

SENATE BILL NO. 80—SENATOR SETTELMAYER

PREFILED JANUARY 31, 2013

Referred to Committee on Health and Human Services

SUMMARY—Makes various changes to provisions governing dairy products and dairy substitutes. (BDR 51-460)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to commodities; authorizing the State Dairy Commission to impound and dispose of certain milk or milk products; authorizing the Commission to impose a civil penalty for certain violations relating to fluid milk and fluid cream; requiring a member of the Commission to have a background in agriculture; authorizing the Commission to enter into an agreement to promote and develop the dairy industry in this State; revising the circumstances under which milk and milk products may be imported and sold in this State without inspection by the Commission; revising certain provisions governing distributors and producers of fluid milk and fluid cream; repealing certain provisions governing fees and sales of butter and margarine, inspection of dairy farms and hearings conducted by the Commission; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law creates the State Dairy Commission and provides for the
2 membership of the Commission. (NRS 584.031, 584.033) Existing law authorizes
3 the Commission to adopt regulations to carry out the provisions of chapter 584 of
4 NRS governing dairy products and dairy substitutes and requires the Commission
5 to enforce those provisions. (NRS 584.067, 584.089) **Section 2** of this bill
6 authorizes the Commission to impound and dispose of any adulterated milk or milk
7 product or any misbranded milk or milk product. **Section 3** of this bill authorizes
8 the Commission to impose a civil penalty of not more than \$1,000 for a violation of
9 certain provisions governing permits for the sale of milk and cream. **Section 6** of
10 this bill requires one member of the Commission to have a background in
11 agriculture. **Section 7** of this bill authorizes the Commission to accept gifts and



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grants and to enter into agreements to promote and develop the economic viability of the dairy industry in this State.

Existing law requires the Commission to adopt regulations governing the production and manufacturing of frozen desserts sold for ultimate consumption within this State. (NRS 584.103) **Section 9** of this bill deletes the requirement that the frozen desserts be sold for ultimate consumption within this State and requires the Commission to adopt those regulations for all frozen desserts sold within this State.

Section 11 of this bill deletes the requirement that the Commission make certain determinations concerning impure butter.

Sections 14 and 15 of this bill delete certain references to standards adopted by the American Association of Medical Milk Commissions concerning certified raw milk.

Existing law sets forth the fee for issuing and renewing a milk tester's license. (NRS 584.220, 584.225) **Sections 17 and 18** of this bill delete the provisions that specify the amount of the fee and instead authorize the Commission to establish a fee of not more than \$10 by regulation.

Existing law provides for the regulation of the business activities of distributors and producers of fluid milk and fluid cream. (NRS 584.325-584.670) **Sections 19-35** of this bill make various changes to those provisions. **Sections 19-23** revise the definitions of the terms "distributor," "fluid cream," "fluid milk," "fresh dairy products" and "producer," respectively. **Sections 24 and 25** revise the policy of this State to include the promotion of the economic viability of the dairy industry in this State to ensure the availability of certain dairy products. **Sections 26 and 27** revise the requirements for the Commission to designate marketing areas for dairy products and to formulate stabilization and marketing plans for fluid milk or fluid cream. **Section 28** deletes substitute dairy products from the provisions which prohibit a distributor from extending special prices or services to certain customers. **Section 29** requires a distributor to provide to the Commission a statement of costs in accordance with the appropriate stabilization and marketing plan and specifies that a retailer is not prohibited from donating or discounting a dairy product within 48 hours before midnight of the date of expiration printed on the dairy product. **Section 30** includes retailers in certain provisions concerning the competitive prices of distributors. **Section 31** requires each distributor, before purchasing any fluid milk or fluid cream directly from a producer, to execute a surety bond in an amount specified by the Commission. **Section 34** revises the assessment imposed by the Commission on all distributors of fresh dairy products. **Section 35** requires a distributor who makes no sales or purchases of a dairy product during a month to file with the Commission a report indicating that fact.

Section 36 of this bill repeals numerous provisions of existing law governing dairy products and dairy substitutes, including the repeal of: (1) certain fees charged and collected by the Commission; (2) provisions governing the sale of butter; (3) certain provisions governing the inspection of dairy farms, milk plants and other facilities located outside of this State; (4) certain provisions governing hearings by the Commission; and (5) certain restrictions on the sale of substitute dairy products by a distributor.



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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 584 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *In addition to the provisions of NRS 584.208, raw milk may be sold or dispensed:*

(a) Solely to a hauler of milk or to a processing facility which is permitted or regulated by a state or federal agency; or

(b) Only if the raw milk is labeled "FOR ANIMAL FOOD - NOT FOR HUMAN CONSUMPTION" in letters at least 3 inches high on each container of the raw milk and only if the raw milk is altered with an approved denaturant consisting of:

(1) Finely powdered charcoal;

(2) FD&C Blue No. 1, FD&C Blue No. 2 or Ultramarine Blue; or

(3) FD&C Green No. 3, FD&C Red No. 3 or FD&C Red No. 40.

2. *The Commission may impound and dispose of any adulterated milk or milk product or misbranded milk or milk product in any manner prescribed by the Commission.*

3. *As used in this section:*

(a) "Adulterated milk or milk product" means any milk or milk product for which one or more of the conditions prescribed in 21 U.S.C. § 342 exist.

(b) "Misbranded milk or milk product" means any milk or milk product:

(1) That is packaged in a container which displays or is accompanied by any false or misleading written, printed or graphic matter; or

(2) For which one or more of the conditions prescribed in 21 U.S.C. § 343 exist.

(c) "Sold or dispensed" means any transaction involving the transfer or dispensing of raw milk by barter or contractual agreement or in exchange for any form of compensation, including, but not limited to, the sale of shares or interests in a cow, goat or other lactating mammal or herd.

Sec. 3. *In addition to denying, suspending or revoking a permit pursuant to NRS 584.210 or the imposition of any other penalty pursuant to the provisions of this section and NRS 584.180 to 584.210, inclusive, and section 2 of this act, the Commission may impose a civil penalty of not more than \$1,000 for each violation of those provisions, which may be recovered by the Commission in a civil action in a court of competent jurisdiction.*



All sums recovered under this subsection must be deposited with the State Treasurer for credit to the State General Fund.

Sec. 4. NRS 584.007 is hereby amended to read as follows:

584.007 “Milk **processing** plant” means any place, ~~{structure}~~ **premises** or ~~{building}~~ **establishment** where ~~{a distributor receives fluid} milk , milk products~~ or ~~{fluid cream and weighs or tests or standardizes or pasteurizes or homogenizes or separates or bottles or packages such fluid milk or fluid cream. The term does not include a place or structure or building used for the purpose of receiving, weighing or testing fluid milk or fluid cream which is to be diverted or delivered to the milk plant of the distributor receiving fluid milk or fluid cream, which milk plant is licensed and bonded under the provisions of NRS 584.595 to 584.645, inclusive.}~~ **dairy products are collected, handled, processed, stored, pasteurized, aseptically processed, bottled, packaged or prepared for distribution.**

Sec. 5. NRS 584.009 is hereby amended to read as follows:

584.009 “Single-service plant” means a place, structure or building where a person engages in the business of manufacturing a single-service container or closure for use by a milk **processing** plant for the packaging of finished Grade A milk or milk products.

Sec. 6. NRS 584.033 is hereby amended to read as follows:

584.033 1. The Governor shall appoint the members of the Commission, who must have the following qualifications:

(a) One member must be a public accountant or certified public accountant who has been issued a permit or a certificate pursuant to the laws of this State;

(b) One member must ~~{be an agricultural economist;}~~ **have a background in agriculture;** and

(c) One member must be experienced in banking or finance.

2. The Governor shall designate one of the members as Chair.

3. A member of the Commission ~~{shall}~~ **must** not have any connection with any segment of the dairy industry.

4. The Governor may remove a member of the Commission for malfeasance in office or neglect of duty.

Sec. 7. NRS 584.041 is hereby amended to read as follows:

584.041 1. Each member of the Commission is entitled to receive a salary of not more than \$80 per day, as fixed by the Commission, while engaged in the business of the Commission.

2. While engaged in the business of the Commission, each member and employee of the Commission is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

3. The Commission may ~~{expend}~~ :



(a) Apply for and accept any gifts, grants, donations or contributions from any source to promote and develop the economic viability of the dairy industry in this State.

(b) Expend in accordance with law all money made available for its use.

(c) In addition to any contract entered into pursuant to NRS 584.047, enter into any contract or other agreement to promote and develop the economic viability of the dairy industry in this State.

Sec. 8. NRS 584.101 is hereby amended to read as follows:

584.101 1. As used in this section:

(a) "Candy" includes candies, cakes, cookies, glaceed fruits, prepared cereals and similar products.

(b) "Chocolate ice cream" means ice cream flavored with chocolate or cocoa.

(c) "Fruit ice cream" means ice cream containing not less than 3 percent by weight of clean, mature, sound fruit or its equivalent in other forms.

(d) "Nut or candy ice cream" means ice cream containing not less than 1 percent by weight of sound ~~fr, nonrancid~~ nut meats or candy.

2. No frozen dessert may be labeled or sold in this state as ice cream unless it:

(a) Weighs at least 4.5 pounds per gallon;

(b) Contains at least 6 percent of milk solids not fat; and

(c) Except as provided in subsection 3, contains at least 10 percent of milk fat and 20 percent of total milk solids.

3. Chocolate ice cream, fruit ice cream and nut or candy ice cream must contain at least 8 percent of milk fat and 16 percent of total milk solids.

4. Frozen desserts may be produced and sold which contain less than the amounts of milk fat required by subsections 2 and 3 for their respective categories of ice cream, but must be labeled:

(a) "Ice milk" if they contain at least 2 percent of milk fat and 11 percent of milk solids;

(b) "Low-fat frozen dairy desserts" if they contain at least 0.5 percent but less than 2 percent milk fat; or

(c) By a name which does not imply a dairy dessert, if they contain less than such amounts.

Sec. 9. NRS 584.103 is hereby amended to read as follows:

584.103 Except as otherwise provided by law, the Commission shall adopt, and may amend and repeal, reasonable regulations governing:

1. The production, manufacturing, mixing, preparing, processing, pasteurizing, freezing, packaging, transportation,



1 handling, sampling, examination, labeling and sale of all mix and
2 frozen desserts sold ~~for ultimate consumption~~ within the State of
3 Nevada.

4 2. The inspection of all establishments engaged in the
5 production, processing and distribution of mix and frozen desserts.

6 3. The issuing and revocation of permits to frozen desserts
7 plants.

8 4. The grading and regrading of frozen desserts plants.

9 5. The displaying of grade placards.

10 6. The fixing of penalties for a violation of the regulations.

11 **Sec. 10.** NRS 584.125 is hereby amended to read as follows:

12 584.125 For the purposes of NRS ~~584.110~~ **584.125** to
13 ~~584.160,~~ **584.145**, inclusive, "wholesome butter" ~~is defined to be~~
14 **means** butter made from cream and milk wherein the entire
15 procedure from dairy to creamery, or other place of manufacture of
16 such product or products, is conducted under sanitary conditions,
17 and wherein the milk or cream has either been produced by cows all
18 of which have been duly certified by some reputable veterinarian as
19 free from tuberculosis, or, if not so certified, wherein such milk or
20 cream has been pasteurized as prescribed by the Commission
21 pursuant to NRS 584.135.

22 **Sec. 11.** NRS 584.130 is hereby amended to read as follows:

23 584.130 The inspection of butter under the provisions of NRS
24 ~~584.110~~ **584.125** to ~~584.160,~~ **584.145**, inclusive, and the
25 determination of the same as wholesome, ~~for impure,~~ are hereby
26 made duties of the Commission. The Commission is hereby given
27 all necessary authority and power for such inspection and
28 determination and may employ such inspectors or agents therefor as
29 may be necessary within any revenues generated or appropriation
30 provided for such purposes.

31 **Sec. 12.** NRS 584.135 is hereby amended to read as follows:

32 584.135 The Commission shall make such regulations, within
33 the meaning and purposes of NRS ~~584.110~~ **584.125** to ~~584.160,~~
34 **584.145**, inclusive, as may be necessary in their administration, and
35 which may include the sanitary production, care and handling of
36 milk and cream used in the making of butter.

37 **Sec. 13.** NRS 584.145 is hereby amended to read as follows:

38 584.145 Pasteurizing plants must be equipped with a self-
39 registering device for recording the time and temperature of
40 pasteurizing. Such a record must be kept for at least 6 months and
41 must be available for inspection by any health officer or person
42 charged with the enforcement of NRS ~~584.110~~ **584.125** to
43 ~~584.160,~~ **584.145**, inclusive.



Sec. 14. NRS 584.205 is hereby amended to read as follows:

584.205 1. In addition to the initial inspection of new applicants, the Commission shall, except as otherwise provided in subsection 2, direct a periodic inspection, not less than annually, of all facilities belonging to permittees to ascertain whether the services, facilities and equipment continue to comply with the regulations referred to in NRS 584.195.

2. Except as otherwise provided in NRS 584.208 and the regulations adopted pursuant to that section, milk and milk products, including certified raw milk and products made from it, imported from outside the State of Nevada may be sold in this state without inspection by the Commission if the requirements of paragraph ~~((e))~~ ~~and the requirements of paragraph~~ (a) or (b) are met:

~~(a) In the case of certified raw milk and products made from it, they have been produced under standards adopted by the American Association of Medical Milk Commissions and under the statutory provisions of the State of California applicable to such products.~~

~~—(b)~~ The milk and milk products have been produced, pasteurized, processed, transported and inspected under statutes or regulations substantially equivalent to the Nevada milk and milk products statutes and regulations.

~~((e))~~ (b) The milk and milk products have been awarded an acceptable milk sanitation, compliance and enforcement rating by a state milk sanitation rating officer certified by the United States Public Health Service.

3. Whenever the Commission has reasonable grounds to believe that a seller of milk or milk products, including certified raw milk and products made from it, is violating any of the regulations adopted by the Commission or any county milk commission relating to the sanitation and grading of milk and milk products, including certified raw milk and products made from it, or that the seller's facilities or products fail to meet the regulations, or that the seller's operation is in any other manner not in the best interests of the people of this state, the Commission may conduct a reasonable inspection, and if any violation or other condition inimical to the best interests of the people of this state is found, to take corrective action pursuant to NRS 584.180 to 584.210, inclusive ~~H~~ , *and sections 2 and 3 of this act.*

Sec. 15. NRS 584.207 is hereby amended to read as follows:

584.207 1. Certified raw milk is unpasteurized, marketed milk which conforms to the regulations and standards adopted by the county milk commission for the production and distribution of certified raw milk and certified raw milk products in the county in which they are produced.



2. In each county in which certified raw milk or certified raw milk products are produced for public consumption, there must be a county milk commission to regulate the production and distribution of those products. The board of county commissioners shall appoint to the commission three members for terms of 4 years, all of whom are eligible for reappointment. The members must all be residents of the county and have the following respective qualifications:

(a) One member must be a physician licensed in this State and a member of the medical society of the state;

(b) One member must be a veterinarian licensed in this State and a member of the county or regional veterinarian association; and

(c) One member must be a representative of the public at large.

3. A county milk commission shall:

(a) Elect one of its members as chair and adopt appropriate rules to govern:

(1) The time and place of its meetings;

(2) Its rules of procedure; and

(3) Its recordkeeping and other internal operations.

(b) Adopt written regulations, which must be approved by the State Dairy Commission, governing the production, distribution and sale in the county of certified raw milk and products made from it, to protect the public health and safety and the integrity of the product. ~~[The regulations so adopted must conform as nearly as practicable to, but may be more stringent than, the standards adopted by the American Association of Medical Milk Commissions.]~~

(c) Certify raw milk and the products thereof for any applicant producing raw milk within the county, whose product and methods of production, distribution and sale comply with the regulations and standards adopted by the county milk commission.

4. A county milk commission may:

(a) Establish and collect such fees and charges as appear reasonably necessary to defray the costs and expenses incurred by it in the performance of its duties under this section, and expend any money so collected as is necessary for such performance.

(b) Conduct such tests, inspections and analyses as are necessary to enable it to perform its duties under this section and employ such personnel and equipment as it deems necessary therefor.

5. Each applicant for certification must, as a condition for entertaining his or her application and as a condition for any certification granted, submit for testing by the county milk commission such samples as the county milk commission requests, and allow inspections by the county milk commission or its agents at any reasonable times, of any or all of the facilities, equipment, herds or other property employed in the applicant's dairy operations,



1 including, without limitation, all of the applicant's books and
2 records relating thereto.

3 **Sec. 16.** NRS 584.210 is hereby amended to read as follows:

4 584.210 1. Whenever the Commission has reasonable
5 grounds to believe that any applicant or permittee under NRS
6 584.180 to 584.210, inclusive, *and sections 2 and 3 of this act* is
7 violating any of the provisions of those sections, or any of the rules,
8 regulations or specifications adopted by the Commission relative to
9 the sanitation and grading of milk and milk products, or whenever
10 the results of tests indicate that the facilities, milk or milk products
11 do not meet those regulations or are not reliable or are questionable,
12 or when the Commission determines that the operation in any other
13 manner is inimical and not for the best interests of the health, safety
14 or welfare of the people of this state, the Commission may, after
15 providing notice and opportunity for a hearing pursuant to the
16 provisions of subsection 2, refuse to grant a permit or suspend or
17 revoke any or all permits previously issued.

18 2. Except as otherwise provided in this subsection, if the
19 Commission intends to refuse to grant a permit or to suspend or
20 revoke a permit pursuant to the provisions of subsection 1, the
21 Commission shall provide to the applicant or permittee, by certified
22 mail, written notice of the intended action within the period
23 established pursuant to regulations adopted by the Commission. The
24 notice must specify the reasons, the legal authority and the
25 jurisdiction of the Commission for taking the intended action. Upon
26 receipt of the notice, an applicant or permittee may request a
27 hearing, and, if so requested, the Commission shall conduct a
28 hearing pursuant to regulations adopted by the Commission. If an
29 applicant or permittee does not request a hearing after being notified
30 pursuant to the provisions of this subsection, any decision of the
31 Commission made pursuant to this section is final and not subject to
32 judicial review. Such notice and hearing is not required and a permit
33 may be summarily disapproved, revoked or suspended by the
34 Commission if the Commission finds that, based upon the particular
35 circumstances of the case, it is in the best interests of the health,
36 safety or welfare of the people of this state to so proceed.

37 3. The Commission may conduct the investigations, summon
38 and compel the attendance of witnesses, require the production of
39 any records or documents, and provide for the taking of depositions
40 under the Nevada Rules of Civil Procedure in connection with a
41 hearing conducted pursuant to the provisions of this section.

42 4. The findings of the Commission and the judgment or order
43 must be reduced to writing and filed in the permanent public records
44 of the Commission. The findings must state the reasons why the
45 application for a permit was disapproved or the permit was



1 suspended or revoked. Copies must be furnished to the applicant or
2 permittee who may, if he or she requested and was given a hearing
3 or if the application or permit was summarily disapproved, revoked
4 or suspended pursuant to the provisions of subsection 2, file an
5 appeal pursuant to regulations adopted by the Commission. Upon
6 the filing of the appeal, the Chair of the Commission or the Chair's
7 designee shall appoint a person who did not participate in the
8 decision of the Commission to conduct a hearing in accordance with
9 those regulations. The applicant or permittee is entitled to judicial
10 review of the decision of the person so appointed in the manner
11 provided by chapter 233B of NRS. Upon the filing for appeal or
12 review, the enforcement of the Commission's order must be stayed
13 pending final disposition of the matter. If the order is judicially
14 affirmed, it becomes final and the stay of enforcement is
15 automatically vacated.

16 5. In any case where the Commission refuses to issue a permit,
17 or suspends or revokes a permit, the applicant or accused is entitled
18 to submit another application for the consideration of the
19 Commission.

20 6. The Commission shall adopt such regulations as are
21 necessary to carry out the provisions of this section.

22 **Sec. 17.** NRS 584.220 is hereby amended to read as follows:

23 584.220 1. Every creamery, shipping station, milk factory,
24 cheese factory, ice cream factory, condensery, or any person, firm or
25 corporation receiving or purchasing milk or cream on the basis of
26 butterfat contained therein is required to hold a license so to do.

27 2. The license must be issued to the creamery, shipping station,
28 milk factory, condensery, ice cream factory, cheese factory, or
29 person, firm or corporation by the Commission upon complying
30 with all sanitary laws, rules and regulations of the State of Nevada,
31 and upon complying with the provisions of NRS 584.215 to
32 584.285, inclusive, and upon payment of a license fee , *if any*, as
33 provided in *any regulations adopted pursuant to* NRS 584.225.

34 **Sec. 18.** NRS 584.225 is hereby amended to read as follows:

35 584.225 1. The *Commission may, by regulation, establish a*
36 *fee of not more than \$10* for issuing and renewing a milk tester's
37 license . ~~his \$10 for a full year or fraction thereof.~~

38 2. All licenses required under NRS 584.215 to 584.285,
39 inclusive, expire at the end of each calendar year.

40 ~~{3. The provisions of this section do not apply to natural~~
41 ~~persons, hotels, restaurants or boardinghouses buying milk or cream~~
42 ~~for private use.}~~

43 **Sec. 19.** NRS 584.345 is hereby amended to read as follows:

44 584.345 1. "Distributor" means any person, whether or not
45 the person is a producer or an association of producers, who



1 purchases or handles fluid milk, fluid cream or any other dairy
2 product for sale, including brokers, agents, copartnerships,
3 cooperative corporations, and incorporated and unincorporated
4 associations.

5 2. The ~~definition of "distributor"~~ *term* does not include any
6 of the following:

7 (a) Any retail store that is not engaged in processing and
8 packaging fluid milk or fluid cream or does not purchase, transport
9 into the state, or otherwise receive for resale, fluid milk, fluid cream
10 or any other dairy product from sources outside this state.

11 (b) Any establishment, where fluid milk or fluid cream is sold
12 only for consumption on the premises, that is not engaged in
13 processing and packaging fluid milk or fluid cream.

14 (c) Any person ~~owned~~ *who owns* or ~~controlled by~~ *controls*
15 one or more retail stores or ~~owned~~ *owns* or ~~controlled by~~ *controls*
16 one or more establishments where fluid milk or fluid cream
17 is sold for consumption on the premises . ~~the person is not~~
18 ~~actively and directly engaged in the processing and packaging of~~
19 ~~fluid milk or fluid cream.~~

20 (d) Any producer who delivers fluid milk or fluid cream only to
21 a distributor.

22 **Sec. 20.** NRS 584.350 is hereby amended to read as follows:

23 584.350 "Fluid cream" means cream ~~as defined in NRS~~
24 ~~584.325 to 584.670, inclusive, and~~ *or any combination mixture* of
25 cream and milk ~~or any fluid product of~~ *skim milk* ~~or cream~~
26 ~~sold under any trade name whatsoever.~~ *containing 9 percent or*
27 *more of butterfat, with or without the addition of any other*
28 *ingredient*, which is not packaged in hermetically sealed containers .
29 ~~and which contains more than 11.6 percent milk fat and conforms~~
30 ~~to the health and sanitary regulations of the place where sold or~~
31 ~~disposed of for human consumption.~~

32 **Sec. 21.** NRS 584.355 is hereby amended to read as follows:

33 584.355 "Fluid milk" means any ~~and all whole or~~
34 ~~concentrated milk that is produced in conformity with applicable~~
35 ~~health regulations for market milk of the place where such milk is~~
36 ~~consumed.~~ *milk product in fluid or frozen form containing less*
37 *than 9 percent butterfat, including, without limitation, milk, fat-*
38 *free milk, low-fat milk, light milk, reduced-fat milk, eggnog and*
39 *cultured buttermilk. The term does not include any:*

- 40 1. *Evaporated or condensed milk;*
41 2. *Formula for infants or for dietary use that is packaged in a*
42 *hermetically sealed container; or*
43 3. *Product which contains less than 6.5 percent nonfat milk*
44 *solids and whey.*



Sec. 22. NRS 584.357 is hereby amended to read as follows:

584.357 "Fresh dairy products" includes, but is not limited to, buttermilk, skim milk, ~~chocolate drink,~~ ice cream, ice milk mix, sherbet, sour cream, ~~sour cream dressing,~~ *eggnog, yogurt, butter* and cottage cheese, without regard to the class of fluid milk or fluid cream which is used to make those products.

Sec. 23. NRS 584.370 is hereby amended to read as follows:

584.370 1. "Producer" means any person who produces fluid milk from five or more ~~cows or goats,~~ *lactating mammals* in conformity with the applicable health regulations of the place in which it is sold.

2. "Producer" includes any association of producers.

Sec. 24. NRS 584.395 is hereby amended to read as follows:

584.395 The Legislature declares that:

1. Fluid milk, ~~and~~ fluid cream *and other dairy products* are necessary articles of food for human consumption.

2. The production and maintenance of an adequate supply of healthful ~~milk of proper chemical and physical content, free from contamination,~~ *dairy products* is vital to the public health and welfare.

3. The production, transportation, processing, storage, distribution or sale of fluid milk, ~~and~~ fluid cream *and other dairy products* in the State of Nevada is an industry affecting the public health and welfare.

4. It is the policy of this state to ~~promote,~~ :

(a) Promote, foster and encourage ~~intelligent,~~ *economical* production and orderly marketing of ~~commodities,~~ *dairy products* necessary to its citizens, including milk ~~, and to eliminate,~~ ;

(b) Promote the economic viability of the dairy industry to ensure the availability of pure, fresh and wholesome dairy products necessary for its citizens; and

(c) Eliminate speculation, waste, improper marketing, unfair and destructive trade practices and improper accounting for milk purchased from producers.

Sec. 25. NRS 584.410 is hereby amended to read as follows:

584.410 The purposes of NRS 584.325 to 584.670, inclusive, are:

1. To provide money for the administration and enforcement of the provisions of this chapter by assessments to be paid by producers of fluid milk or fluid cream, or both, and from licenses issued to distributors in the manner prescribed herein.

2. To authorize and enable the Commission to prescribe marketing areas and to fix prices at which fluid milk or fluid cream, or both, may be sold by producers, distributors and retailers, which areas and prices are necessary due to varying factors of costs of



1 production, health regulations, transportation and other factors in the
2 marketing areas of this state, but the price of fluid milk or fluid
3 cream within any marketing area must be uniform for all purchasers
4 of fluid milk or fluid cream of similar grade or quality under like
5 terms and conditions.

6 3. To authorize and enable the Commission to formulate
7 stabilization and marketing plans subject to the limitations
8 prescribed in NRS 584.325 to 584.670, inclusive, with respect to the
9 contents of the stabilization and marketing plans and to declare the
10 plans in effect for any marketing area.

11 4. To ~~enable~~ *promote the economic viability of* the dairy
12 industry ~~{with the aid of the State to correct existing evils, develop~~
13 ~~and maintain}~~ *in this State by developing and maintaining*
14 satisfactory marketing conditions, ~~and bring about~~ *creating* a
15 reasonable amount of stability ~~and prosperity~~ in the production and
16 marketing of fluid milk, ~~and~~ fluid cream ~~and other dairy~~
17 *products and enhancing the knowledge of the members of the*
18 *public concerning the nutritional value of pure, fresh and*
19 *wholesome fluid milk, fluid cream and other dairy products.*

20 **Sec. 26.** NRS 584.550 is hereby amended to read as follows:

21 584.550 1. The Commission shall designate marketing areas
22 which it deems necessary or advisable to effectuate the purposes of
23 NRS 584.325 to 584.670, inclusive, and wherein it finds the
24 conditions affecting the production, distribution and sale of fluid
25 milk, fluid cream ~~for both~~ *and other dairy products* are reasonably
26 uniform.

27 2. The Commission ~~{shall have the power to}~~ *may* establish
28 additional areas or ~~to~~ modify areas theretofore established when it
29 deems the establishment or modification of such areas necessary or
30 advisable to effectuate the purposes of NRS 584.325 to 584.670,
31 inclusive.

32 3. When the Commission finds, after a public hearing in and
33 for each particular marketing area under consideration for
34 consolidation, that conditions of production and distribution are
35 reasonably uniform in two or more such marketing areas wherein
36 stabilization and marketing plans are in effect, it may consolidate
37 the area, provided that at the hearings more than 35 percent of the
38 producers present who supply the areas proposed to be consolidated
39 do not object to such consolidation.

40 **Sec. 27.** NRS 584.555 is hereby amended to read as follows:

41 584.555 The Commission shall, prior to the formulation of a
42 stabilization and marketing plan for fluid milk *or fluid cream* for
43 any marketing area, conduct a public hearing in the area for the
44 purpose of determining whether or not producers whose major
45 interest in the fluid milk *or fluid cream* business is in the production



1 of fluid milk *or fluid cream* for the marketing area, and who
2 represent not less than 65 percent of the total number of producers
3 whose major interest in the fluid milk *or fluid cream* business is in
4 the production of fluid milk *or fluid cream* for the marketing area,
5 and who produce not less than 65 percent of the total volume of the
6 fluid milk *or fluid cream* produced for the marketing area by all
7 such producers, desire that a stabilization and marketing plan for
8 fluid milk *or fluid cream* be formulated for the area; but if a petition
9 is presented to the Commission by the producers whose major
10 interest in the fluid milk *or fluid cream* business is in the production
11 of fluid milk *or fluid cream* for the marketing area, and who
12 represent not less than 65 percent of the total number of producers
13 whose major interest in the fluid milk *or fluid cream* business is in
14 the production of fluid milk *or fluid cream* for the marketing area,
15 and who produce not less than 65 percent of the total volume of the
16 fluid milk *or fluid cream* produced for the marketing area by all
17 such producers, it ~~shall~~ *is* not ~~be~~ necessary that ~~such~~ *the*
18 hearing be held.

19 **Sec. 28.** NRS 584.581 is hereby amended to read as follows:

20 584.581 1. No distributor may engage in any of the practices
21 set forth in paragraphs (a) to (d), inclusive, of subsection 2, whether
22 or not a stabilization and marketing plan is in effect in the area in
23 which the distributor carries on his or her business.

24 2. Each stabilization and marketing plan must contain
25 provisions for prohibiting distributors and retail stores from
26 engaging in the unfair practices set forth in this subsection:

27 (a) The payment, allowance or acceptance of secret rebates,
28 secret refunds or unearned discounts by any person, whether in the
29 form of money or otherwise.

30 (b) The giving of any milk, cream, dairy products, ~~substitute~~
31 ~~dairy products as defined in NRS 584.176,~~ services or articles of
32 any kind, except to bona fide charities, for the purpose of securing
33 or retaining the fluid milk or fluid cream business of any customer.

34 (c) The extension to certain customers of special prices or
35 services not made available to all customers who purchase fluid
36 milk, fluid cream ~~;~~ *or any other* dairy products ~~;~~ *or substitute*
37 ~~dairy products as defined in NRS 584.176,~~ of like quantity under
38 like terms and conditions.

39 (d) The purchase of any fluid milk in excess of 200 gallons
40 monthly from any producer or association of producers unless a
41 written contract has been entered into with the producer or
42 association of producers stating the amount of fluid milk to be
43 purchased for any period, the quantity of milk to be paid for as class
44 1 in pounds of milk, pounds of milk fat or gallons of milk, and the
45 price to be paid for all milk received. The contract must also state



the date and method of payment for the fluid milk, which must be that payment must be made for approximately one-half of the milk delivered in any calendar month not later than the 1st day of the next following month and the remainder not later than the 15th day of the month, the charges for transportation if hauled by the distributor, and may contain other provisions which are not in conflict with NRS 584.325 to 584.670, inclusive. The contract must also provide that the producer is not obligated to deliver in any calendar month fluid milk which is to be paid for at the lowest class price for milk usage established by the Commission for that area. A signed copy of the contract must be filed by the distributor with the Commission within 5 days from the date of its execution.

➔ The provisions of this subsection relating to dates of payment do not apply to contracts for the purchase of fluid milk from nonprofit cooperative associations of producers.

3. This section does not apply to discounts offered by a retail store to elderly consumers.

Sec. 29. NRS 584.583 is hereby amended to read as follows:

584.583 1. No distributor or retailer may sell fluid milk, fluid cream, butter or any fresh dairy product below cost.

2. ~~In determining the cost for a distributor who processes or manufactures fluid milk, fluid cream, butter or any fresh dairy product, the following factors, in addition to any other factor acceptable to the Commission, must be considered:~~

~~—(a) Cost of raw products based on actual cost or on current and prospective supplies of fluid milk and fluid cream in relation to current and prospective demands for fluid milk and fluid cream.~~

~~—(b) Cost of production.~~

~~—(c) Reasonable return on capital investment.~~

~~—(d) Producer's costs for transportation.~~

~~—(e) Cost of compliance with health regulations.~~

~~—(f) Overhead.~~

~~3. In determining the cost for a peddler distributor or retailer, the following factors, in addition to any other factor acceptable to the Commission, must be considered:~~

~~—(a) Purchase price of the product.~~

~~—(b) Overhead for handling.~~

~~—(c) Reasonable return on capital investment.~~

~~4. For the purposes of subsections 2 and 3:~~

~~—(a) Reasonable return on capital investment must be calculated per unit of production by dividing the product of:~~

~~—(1) The net capital investment; and~~

~~—(2) The reasonable rate of return on capital investment,~~

~~➔ by the total sales per unit of production. "Net capital investment" includes land, buildings, equipment and any other capital asset used~~



1 as a rate base. A reasonable rate of return on capital investment shall
2 be deemed to be the rate fixed for 6-month United States treasury
3 bills at the auction in the first week of the month of January or July
4 immediately preceding the date that the reasonable return on capital
5 investment is calculated.

6 —(b) Costs for overhead must be determined according to
7 generally accepted principles of accounting and allocated
8 proportionately to each unit of production. Costs for overhead
9 include salaries for executives and officers of the company, all other
10 costs of labor, including indirect costs, rent, depreciation, costs for
11 maintenance, costs incurred in delivering the product, fees for
12 licenses, taxes and insurance, cost of materials, costs for repairs, the
13 cost of electricity and other public utilities, and all other costs that
14 relate to the sale and distribution of the product. Any expense
15 incurred in the marketing of a finished or manufactured dairy
16 product which cannot be attributed directly to a particular product
17 must be apportioned to the product on a basis consistent with
18 generally accepted principles of accounting relating to costs.

19 —5. Each distributor who processes or manufactures fluid milk,
20 fluid cream, butter or any fresh dairy product and each peddler-
21 distributor shall file with the Commission a statement of costs,
22 listing separately, and as applicable, the items set forth in subsection
23 2 or 3 and any other applicable factors relating to cost. The
24 statements must be kept current as prescribed by regulations adopted
25 by the Commission. All statements must be kept confidential by the
26 Commission except as otherwise provided in NRS 239.0115 and
27 except when used in judicial or administrative proceedings pursuant
28 to NRS 584.325 to 584.670, inclusive.

29 —6. Each distributor who processes or manufactures fluid milk,
30 fluid cream, butter or any fresh dairy product and each peddler-
31 distributor shall file with the Commission lists of wholesale prices
32 and of minimum retail, distributor and dock prices. No distributor
33 may sell at wholesale prices other than, or at retail, distributor or
34 dock prices less than, those contained in the appropriate list, except
35 in the case of bids to departments or agencies of federal, state and
36 local governments. In no case may the distributor sell or offer to sell
37 below cost.] *Each distributor shall provide to the Commission a
38 statement of costs in accordance with the appropriate stabilization
39 and marketing plan.*

40 *3. The provisions of this section do not prohibit a retailer*
41 *from donating or discounting a dairy product within 48 hours*
42 *before midnight of the date of expiration printed on the dairy*
43 *product.*

44 *4. As used in this section, "cost" means:*



1 (a) *When applied to a distributor, the total consideration paid*
2 *or exchanged for a raw product, plus the total expense incurred*
3 *for manufacturing, processing, handling, sale and delivery of the*
4 *raw product.*

5 (b) *When applied to a retailer, the invoice price charged to the*
6 *retailer for the raw product or the cost of replacement of the raw*
7 *product, whichever is less, plus the retailer's cost of doing*
8 *business.*

9 **Sec. 30.** NRS 584.584 is hereby amended to read as follows:

10 584.584 ~~1-1~~ The provisions of NRS 584.583 do not authorize
11 the development of conditions of monopoly in production or
12 distribution of fluid milk, fluid cream ~~1, butter, fresh~~ *or any other*
13 dairy products , ~~for products made from fluid milk,~~ and a
14 distributor *or retailer* who meets in good faith a lawful competitive
15 price is not subject to any penalty provided in NRS 584.325 to
16 584.670, inclusive, if the distributor *or retailer* files with the
17 Commission information detailing the circumstances surrounding
18 the lawful competitive price within 5 days after each occurrence.
19 The information must include the name and address of the
20 distributor *or retailer* and the customer involved, the competitive
21 price, the effective date of the price or condition, and the name and
22 address of the competing distributor ~~1~~.

23 ~~2. If that information is accompanied by a written statement,~~
24 ~~signed by the customer before a notary public or two competent~~
25 ~~witnesses, that the competitive price has been offered or made~~
26 ~~available to the customer, the statement is prima facie evidence that~~
27 ~~a distributor is meeting the competitive price or condition in good~~
28 ~~faith.~~ *or retailer.*

29 **Sec. 31.** NRS 584.600 is hereby amended to read as follows:

30 584.600 1. Every distributor, before purchasing any fluid
31 milk or fluid cream *directly* from a producer, must execute and
32 deliver to the Commission a surety bond in ~~the minimum sum of~~
33 ~~\$1,000~~ *an amount specified by the Commission by regulation and*
34 executed by the applicant as principal and by a surety company
35 qualified and authorized to do business in this state as surety.

36 2. The bond ~~shall~~ *must* be upon a form approved by the
37 Commission and ~~shall~~ *must* be conditioned upon the payment in
38 the manner required by NRS 584.325 to 584.670, inclusive, of all
39 amounts due to producers for fluid milk and fluid cream *directly*
40 purchased by such licensee or applicant during the license year. The
41 bond ~~shall~~ *must* be to the State in favor of every producer of fluid
42 milk and fluid cream ~~1~~ *who sells directly to a distributor.*

43 3. In case of failure by a distributor to pay any producer ~~for~~
44 ~~producers~~ for fluid milk or fluid cream *directly purchased by the*
45 *distributor* in the manner required by NRS 584.325 to 584.670,



1 inclusive, the Commission shall proceed forthwith to ascertain the
2 names and addresses of all producer-creditors of ~~{such}~~ *the*
3 distributor ~~{}~~ *who sell directly to the distributor*, together with the
4 amounts due and owing to them and each of them by ~~{such}~~ *the*
5 distributor, and shall request all such producer-creditors to file a
6 verified statement of their respective claims with the Commission.
7 Thereupon, the Commission shall bring an action on the bond on
8 behalf of the producer-creditors ~~{}~~ *who sell directly to the*
9 *distributor*.

10 4. Upon any action being commenced upon the bond, the
11 Commission may require the filing of a new bond and immediately
12 upon a recovery in any action upon such bond, such distributor shall
13 file a new bond, and upon failure to file the same within 10 days in
14 either case, such failure ~~{shall constitute}~~ *constitutes* grounds for the
15 revocation or suspension of the license of such distributor.

16 5. In the event that recovery upon the bond is not sufficient to
17 pay all of the claims as finally determined and adjudged by the
18 court, any such amount recovered ~~{shall}~~ *must* be divided pro rata
19 among the producer-creditors.

20 **Sec. 32.** NRS 584.615 is hereby amended to read as follows:

21 584.615 1. The licenses and bonds provided for in NRS
22 584.595 to 584.645, inclusive, ~~{shall be}~~ *are* required for each
23 distributor, and for the purposes of NRS 584.595 to 584.645,
24 inclusive, each subsidiary milk *processing* plant or branch milk
25 *processing* plant, whether under one ownership or not, ~~{shall be~~
26 ~~considered as}~~ *is* an individual distributor.

27 2. No bond ~~{shall be}~~ *is* required of a cooperative association of
28 producers.

29 **Sec. 33.** NRS 584.625 is hereby amended to read as follows:

30 584.625 Failure of any distributor who purchases fluid milk or
31 fluid cream *directly* from producers to execute and deliver the bond
32 as herein provided and required ~~{shall constitute}~~ *constitutes* a
33 violation of NRS 584.325 to 584.670, inclusive. Failure of any such
34 distributor to post such additional bond or bonds as may be required
35 to comply with the provisions of NRS 584.325 to 584.670,
36 inclusive, ~~{shall}~~ likewise ~~{constitute}~~ *constitutes* a violation of NRS
37 584.325 to 584.670, inclusive.

38 **Sec. 34.** NRS 584.648 is hereby amended to read as follows:

39 584.648 1. The Commission shall assess each distributor of
40 butter a sum not exceeding 2 cents per pound on all butter
41 distributed by the distributor.

42 2. The Commission shall assess all distributors of ~~{fresh}~~ dairy
43 products a sum not exceeding 4 cents per gallon on all ice cream,
44 sherbet or ice cream or ice milk mixes, and a sum not exceeding 2



1 cents per pound on all cottage cheese and yogurt distributed by the
2 distributors.

3 **Sec. 35.** NRS 584.649 is hereby amended to read as follows:

4 584.649 1. The Commission may lower the rate of any
5 assessment required to be paid under NRS 584.647 or 584.648,
6 whenever it finds that the cost of administering the provisions of
7 this chapter can be defrayed from revenues derived from the lower
8 rates.

9 2. A distributor shall pay the amount of the assessment to the
10 Commission on or before the 20th of the month following the month
11 during which the fluid milk, fluid cream, butter or ~~fresh~~ dairy
12 product was distributed. If *no sales or purchases were made during*
13 *the month, the distributor must file a report indicating that fact. If*
14 *the payment is sent by mail, it is subject to the provisions of NRS*
15 *238.100. ~~If the assessment for the month is less than \$3, the~~*
16 *distributor may delay payment for 3 months or until the cumulative*
17 *assessments are \$3 or more, whichever occurs first.*

18 3. If payments of assessments are not made as provided in
19 subsection 2, the Commission shall charge, as a penalty for the late
20 payment, the amount of \$10 or 10 percent of the total amount due
21 but remaining unpaid, whichever is greater.

22 **Sec. 36.** NRS 584.072, 584.110, 584.115, 584.140, 584.150,
23 584.155, 584.160, 584.165, 584.170, 584.175, 584.176, 584.177,
24 584.179, 584.200, 584.560, 584.5835 and 584.605 are hereby
25 repealed.

26 **Sec. 37.** This act becomes effective on July 1, 2013.

LEADLINES OF REPEALED SECTIONS

584.072 Annual fees.

584.110 Classification.

584.115 "Impure butter" defined.

584.140 List of makers of wholesome or impure butter.

584.150 Sale or exchange of impure butter unlawful;
imported butter; confiscation and destruction of impure butter;
penalties.

584.155 Duties of district attorneys.

584.160 Applicability of provisions.

584.165 Duty of manufacturer to label; penalty.

584.170 Sale of unlabeled oleomargarine or margarine
unlawful; penalty.

584.175 Size of print on labels and brands.



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584.176 “Substitute dairy product” defined.

584.177 Restrictions on labels and marks on containers containing substitute dairy products.

584.179 Penalty.

584.200 Inspection of dairy farms, milk plants or facilities outside of State: Applicant or permittee to pay expenses; deposit and use of expenses; failure to pay expenses constitutes ground for denial, suspension or revocation of permit.

584.560 Hearing to determine whether producers desire fluid cream plan.

584.5835 Restrictions on sale of substitute dairy products by distributor.

584.605 Amount of bond.

