to make deductions for
17 all of its production from its own class 1 sales before being required
18 to account to the pool.

19 (f) The deductions from class 1 sales authorized pursuant to this
20 section may be made irrespective of the fact that the average class
21 1 usage in the pool for that month may be less than 100 percent
22 of the pool quota in that pool.

23 (g) The fact that a producer-handler qualifies as to one of its
24 milk production operations under this section does not prevent it
25 from operating on an entirely separate nonqualifying basis (and,
26 therefore, subject to pooling) at other milk production facilities,
27 and with other nonqualifying persons at these other milk production
28 facilities. This section does not prevent a producer-handler from
29 purchasing or selling pool quota or production base as otherwise
30 provided in this chapter.

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

37 SEC. 2. Section 62722 of the Food and Agricultural Code is
38 amended to read:

39 62722. Pooling plans shall not apply to the production of goats
40 milk or producer-handlers who produce and sell less than 500

1 gallons of fluid milk used for class 1 purposes per day unless they
2 specifically request entry into the pool at the time of the adoption
3 of the initial pooling plan for that area. ~~A dairy farm that produces~~
4 ~~and processes raw milk and a~~ A producer of certified milk or
5 guaranteed raw milk shall have the option, at the time of the
6 adoption of the initial pooling plan under this chapter, to be subject
7 to the plan, and accordingly to have a production base and pool
8 quota established for the producer, or to be excluded from the plan.
9 *On or after January 1, 2010, a dairy farm that produces and*
10 *processes raw milk shall have the option to be or continue to be*
11 *subject to the pooling plan or to be prospectively excluded from*
12 *the pooling plan.* For purposes of this section, “dairy farm that
13 produces and processes raw milk” means a vertically integrated
14 operation that includes a dairy farm and processing plant owned
15 and operated by the same entity that produces guaranteed raw milk,
16 or grade A raw milk, to be sold to the consumer.

17 (a) Any such producer of less than 500 gallons of fluid milk per
18 day, dairy farm that produces and processes raw milk, producer
19 of certified milk, or producer of guaranteed raw milk, electing to
20 be excluded from the plan, may at any later time be admitted to
21 the pool, but with only the production base and pool quota to which
22 the producer would have originally been entitled or the producer’s
23 existing production and average daily class 1 usage during the 12
24 months preceding the producer’s entry into the pool, whichever is
25 less.

26 (b) Any producer claiming exemptions from the provision of
27 any pooling plan by reason of the provisions of Section 62708,
28 62708.1, or this section, who loses his or her exemption by failure
29 to meet the requirements for exemptions set forth in those sections
30 shall automatically be deemed to have applied for and become a
31 part of a producer pool on September 1st following any year ended
32 August 31st during which the secretary determines the producer
33 is no longer entitled to exemption, and the producer’s admittance
34 into such a pool shall be on the basis of the production base and
35 pool quota calculations as set forth in those sections.

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