

Senate Bill No. 80—Senator Settlemeyer

CHAPTER.....

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:

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

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

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

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

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

4. The grading and regrading of frozen desserts plants.

5. The displaying of grade placards.

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

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

584.125 For the purposes of NRS ~~584.110~~ **584.125** to ~~584.160~~ **584.145**, inclusive, "wholesome butter" ~~is defined to be~~



means butter made from cream and milk wherein the entire procedure from dairy to creamery, or other place of manufacture of such product or products, is conducted under sanitary conditions, and wherein the milk or cream has either been produced by cows all of which have been duly certified by some reputable veterinarian as free from tuberculosis, or, if not so certified, wherein such milk or cream has been pasteurized as prescribed by the Commission pursuant to NRS 584.135.

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

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

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

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

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

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

~~(c)~~ (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, including, without limitation, all of the applicant's books and records relating thereto.

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

584.210 1. Whenever the Commission has reasonable grounds to believe that any applicant or permittee under NRS 584.180 to 584.210, inclusive, *and sections 2 and 3 of this act* is violating any of the provisions of those sections, or any of the rules, regulations or specifications adopted by the Commission relative to the sanitation and grading of milk and milk products, or whenever the results of tests indicate that the facilities, milk or milk products



do not meet those regulations or are not reliable or are questionable, or when the Commission determines that the operation in any other manner is inimical and not for the best interests of the health, safety or welfare of the people of this state, the Commission may, after providing notice and opportunity for a hearing pursuant to the provisions of subsection 2, refuse to grant a permit or suspend or revoke any or all permits previously issued.

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

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

4. The findings of the Commission and the judgment or order must be reduced to writing and filed in the permanent public records of the Commission. The findings must state the reasons why the application for a permit was disapproved or the permit was suspended or revoked. Copies must be furnished to the applicant or permittee who may, if he or she requested and was given a hearing or if the application or permit was summarily disapproved, revoked or suspended pursuant to the provisions of subsection 2, file an appeal pursuant to regulations adopted by the Commission. Upon the filing of the appeal, the Chair of the Commission or the Chair's designee shall appoint a person who did not participate in the decision of the Commission to conduct a hearing in accordance with



those regulations. The applicant or permittee is entitled to judicial review of the decision of the person so appointed in the manner provided by chapter 233B of NRS. Upon the filing for appeal or review, the enforcement of the Commission's order must be stayed pending final disposition of the matter. If the order is judicially affirmed, it becomes final and the stay of enforcement is automatically vacated.

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

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

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

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

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

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

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

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

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

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

584.345 1. "Distributor" means any person, whether or not the person is a producer or an association of producers, who purchases or handles fluid milk, fluid cream or any other dairy product for sale, including brokers, agents, copartnerships, cooperative corporations, and incorporated and unincorporated associations.

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



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

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

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

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

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

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

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

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

1. *Evaporated or condensed milk;*
2. *Formula for infants or for dietary use that is packaged in a hermetically sealed container; or*
3. *Product which contains less than 6.5 percent nonfat milk 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 production, health regulations, transportation and other factors in the marketing areas of this state, but the price of fluid milk or fluid



cream within any marketing area must be uniform for all purchasers of fluid milk or fluid cream of similar grade or quality under like terms and conditions.

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

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

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

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

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

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

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

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



of fluid milk *or fluid cream* for the marketing area, and who represent not less than 65 percent of the total number of producers whose major interest in the fluid milk *or fluid cream* business is in the production of fluid milk *or fluid cream* for the marketing area, and who produce not less than 65 percent of the total volume of the fluid milk *or fluid cream* produced for the marketing area by all such producers, desire that a stabilization and marketing plan for fluid milk *or fluid cream* be formulated for the area; but if a petition is presented to the Commission by the producers whose major interest in the fluid milk *or fluid cream* business is in the production of fluid milk *or fluid cream* for the marketing area, and who represent not less than 65 percent of the total number of producers whose major interest in the fluid milk *or fluid cream* business is in the production of fluid milk *or fluid cream* for the marketing area, and who produce not less than 65 percent of the total volume of the fluid milk *or fluid cream* produced for the marketing area by all such producers, it ~~shall~~ *is* not ~~be~~ necessary that ~~such~~ *the* hearing be held.

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

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

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

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

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

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

(d) The purchase of any fluid milk in excess of 200 gallons monthly from any producer or association of producers unless a written contract has been entered into with the producer or association of producers stating the amount of fluid milk to be purchased for any period, the quantity of milk to be paid for as



class 1 in pounds of milk, pounds of milk fat or gallons of milk, and the 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 as a rate base. A reasonable rate of return on capital investment shall be deemed to be the rate fixed for 6 month United States treasury bills at the auction in the first week of the month of January or July immediately preceding the date that the reasonable return on capital investment is calculated.~~

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

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

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



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

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

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

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

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

584.584 ~~{+}~~ The provisions of NRS 584.583 do not authorize the development of conditions of monopoly in production or distribution of fluid milk, fluid cream ~~{, butter, fresh}~~ *or any other dairy products* , ~~{or products made from fluid milk,}~~ and a distributor *or retailer* who meets in good faith a lawful competitive price is not subject to any penalty provided in NRS 584.325 to 584.670, inclusive, if the distributor *or retailer* files with the Commission information detailing the circumstances surrounding the lawful competitive price within 5 days after each occurrence. The information must include the name and address of the distributor *or retailer* and the customer involved, the competitive price, the effective date of the price or condition, and the name and address of the competing distributor ~~{~~

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

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

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

2. The bond ~~{shall}~~ *must* be upon a form approved by the Commission and ~~{shall}~~ *must* be conditioned upon the payment in the manner required by NRS 584.325 to 584.670, inclusive, of all



amounts due to producers for fluid milk and fluid cream *directly* purchased by such licensee or applicant during the license year. The bond ~~{shall}~~ *must* be to the State in favor of every producer of fluid milk and fluid cream ~~{}~~ *who sells directly to a distributor.*

3. In case of failure by a distributor to pay any producer ~~{or producers}~~ for fluid milk or fluid cream *directly purchased by the distributor* in the manner required by NRS 584.325 to 584.670, inclusive, the Commission shall proceed forthwith to ascertain the names and addresses of all producer-creditors of ~~{such}~~ *the distributor* ~~{}~~ *who sell directly to the distributor*, together with the amounts due and owing to them and each of them by ~~{such}~~ *the distributor*, and shall request all such producer-creditors to file a verified statement of their respective claims with the Commission. Thereupon, the Commission shall bring an action on the bond on behalf of the producer-creditors ~~{}~~ *who sell directly to the distributor.*

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

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

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

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

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

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

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



inclusive, ~~shall~~ likewise ~~constitute~~ *constitutes* a violation of NRS 584.325 to 584.670, inclusive.

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

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

2. The Commission shall assess all distributors of ~~fresh~~ dairy products a sum not exceeding 4 cents per gallon on all ice cream, sherbet or ice cream or ice milk mixes, and a sum not exceeding 2 cents per pound on all cottage cheese and yogurt distributed by the distributors.

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

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

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

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

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

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



