

## Senate Bill No. 1885

### CHAPTER 759

An act to amend Sections 33453, 33551, 33581, 36091, 36092, 36123, 36301, 36302, 36303, 61828, 62196, 62707, and 62711 of, to amend the headings of Article 13 (commencing with Section 36091) and Article 14 (commencing with Section 36121) of Chapter 2 of Part 2 of Division 15 of, to amend the heading of Chapter 3 (commencing with Section 36301) of Part 2 of Division 15 of, to amend and renumber Sections 61401, 61402, and 61403 of, to add Sections 32516.5, 61316, 62079, and 62750.1 to, to repeal Article 3 (commencing with Section 36351) of Chapter 3 of Part 2 of Division 15 of, and to repeal, add, and repeal Section 33452 of, the Food and Agricultural Code, relating to milk production.

[Approved by Governor September 21, 1996. Filed  
with Secretary of State September 23, 1996.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1885, Costa. Milk production.

(1) Existing law specifies that a dairy farm is not required to have a mechanical sterilizer, mechanical cooler, or milk house or room, if specified conditions are satisfied.

This bill would repeal these provisions. In addition, the bill would prohibit, with certain exceptions, until January 1, 1999, a dairy cow farm that was marketing market milk on August 1, 1996, from marketing manufacturing milk, unless the dairy elects to do so during specified periods.

(2) Existing law governing market milk and cream sets forth provisions relating to degrading and exclusion based upon dairy score.

This bill, instead, would change these provisions to relate to restricted use and exclusion based upon dairy score. The bill also would make related changes.

(3) Existing law governs manufacturing milk and cream.

This bill would add restricted use market milk, as defined, to those provisions.

(4) Existing law includes provisions governing manufacturing cream grades and standards.

This bill would repeal these provisions.

(5) Existing law governing market milk provides for the establishment of minimum prices and stabilization and marketing plans.

This bill would specify that whenever a pooling plan is in effect as provided by specified provisions of law, all market milk received by



pool handlers shall be obligated to the pool at the applicable minimum price established in the Stabilization and Marketing Plans based on the classified usage of that milk. In addition, the bill would provide that handlers may pay producers for restricted use market milk at prices that are less than the amount credited to those handlers for restricted use market milk by the pooling plan.

(6) Existing law governing milk provides for equalization pools and milk pooling. With regard to equalization pools, existing law requires a formulation committee to make recommendations to the Secretary of Food and Agriculture for inclusion in the pooling plan and requires the secretary to include in the pooling plans specified provisions.

With regard to equalization pools, this bill also would provide that any governmental agency that produces, processes, and consumes in its own facilities only its own production shall not be a pool plant and shall operate outside the pool for certain purposes unless the plant notifies the secretary of its election to participate in the pool.

(7) Under existing law relating to milk pooling, each producer is required to be paid the highest usage for that amount of his or her fluid milk production which is equal to his or her pool quota, as specified.

The bill would specify, with regard to equalization pools and milk pooling, that in calculating the pool value, the volume of milk that has been classified as restricted use market milk shall be credited to the handler at the class 4a or class 4b price, whichever is lower.

(8) In addition, the bill would include legislative declarations that the changes made to existing law described in (6) and (7) are nonsubstantive changes and shall be incorporated by the secretary into the pooling plan for market milk as nonsubstantive changes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 32516.5 is added to the Food and Agricultural Code, to read:

32516.5. "Restricted use market milk" means market milk that does not conform to the standards specified in Article 2 (commencing with Section 35781), Article 13 (commencing with Section 36091), and Article 14 (commencing with Section 36123) of Chapter 2 of Part 2. Restricted use market milk includes components and derivatives of restricted use market milk. Restricted use market milk may only be utilized in manufactured milk products as defined in Part 3 (commencing with Section 36601) that do not require the use of market milk.

SEC. 2. Section 33452 of the Food and Agricultural Code is repealed.

SEC. 3. Section 33452 is added to the Food and Agricultural Code, to read:



33452. (a) A dairy cow farm that was marketing market milk, including milk that meets the definition of restricted use market milk, on August 1, 1996, shall not market manufacturing milk. However, such a dairy may elect to market manufacturing milk for the 12-month period beginning January 1, 1997, or for the 12-month period beginning January 1, 1998, or for both of those time periods. This provision applies to a dairy cow farm that was marketing manufacturing milk on August 1, 1996, that subsequently obtains a market milk grade A permit, but does not apply if the facility is sold or leased to a new operator.

(b) This section does not apply to dairy goat farms.

(c) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 4. Section 33453 of the Food and Agricultural Code is amended to read:

33453. This chapter does not prohibit the immediate restricted use or exclusion from the market or the immediate condemnation by the secretary or an approved milk inspection service of any milk or cream that is contaminated or that is produced in a dairy barn or held in a milk house which is in such an insanitary condition that the milk or cream will be contaminated by direct contact with filth.

SEC. 5. Section 33551 of the Food and Agricultural Code is amended to read:

33551. For any violation of this chapter a dairy farm with a market milk (grade A) permit shall be placed on restricted use or the milk or cream from it shall be excluded from the market. No such dairy farm, however, shall be placed on restricted use or the milk or cream from it excluded from the market, unless the exclusion is made pursuant to Section 33453, for a violation of this chapter, which, upon written notice from a qualified inspector, can be corrected and is corrected within 72 hours of the issuance of the notice.

The notice shall be served personally on the owner or operator of the dairy farm. A copy of it shall be immediately delivered or mailed to the distributors that purchase the milk or cream produced on the dairy farm.

SEC. 6. Section 33581 of the Food and Agricultural Code is amended to read:

33581. An application for reinstatement of a dairy farm which has been placed on restricted use or the milk of which has been excluded from the market, pursuant to this chapter, shall be acted upon by the secretary or the approved milk inspection service that has jurisdiction, within three days after the receipt of the application by the secretary or approved milk inspection service.

SEC. 7. The heading of Article 13 (commencing with Section 36091) of Chapter 2 of Part 2 of Division 15 of the Food and Agricultural Code is amended to read:



Article 13. Restricted Use and Exclusion Based Upon Dairy Score

SEC. 8. Section 36091 of the Food and Agricultural Code is amended to read:

36091. Milk that is delivered by the producer of the milk, to be sold as any grade of market milk, shall not be restricted in use or excluded from the market if a score of the dairy farm on which the milk is produced is below the specified minimum legal requirements unless both of the following occur:

(a) A copy of the score is promptly given to the proprietor or operator of the dairy farm and, if milk is sold in bulk to a distributor or processor, a copy of the notice is also given or mailed to the distributor or processor.

(b) A rescore, after 10 days, shows the score of the dairy farm to be still or again below the specified minimum legal requirements and a copy of the rescore is promptly given to the proprietor or operator of the dairy farm and the purchaser of the milk produced by the dairy farm and until 60 hours has elapsed after the rescore.

SEC. 9. Section 36092 of the Food and Agricultural Code is amended to read:

36092. If, during the 60 hours following the rescoring of a dairy farm, a protest is filed with the head of the milk inspection service under whose jurisdiction the milk of the dairy farm is sold, the milk which is produced on that dairy farm shall not be restricted in use or excluded from the market until a third score has been made and concurred in by the representative of the milk inspection service and the secretary.

SEC. 10. The heading of Article 14 (commencing with Section 36121) of Chapter 2 of Part 2 of Division 15 of the Food and Agricultural Code is amended to read:

Article 14. Restricted Use or Exclusion

SEC. 11. Section 36123 of the Food and Agricultural Code is amended to read:

36123. Whenever two of the last four consecutive bacteria counts, coliform determinations, or cooling temperatures taken on separate days exceed the limit of the standard for market milk or products of market milk, or both, the health authority or secretary shall send a notice thereof to the producer or distributor concerned. This notice shall be in effect as long as two of the last four consecutive samples exceed the limit of the standard. An additional sample shall be taken within 14 days of the sending of the notice, but not before the lapse of three days. Immediate restricted use of the market milk or product of market milk or exclusion of the market milk or product of market milk shall be instituted whenever the standard is violated by three of the last five bacteria counts, coliform determinations, or cooling



temperatures, provided that no action required by this section shall be based upon a sample that is over 180 days old.

Violations of bacterial, coliform, and cooling temperature standards shall be followed promptly by inspection to determine and correct the cause. This inspection shall be made immediately when the notice required by this section is sent.

Samples may be taken from consecutive milking at the producer level and from consecutive lots of processed products and shall be taken when requested by the producer or processor. Analysis of those samples shall commence within 36 hours from their taking.

Reinstatement of the market milk or products of market milk shall be made when two consecutive samples taken within a seven-day period following notice of restricted use again meet the standard. For the purpose of this section sampling for reinstatement and the new compliance series shall begin with the first sample taken after use is restricted.

SEC. 12. The heading of Chapter 3 (commencing with Section 36301) of Part 2 of Division 15 of the Food and Agricultural Code is amended to read:

CHAPTER 3. RESTRICTED USE MARKET MILK AND MANUFACTURING MILK AND CREAM

SEC. 13. Section 36301 of the Food and Agricultural Code is amended to read:

36301. Restricted use market milk, manufacturing milk, or manufacturing cream shall be sold only for manufacturing purposes and to be converted into some other form or product.

SEC. 14. Section 36302 of the Food and Agricultural Code is amended to read:

36302. Restricted use market milk, manufacturing milk, or manufacturing cream shall not be sold for human consumption in a fluid state.

SEC. 15. Section 36303 of the Food and Agricultural Code is amended to read:

36303. Restricted use market milk, manufacturing milk, or manufacturing cream shall not be sold in quantities of less than three gallons or in containers of less than three gallons capacity. Pasteurized manufacturing cream shall not be sold in quantities of less than one-half gallon or in containers of less than one-half-gallon capacity.

SEC. 17. Article 3 (commencing with Section 36351) of Chapter 3 of Part 2 of Division 15 of the Food and Agricultural Code is repealed.

SEC. 18. Section 61401 of the Food and Agricultural Code is amended and renumbered to read:



61307. “Manufacturing milk” has the meaning of that term as defined in Section 32509.

SEC. 19. Section 61402 of the Food and Agricultural Code is amended and renumbered to read:

61307.2. “Manufacturing milk handler” means any person who, as owner, agent, broker, or intermediary, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of manufacturing milk in unprocessed or bulk form from a producer, a producer-handler, or another manufacturing milk handler for the purpose of manufacture, processing, sale, or other handling, regardless of whether the manufacturing milk is produced within or outside this state.

SEC. 20. Section 61403 of the Food and Agricultural Code is amended and renumbered to read:

61307.4. “Manufacturing milk plant” means any place, structure, or building where a handler receives manufacturing milk.

SEC. 21. Section 61316 is added to the Food and Agricultural Code, to read:

61316. “Restricted use market milk” has the meaning of that term as defined in Section 32516.5.

SEC. 22. Section 61828 of the Food and Agricultural Code is amended to read:

61828. “Market milk” has the meaning of that term as defined in Section 32510 and has the same meaning as “restricted use market milk” as defined in Section 32516.5. Unless the context otherwise indicates, “market milk” includes market cream, the components and derivatives of market milk, and dairy products manufactured from market milk or its components and derivatives.

SEC. 23. Section 62079 is added to the Food and Agricultural Code, to read:

62079. Whenever a pooling plan is in effect as provided in Chapter 3 (commencing with Section 62700) and Chapter 3.5 (commencing with Section 62750) of this part, all market milk received by pool handlers shall be obligated to the pool at the applicable minimum price established in the Stabilization and Marketing Plans based on the classified usage of that milk. Handlers may pay producers for restricted use market milk at prices that are less than the amount credited to those handlers for restricted use market milk by the pooling plan.

SEC. 24. Section 62196 of the Food and Agricultural Code is amended to read:

62196. The failure of any handler to pay for market milk delivered to him or her at the time and in the manner specified in the contract with the producer is an unlawful trade practice, except as provided for in Section 62079.

SEC. 25. Section 62707 of the Food and Agricultural Code is amended to read:



62707. The formulation committee shall make recommendations to the secretary for inclusion in the pooling plan, and the secretary shall include in the pooling plan, all of the following:

(a) The establishment of one or more pools throughout the state.

(b) (1) The base period to be used in determining the production and class 1 usage bases of each producer directly affected by the pooling plan. The base period shall, at the producer's option, be his or her fluid milk production and usage in the pool area during the calendar year 1967 on an average daily basis or his or her production and usage in the pool area during the last six months of 1966 on an average daily basis.

(2) As to a producer south and east of San Gorgonio Pass, his or her production base may, at his or her option, be four times his or her production in the months of December 1966, and January and February 1967.

(3) If a producer, during any base period, had a valid contract with a distributor, or as a member of a cooperative association had an allocation, which provided that the distributor or cooperative association was required to accept a larger amount of fluid milk from the producer than the producer actually produced during the period, on proof satisfactory to the secretary of the contract or allocation, the producer may, at his or her option, have the amount specified in the contract or allocation established as his or her production base.

(c) The establishment of a class 1 usage for each producer, which shall be the amount of his or her production of fluid milk accounted for as class 1, and any fluid milk sold for use as class 1 to a United States military installation but which was not accounted for as class 1.

(d) The allocation to each producer within any pool of a pool quota, which, initially, shall be 110 percent of that producer's class 1 usage, as determined in subdivision (c).

(e) (1) The determination of new class 1 usage and the allocation of pool quota based thereon in a manner consistent with effectuating the purposes of this chapter.

(2) All producers who have not reached the equalization point shall share in the allocation of pool quota on the basis of a formula which gives substantial weight to each producer's production base, but which, at the same time, allocates a larger percentage to hardship cases and low class 1 usage producers.

(3) The allocations shall be made on the basis of each individual producer, with each cooperative association considered as a single producer. The cooperative associations of producers shall reassign any new quota to their own members subject to Section 62710.

(4) Annually, within no more than four months after August 31 of each year, the pool quota shall be adjusted by each component to reflect any additional pool quota. Any increase in pool quota shall be determined from the amount of new class 1 and class 2 solids not fat usage which developed during the preceding annual period which



exceeded the previous highest identical annual period since the 1988–89 fiscal year.

There shall be no downward adjustment of pool quota below the quota initially established pursuant to this chapter.

(f) The establishment of production bases and pool quotas for new fluid milk producers who wish to enter the pooling plan after the effective date of the plan. The recommendations of the committee shall be reasonably equitable to both the new producers and to participating producers and consistent with effectuating the purposes of this chapter.

(g) The transfer of production bases and pool quotas from one fluid milk producer to another under conditions so designed as to prevent abuses in the transfers and to avoid the development of excessive values for the bases and quotas.

(h) Notwithstanding Section 62711, any provision which may be necessary to encourage the availability of market milk for those usages for which class 1 and class 2 milk is mandatory.

(i) Any governmental agency that produces, processes, and consumes in its own facilities only its own production shall not be a pool plant. The plant shall operate outside the pool for accounting and settlement purposes unless the plant notifies the secretary of its election to participate in the pool. Any production of such a governmental agency that is transferred or diverted to a pool plant shall be classified for the purpose of settlement at the class 4a or class 4b price, whichever is lower.

(j) Any and all other matters necessary and desirable to effectuate the provisions of this chapter.

The recommendations of the formulation committee and the pooling plan may provide exceptions from the plan's general application for individual cases of hardship.

SEC. 26. Section 62711 of the Food and Agricultural Code is amended to read:

62711. (a) Except as provided in subdivision (h) of Section 62707, each producer shall be paid the highest usage for that amount of his or her fluid milk production that is equal to his or her pool quota and shall be paid the next highest usage for the difference between his or her pool quota and his or her production base under the production pool designated pursuant to this chapter and the lowest usage for all milk produced in excess of his or her production base under the overproduction pool designated pursuant to this chapter.

(b) In calculating the pool value, the volume of milk that has been classified as restricted use market milk shall be credited to the handler at the class 4a or class 4b price, whichever is lower.

SEC. 27. Section 62750.1 is added to the Food and Agricultural Code, to read:



62750.1. In calculating the pool value, the volume of milk that has been classified as restricted use market milk shall be credited to the handler at the class 4a or class 4b price, whichever is lower.

SEC. 28. It is the intent of the Legislature that Sections 25 to 27, inclusive, of this act, which amend Chapter 3 (commencing with Section 62700) and Chapter 3.5 (commencing with Section 62750) of Part 3 of Division 21 of the Food and Agricultural Code are nonsubstantive changes and shall be incorporated by the Secretary of Food and Agriculture into the pooling plan for market milk as nonsubstantive changes.

