

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 998*

Short Title: Southern Dairy Compact.

(Public)

Sponsors: Representatives Brown and Mitchell.

Referred to: Agriculture, if favorable, Appropriations.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT INTO LAW THE SOUTHERN DAIRY COMPACT, TO DIRECT
THE APPOINTMENT OF MEMBERS FROM NORTH CAROLINA TO THE
SOUTHERN DAIRY COMPACT COMMISSION, AND TO APPROPRIATE
FUNDS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new
Article to read:

“ARTICLE 68.

“SOUTHERN DAIRY COMPACT.

“§ 106-810. Southern Dairy Compact entered into; form of Compact.

The Southern Dairy Compact is enacted into law and entered into with all other
jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. Statement of Purpose, Findings, and Declaration of Policy

“§ 1. Statement of purpose, findings, and declaration of policy.

The purpose of this compact is to recognize the interstate character of the southern
dairy industry and the prerogative of the states under the United States Constitution to
form an interstate commission for the southern region. The mission of the Commission is
to take such steps as are necessary to assure the continued viability of dairy farming in

1 the South, and to assure consumers of an adequate, local supply of pure and wholesome
2 milk.

3 The participating states find and declare that the dairy industry is an essential
4 agricultural activity of the South. Dairy farms, and associated suppliers, marketers,
5 processors, and retailers, are an integral component of the region's economy. Their
6 ability to provide a stable, local supply of pure, wholesome milk is a matter of great
7 importance to the health and welfare of the region.

8 The participating states further find that dairy farms are essential, and they are an
9 integral part of the region's rural communities. The farms preserve land for agricultural
10 purposes and provide needed economic stimuli for rural communities.

11 By entering into this compact, the participating states affirm that their ability to
12 regulate the price that southern dairy farmers receive for their product is essential to the
13 public interest. Assurance of a fair and equitable price for dairy farmers ensures their
14 ability to provide milk to the market and the vitality of the southern dairy industry, with
15 all the associated benefits.

16 Recent dramatic price fluctuations, with a pronounced downward trend, threaten the
17 viability and stability of the southern dairy region. Historically, individual state
18 regulatory action had been an effective emergency remedy available to farmers
19 confronting a distressed market. The system of federal orders, implemented by the
20 Agricultural Marketing Agreement Act of 1937, establishes only minimum prices paid to
21 producers for raw milk, without preempting the power of states to regulate milk prices
22 above the minimum levels so established.

23 In today's regional dairy marketplace, cooperative, rather than individual state action
24 is needed to more effectively address the market disarray. Under our constitutional
25 system, properly authorized states acting cooperatively may exercise more power to
26 regulate interstate commerce than they may assert individually without such authority.
27 For this reason, the participating states invoke their authority to act in common
28 agreement, with the consent of Congress, under the compact clause of the Constitution.

29 In establishing their constitutional regulatory authority over the region's fluid milk
30 market by this compact, the participating states declare their purpose that this compact
31 neither displace the system of federal orders nor encourage the merging of federal orders.
32 Specific provisions of the compact itself set forth this basic principle.

33 Designed as a flexible mechanism able to adjust to changes in a regulated
34 marketplace, the compact also contains a contingency provision should the system of
35 federal orders be discontinued. In that event, the interstate commission may regulate the
36 marketplace in lieu of the system of federal orders. This contingent authority does not
37 anticipate such a change, however, and should not be so construed. It is only provided
38 should developments in the market other than establishment of this compact result in
39 discontinuance of the system of federal orders.

40 ARTICLE II. Definitions and Rules of Construction

41 "§ 2. Definitions.

42 For the purposes of this compact, and of any supplemental or concurring legislation
43 enacted pursuant thereto, except as may be otherwise required by the context:

- 1 (1) 'Class I milk' means milk disposed of in fluid form or as a fluid milk
2 product, subject to further definition in accordance with the principles
3 expressed in subsection (b) of Section 3.
- 4 (2) 'Commission' means the Southern Dairy Compact Commission
5 established by this compact.
- 6 (3) 'Commission marketing order' means regulations adopted by the
7 Commission pursuant to Sections 9 and 10 of this compact in place of a
8 terminated federal marketing order or state dairy regulation. Such order
9 may apply throughout the region or in any part or parts thereof as
10 defined in the regulations of the Commission. Such order may establish
11 minimum prices for any or all classes of milk.
- 12 (4) 'Compact' means this interstate compact.
- 13 (5) 'Compact over-order price' means a minimum price required to be paid
14 to producers for Class I milk established by the Commission in
15 regulations adopted pursuant to Sections 9 and 10 of this compact,
16 which is above the price established in federal marketing orders or by
17 state farm price regulation in the regulated area. Such price may apply
18 throughout the region or in any part or parts thereof as defined in the
19 regulations of the Commission.
- 20 (6) 'Milk' means the lacteal secretion of cows and includes all skim,
21 butterfat, or other constituents obtained from separation or any other
22 process. The term is used in its broadest sense and may be further
23 defined by the Commission for regulatory purposes.
- 24 (7) 'Partially regulated plant' means a milk plant not located in a regulated
25 area but having Class I distribution within such area. Commission
26 regulations may exempt plants having such distribution or receipts in
27 amounts less than the limits defined therein.
- 28 (8) 'Participating state' means a state which has become a party to this
29 compact by the enactment of concurring legislation.
- 30 (9) 'Pool plant' means any milk plant located in a regulated area.
- 31 (10) 'Region' means the territorial limits of the states which are parties to this
32 compact.
- 33 (11) 'Regulated area' means any area within the region governed by and
34 defined in regulations establishing a compact over-order price or
35 commission marketing order.
- 36 (12) 'State dairy regulation' means any state regulation of dairy prices and
37 associated assessments, whether by statute, marketing order, or
38 otherwise.

39 **"§ 3. Rules of construction.**

- 40 (a) This compact shall not be construed to displace existing federal milk marketing
41 orders or state dairy regulation in the region but to supplement them. In the event some
42 or all federal orders in the region are discontinued, the compact shall be construed to

1 provide the Commission the option to replace them with one or more commission
2 marketing orders pursuant to this compact.

3 (b) This compact shall be construed liberally in order to achieve the purposes and
4 intent enunciated in Section 1. It is the intent of this compact to establish a basic
5 structure by which the Commission may achieve those purposes through the application,
6 adaptation, and development of the regulatory techniques historically associated with
7 milk marketing and to afford the Commission broad flexibility to devise regulatory
8 mechanisms to achieve the purposes of this compact. In accordance with this intent, the
9 technical terms which are associated with market order regulation and which have
10 acquired commonly understood general meanings are not defined herein but the
11 Commission may further define the terms used in this compact and develop additional
12 concepts and define additional terms as it may find appropriate to achieve its purposes.

13 ARTICLE III. Commission Established

14 **"§ 4. Commission established.**

15 There is hereby created a commission to administer the compact, composed of
16 delegations from each state in the region. The Commission shall be known as the
17 Southern Dairy Compact Commission. A delegation shall include not less than three nor
18 more than five persons. Each delegation shall include at least one dairy farmer who is
19 engaged in the production of milk at the time of appointment or reappointment, and one
20 consumer representative. Delegation members shall be residents and voters of, and
21 subject to such confirmation process as is provided for in, the appointing state.
22 Delegation members shall serve no more than three consecutive terms with no single
23 term of more than four years, and be subject to removal for cause. In all other respects,
24 delegation members shall serve in accordance with the laws of the state represented. The
25 compensation, if any, of the members of a state delegation shall be determined and paid
26 by each state, but their expenses shall be paid by the Commission.

27 **"§ 5. Voting requirements.**

28 All actions taken by the Commission, except for the establishment or termination of
29 an over-order price or commission marketing order, and the adoption, amendment, or
30 rescission of the Commission's bylaws, shall be by majority vote of the delegations
31 present. Each state delegation shall be entitled to one vote in the conduct of the
32 Commission's affairs. Establishment or termination of an over-order price or commission
33 marketing order shall require at least a two-thirds vote of the delegations present. The
34 establishment of a regulated area that covers all or part of a participating state shall
35 require also the affirmative vote of that state's delegation. A majority of the delegations
36 from the participating states shall constitute a quorum for the conduct of the
37 Commission's business.

38 **"§ 6. Administration and management.**

39 (a) The Commission shall elect annually from among the members of the
40 participating state delegations a chairperson, a vice-chairperson, and a treasurer. The
41 Commission shall appoint an executive director and fix his or her duties and
42 compensation. The executive director shall serve at the pleasure of the Commission, and,
43 together with the treasurer, shall be bonded in an amount determined by the Commission.

1 The Commission may establish through its bylaws an executive committee composed of
2 one member elected by each delegation.

3 (b) The Commission shall adopt bylaws for the conduct of its business by a two-
4 thirds vote and shall have the power by the same vote to amend and rescind these bylaws.
5 The Commission shall publish its bylaws in convenient form with the appropriate agency
6 or officer in each of the participating states. The bylaws shall provide for appropriate
7 notice to the delegations of all Commission meetings and hearings and of the business to
8 be transacted at such meetings or hearings. Notice also shall be given to other agencies
9 or officers of participating states as provided by the laws of those states.

10 (c) The Commission shall file an annual report with the Secretary of Agriculture
11 of the United States, and with each of the participating states by submitting copies to the
12 Governor, both houses of the legislature, and the head of the state department having
13 responsibilities for agriculture.

14 (d) In addition to the powers and duties elsewhere prescribed in this compact, the
15 Commission may engage in all of the following:

16 (1) Sue and be sued in any state or federal court.

17 (2) Have a seal and alter the same at pleasure.

18 (3) Acquire, hold, and dispose of real and personal property by gift,
19 purchase, lease, license, or other similar manner, for its corporate
20 purposes.

21 (4) Borrow money and to issue notes, to provide for the rights of the
22 holders thereof, and to pledge the revenue of the Commission as
23 security therefor, subject to the provisions of Section 18 of this compact.

24 (5) Appoint such officers, agents, and employees as it may deem necessary,
25 prescribe their powers, duties, and qualifications.

26 (6) Create and abolish such offices, employments, and positions as it deems
27 necessary for the purposes of the compact and provide for the removal,
28 term, tenure, compensation, fringe benefits, pension, and retirement
29 rights of its officers and employees.

30 (7) Retain personal services on a contract basis.

31 **"§ 7. Rule-making power.**

32 In addition to the power to promulgate a compact over-order price or commission
33 marketing orders as provided by this compact, the Commission is further empowered to
34 make and enforce such additional rules and regulations as it deems necessary to
35 implement any provisions of this compact, or to effectuate in any other respect the
36 purposes of this compact.

37 **ARTICLE IV. Powers of the Commission**

38 **"§ 8. Powers to promote regulatory uniformity, simplicity, and interstate**
39 **cooperation.**

40 The Commission may:

41 (1) Investigate or provide for investigations or research projects designed to
42 review the existing laws and regulations of the participating states, to
43 consider their administration and costs, to measure their impact on the

1 production and marketing of milk and their effects on the shipment of
2 milk and milk products within the region.

3 (2) Study and recommend to the participating states joint or cooperative
4 programs for the administration of the dairy marketing laws and
5 regulations and to prepare estimates of cost savings and benefits of such
6 programs.

7 (3) Encourage the harmonious relationships between the various elements
8 in the industry for the solution of their material problems. Conduct
9 symposia or conferences designed to improve industry relations, or a
10 better understanding of problems.

11 (4) Prepare and release periodic reports on activities and results of the
12 Commission's efforts to the participating states.

13 (5) Review the existing marketing system for milk and milk products and
14 recommend changes in the existing structure for assembly and
15 distribution of milk which may assist, improve, or promote more
16 efficient assembly and distribution of milk.

17 (6) Investigate costs and charges for producing, hauling, handling,
18 processing, distributing, selling, and for all other services, performed
19 with respect to milk.

20 (7) Examine current economic forces affecting producers, probable trends
21 in production and consumption, the level of dairy farm prices in relation
22 to costs, the financial conditions of dairy farmers, and the need for an
23 emergency order to relieve critical conditions on dairy farms.

24 **"§ 9. Equitable farm prices.**

25 (a) The powers granted in this section and Section 10 shall apply only to the
26 establishment of a compact over-order price, so long as federal milk marketing orders
27 remain in effect in the region. In the event that any or all such orders are terminated, this
28 Article authorizes the Commission to establish one or more commission marketing
29 orders, as herein provided, in the region or parts thereof as defined in the order.

30 (b) A compact over-order price established pursuant to this section shall apply
31 only to Class I milk. Such compact over-order price shall not exceed one dollar and fifty
32 cents (\$1.50) per gallon at Atlanta, Georgia, however, this compact over-order price shall
33 be adjusted upward or downward at other locations in the region to reflect differences in
34 minimum federal order prices. Beginning in 1990, and using that year as a base, the
35 foregoing one dollar and fifty cents (\$1.50) per gallon maximum shall be adjusted
36 annually by the rate of change in the Consumer Price Index as reported by the Bureau of
37 Labor Statistics of the United States Department of Labor. For purposes of the pooling
38 and equalization of an over-order price, the value of milk used in other use classifications
39 shall be calculated at the appropriate class price established pursuant to the applicable
40 federal order or state dairy regulation and the value of unregulated milk shall be
41 calculated in relation to the nearest prevailing class price in accordance with and subject
42 to such adjustments as the Commission may prescribe in regulations.

43 (c) A commission marketing order shall apply to all classes and uses of milk.

1 (d) The Commission may establish a compact over-order price for milk to be paid
2 by pool plants and partially regulated plants. The Commission also may establish a
3 compact over-order price to be paid by all other handlers receiving milk from producers
4 located in a regulated area. This price shall be established either as a compact over-order
5 price or by one or more commission marketing orders. Whenever such a price has been
6 established by either type of regulation, the legal obligation to pay such price shall be
7 determined solely by the terms and purpose of the regulation without regard to the situs
8 of the transfer of title, possession, or any other factors not related to the purposes of the
9 regulation and this compact. Producer-handlers as defined in an applicable federal
10 market order shall not be subject to a compact over-order price. The Commission shall
11 provide for similar treatment of producer-handlers under commission marketing orders.

12 (e) In determining the price, the Commission shall consider the balance between
13 production and consumption of milk and milk products in the regulated area, the costs of
14 production including, but not limited to, the price of feed, the cost of labor including the
15 reasonable value of the producer's own labor and management, machinery expense and
16 interest expense, the prevailing price for milk outside the regulated area, the purchasing
17 power of the public, and the price necessary to yield a reasonable return to the producer
18 and distributor.

19 (f) When establishing a compact over-order price, the Commission shall take such
20 other action as is necessary and feasible to help ensure that the over-order price does not
21 cause or compensate producers so as to generate local production of milk in excess of
22 those quantities necessary to assure consumers of an adequate supply for fluid purposes.

23 (g) The Commission shall whenever possible enter into agreements with state or
24 federal agencies for exchange of information or services for the purpose of reducing
25 regulatory burden and cost of administering the compact. The Commission may
26 reimburse other agencies for the reasonable cost of providing these services.

27 **"§ 10. Optional provisions for pricing order.**

28 Regulations establishing a compact over-order price or a commission marketing order
29 may contain, but shall not be limited to, any of the following:

- 30 (1) Provisions classifying milk in accordance with the form in which or
31 purpose for which it is used, or creating a flat pricing program.
- 32 (2) With respect to a commission marketing order only, provisions
33 establishing or providing a method for establishing separate minimum
34 prices for each use classification prescribed by the Commission, or a
35 single minimum price for milk purchased from producers or
36 associations of producers.
- 37 (3) With respect to an over-order minimum price, provisions establishing or
38 providing a method for establishing such minimum price for Class I
39 milk.
- 40 (4) Provisions for establishing either an over-order price or a commission
41 marketing order may make use of any reasonable method for
42 establishing such price or prices including flat pricing and formula
43 pricing. Provision may also be made for location adjustments, zone

1 differentials, and competitive credits with respect to regulated handlers
2 who market outside the regulated area.

3 (5) Provisions for the payment to all producers and associations of
4 producers delivering milk to all handlers of uniform prices for all milk
5 so delivered, irrespective of the uses made of such milk by the
6 individual handler to whom it is delivered, or for the payment of
7 producers delivering milk to the same handler of uniform prices for all
8 milk delivered by them.

9 a. With respect to regulations establishing a compact over-order
10 price, the Commission may establish one equalization pool
11 within the regulated area for the sole purpose of equalizing
12 returns to producers throughout the regulated area.

13 b. With respect to any commission marketing order, as defined in
14 Section 2, subdivision (9), which replaces one or more
15 terminated federal orders or state dairy regulation, the marketing
16 area of now separate state or federal orders shall not be merged
17 without the affirmative consent of each state, voting through its
18 delegation, which is partly or wholly included within any such
19 new marketing area.

20 (6) Provisions requiring persons who bring Class I milk into the regulated
21 area to make compensatory payments with respect to all such milk to
22 the extent necessary to equalize the cost of milk purchased by handlers
23 subject to a compact over-order price or commission marketing order.
24 No such provisions shall discriminate against milk producers outside the
25 regulated area. The provisions for compensatory payments may require
26 payment of the difference between the Class I price required to be paid
27 for such milk in the state of production by a federal milk marketing
28 order or state dairy regulation and the Class I price established by the
29 compact over-order price or commission marketing order.

30 (7) Provisions specially governing the pricing and pooling of milk handled
31 by partially regulated plants.

32 (8) Provisions requiring that the account of any person regulated under the
33 compact over-order price shall be adjusted for any payments made to or
34 received by such persons with respect to a producer settlement fund of
35 any federal or state milk marketing order or other state dairy regulation
36 within the regulated area.

37 (9) Provision requiring the payment by handlers of an assessment to cover
38 the costs of the administration and enforcement of such order pursuant
39 to subsection (a) of Section 18 of Article VII.

40 (10) Provisions for reimbursement to participants of the Women, Infants and
41 Children Special Supplemental Food Program of the United States
42 Child Nutrition Act of 1966.

- 1 (11) Other provisions and requirements as the Commission may find are
2 necessary or appropriate to effectuate the purposes of this compact and
3 to provide for the payment of fair and equitable minimum prices to
4 producers.

5 ARTICLE V. Rule-Making Procedure.

6 **"§ 11. Rule-making procedure.**

7 Before promulgation of any regulations establishing a compact over-order price or
8 commission marketing order, including any provision with respect to milk supply under
9 subsection (f) of Section 9, or amendment thereof, as provided in Article IV, the
10 Commission shall conduct an informal rule-making proceeding to provide interested
11 persons with an opportunity to present data and views. Such rule-making proceeding
12 shall be governed by Section 4 of the Federal Administrative Procedure Act, as amended
13 (5 U.S.C. § 553). In addition, the Commission shall, to the extent practicable, publish
14 notice of rule-making proceedings in the official register of each participating state.
15 Before the initial adoption of regulations establishing a compact over-order price or a
16 commission marketing order and thereafter before any amendment with regard to prices
17 or assessments, the Commission shall hold a public hearing. The Commission may
18 commence a rule-making proceeding on its own initiative or may in its sole discretion act
19 upon the petition of any person including individual milk producers, any organization of
20 milk producers or handlers, general farm organizations, consumer or public interest
21 groups, and local, state or federal officials.

22 **"§ 12. Findings and referendum.**

23 (a) In addition to the concise general statement of basis and purpose required by
24 section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 53 (c)),
25 the Commission shall make findings of fact with respect to:

- 26 (1) Whether the public interest will be served by the establishment of
27 minimum milk prices to dairy farmers under Article IV.
28 (2) What level of prices will assure that producers receive a price sufficient
29 to cover their costs of production and will elicit an adequate supply of
30 milk for the inhabitants of the regulated area and for manufacturing
31 purposes.
32 (3) Whether the major provisions of the order, other than those fixing
33 minimum milk prices, are in the public interest and are reasonably
34 designed to achieve the purposes of the order.
35 (4) Whether the terms of the proposed regional order or amendment are
36 approved by producers as provided in Section 13.

37 **"§ 13. Producer referendum.**

38 (a) For the purpose of ascertaining whether the issuance or amendment of
39 regulations establishing a compact over-order price or a commission marketing order,
40 including any provision with respect to milk supply under subsection (f) of Section 9, is
41 approved by producers, the Commission shall conduct a referendum among producers.
42 The referendum shall be held in a timely manner, as determined by regulation of the
43 Commission. The terms and conditions of the proposed order or amendment shall be

1 described by the Commission in the ballot used in the conduct of the referendum, but the
2 nature, content, or extent of such description shall not be a basis for attacking the legality
3 of the order or any action relating thereto.

4 (b) An order or amendment shall be deemed approved by producers if the
5 Commission determines that it is approved by at least two-thirds of the voting producers
6 who, during a representative period determined by the Commission, have been engaged
7 in the production of milk the price of which would be regulated under the proposed order
8 or amendment.

9 (c) For purposes of any referendum, the Commission shall consider the approval
10 or disapproval by any cooperative association of producers, qualified under the
11 provisions of the Act of Congress of February 18, 1922, as amended, known as the
12 Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for
13 or advancing the interests of producers of such commodity, as the approval or
14 disapproval of the producers who are members or stockholders in, or under contract with,
15 such cooperative association of producers, except as provided in subdivision (1) of this
16 subsection and subject to the provisions of subdivisions (2) through (5) of this subsection.

17 (1) No cooperative that has been formed to act as a common marketing
18 agency for both cooperatives and individual producers shall be qualified
19 to block vote for either.

20 (2) Any cooperative that is qualified to block vote shall, before submitting
21 its approval or disapproval in any referendum, give prior written notice
22 to each of its members as to whether and how it intends to cast its vote.
23 The notice shall be given in a timely manner as established, and in the
24 form prescribed, by the Commission.

25 (3) Any producer may obtain a ballot from the Commission in order to
26 register approval or disapproval of the proposed order.

27 (4) A producer who is a member of a cooperative which has provided
28 notice of its intent to approve or not to approve a proposed order, and
29 who obtains a ballot and with such ballot expresses his or her approval
30 or disapproval of the proposed order, shall notify the Commission as to
31 the name of the cooperative of which he or she is a member, and the
32 Commission shall remove such producer's name from the list certified
33 by such cooperative with its corporate vote.

34 (5) In order to ensure that all milk producers are informed regarding a
35 proposed order, the Commission shall notify all milk producers that an
36 order is being considered and that each producer may register his or her
37 approval or disapproval with the Commission either directly or through
38 his or her cooperative.

39 **"§ 14. Termination of over-order price or marketing order.**

40 (a) The Commission shall terminate any regulations establishing an over-order
41 price or commission marketing order issued under this Article whenever it finds that such
42 order or price obstructs or does not tend to effectuate the declared policy of this compact.

1 (b) The Commission shall terminate any regulations establishing an over-order
2 price or a commission marketing order issued under this Article whenever it finds that
3 such termination is favored by a majority of the producers who, during a representative
4 period determined by the Commission, have been engaged in the production of milk, the
5 price of which is regulated by such order; but such termination shall be effective only if
6 announced on or before such date as may be specified in such marketing agreement or
7 order.

8 (c) The termination or suspension of any order or provision thereof, shall not be
9 considered an order within the meaning of this Article and shall require no hearing, but
10 shall comply with the requirements for informal rule making prescribed by Section 4 of
11 the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553).

12 ARTICLE VI. Enforcement

13 **"§ 15. Records, reports, access to premises.**

14 (a) The Commission may by rule and regulation prescribe record keeping and
15 reporting requirements for all regulated persons. For purposes of the administration and
16 enforcement of this compact, the Commission may examine the books and records of any
17 regulated person relating to his or her milk business and for that purpose, the
18 Commission's properly designated officers, employees, or agents shall have full access
19 during normal business hours to the premises and records of all regulated persons.

20 (b) Information furnished to or acquired by the Commission officers, employees,
21 or its agents pursuant to this section shall be confidential and not subject to disclosure
22 except to the extent that the Commission deems disclosure to be necessary in any
23 administrative or judicial proceeding involving the administration or enforcement of this
24 compact, an over-order price, a compact marketing order, or other regulations of the
25 Commission. The Commission may adopt rules further defining the confidentiality of
26 information pursuant to this section. Nothing in this section shall be deemed to prohibit

27 (i) the issuance of general statements based upon the reports of a number of
28 handlers, which do not identify the information furnished by any person, or (ii) the
29 publication by direction of the Commission of the name of any person violating any
30 regulation of the Commission, together with a statement of the particular provisions
31 violated by such person.

32 (c) No officer, employee, or agent of the Commission shall intentionally disclose
33 information, by inference or otherwise, that is made confidential pursuant to this section.
34 Any person violating the provisions of this section shall, upon conviction, be subject to a
35 fine of not more than one thousand dollars (\$1,000) or to imprisonment for not more than
36 one year, or both, and shall be removed from office. The Commission shall refer any
37 allegation of a violation of this section to the appropriate state enforcement authority or
38 United States Attorney.

39 **"§ 16. Subpoena, hearings and judicial review.**

40 (a) The Commission is hereby authorized and empowered by its members and its
41 properly designated officers to administer oaths and issue subpoenas throughout all
42 signatory states to compel the attendance of witnesses and the giving of testimony and the
43 production of other evidence.

1 (b) Any handler subject to an order may file a written petition with the
2 Commission stating that any order or any provision of any such order or any obligation
3 imposed in connection therewith is not in accordance with law and praying for a
4 modification thereof or to be exempted therefrom. The handler shall thereupon be given
5 an opportunity for a hearing upon such petition, in accordance with regulations made by
6 the Commission. After such hearing, the Commission shall make a ruling upon the
7 prayer of such petition which shall be final, if in accordance with law.

8 (c) The district courts of the United States in any district in which the handler is
9 an inhabitant, or has his or her principal place of business, are hereby vested with
10 jurisdiction to review such ruling, provided a complaint for that purpose is filed within 30
11 days from the date of the entry of the ruling. Service of process in these proceedings may
12 be had upon the Commission by delivering to it a copy of the complaint. If the court
13 determines that the ruling is not in accordance with law, it shall remand such proceedings
14 to the Commission with directions either (i) to make such ruling as the court shall
15 determine to be in accordance with law, or (ii) to take such further proceedings as, in its
16 opinion, the law requires. The pendency of proceedings instituted pursuant to this
17 subdivision shall not impede, hinder, or delay the Commission from obtaining relief
18 pursuant to Section 17. Any proceedings brought pursuant to Section 17, except where
19 brought by way of counterclaim in proceedings instituted pursuant to this section, shall
20 abate whenever a final decree has been rendered in proceedings between the same parties,
21 and covering the same subject matter, instituted pursuant to this section.

22 **"§ 17. Enforcement with respect to handlers.**

23 (a) Any violation by a handler of the provisions of regulation establishing an over-
24 order price or a commission marketing order, or other regulations adopted pursuant to
25 this compact shall:

26 (1) Constitute a violation of the laws of each of the signatory states. Such
27 violation shall render the violator subject to a civil penalty in an amount
28 as may be prescribed by the laws of each of the participating states,
29 recoverable in any state or federal court of competent jurisdiction. Each
30 day such violation continues shall constitute a separate violation.

31 (2) Constitute grounds for the revocation of license or permit to engage in
32 the milk business under the applicable laws of the participating states.

33 (b) With respect to handlers, the Commission shall enforce the provisions of this
34 compact, regulations establishing an over-order price, a commission marketing order or
35 other regulations adopted hereunder by:

36 (1) Commencing an action for legal or equitable relief brought in the name
37 of the Commission in any state or federal court of competent
38 jurisdiction; or

39 (2) Referral to the state agency for enforcement by judicial or
40 administrative remedy with the agreement of the appropriate state
41 agency of a participating state.

1 (c) With respect to handlers, the Commission may bring an action for injunction to
2 enforce the provisions of this compact or the order or regulations adopted thereunder
3 without being compelled to allege or prove that an adequate remedy of law does not exist.

4 ARTICLE VII. Finance

5 **"§ 18. Finance of start-up and regular costs.**

6 (a) To provide for its start-up costs, the Commission may borrow money pursuant
7 to its general power under Section 6, subdivision (d), paragraph 4. In order to finance the
8 cost of administration and enforcement of this compact, including payback of start-up
9 costs, the Commission may collect an assessment from each handler who purchases milk
10 from producers within the region. If imposed, this assessment shall be collected on a
11 monthly basis for up to one year from the date the Commission convenes, in an amount
12 not to exceed \$.015 per hundred weight of milk purchased from producers during the
13 period of the assessment. The initial assessment may apply to the projected purchases of
14 handlers for the two-month period following the date the Commission convenes. In
15 addition, if regulations establishing an over-order price or a compact marketing order are
16 adopted, they may include an assessment for the specific purpose of their administration.
17 These regulations shall provide for establishment of a reserve for the Commission's
18 ongoing operating expenses.

19 (b) The Commission shall not pledge the credit of any participating state or of the
20 United States. Notes issued by the Commission and all other financial obligations
21 incurred by it, shall be its sole responsibility and no participating state or the United
22 States shall be liable therefor.

23 **"§ 19. Audit and accounts.**

24 (a) The Commission shall keep accurate accounts of all receipts and
25 disbursements, which shall be subject to the audit and accounting procedures established
26 under its rules. In addition, all receipts and disbursements of funds handled by the
27 Commission shall be audited yearly by a qualified public accountant and the report of the
28 audit shall be included in and become part of the annual report of the Commission.

29 (b) The accounts of the Commission shall be open at any reasonable time for
30 inspection by duly constituted officers of the participating states and by any persons
31 authorized by the Commission.

32 (c) Nothing contained in this Article shall be construed to prevent commission
33 compliance with laws relating to audit or inspection of accounts by or on behalf of any
34 participating state or of the United States.

35 ARTICLE VIII. Entry into Force; Additional Members and Withdrawal

36 **"§ 20. Entry into force; additional members.**

37 The compact shall enter into force effective when enacted into law by any three states
38 of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky,
39 Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina,
40 Tennessee, Texas, Virginia, and West Virginia and when the consent of Congress has
41 been obtained.

42 **"§ 21. Withdrawal from compact.**

1 Any participating state may withdraw from this compact by enacting a statute
2 repealing the same, but no such withdrawal shall take effect until one year after notice in
3 writing of the withdrawal is given to the Commission and the governors of all the
4 participating states. No withdrawal shall affect any liability already incurred by
5 or chargeable to a participating state prior to the time of such withdrawal.

6 **"§ 22. Severability.**

7 If any part or provision of this compact is adjudged invalid by any court, such
8 judgment shall be confined in its operation to the part or provision directly involved in
9 the controversy in which such judgment shall have been rendered and shall not affect or
10 impair the validity of the remainder of this compact. In the event Congress consents to
11 this compact subject to conditions, said conditions shall not impair the validity of this
12 compact when said conditions are accepted by three or more compacting states. A
13 compact state may accept the conditions of Congress by implementation of this compact.

14 **"§ 106-811. Appointment of members to the Southern Dairy Compact Commission.**

15 (a) The delegation from the State of North Carolina to the Southern Dairy
16 Compact Commission, as established in Article IV of the Compact, shall be composed of
17 five members appointed as follows:

18 (1) One member representing consumers of milk, appointed by the
19 Governor.

20 (2) One member appointed by the General Assembly upon the
21 recommendation of the Speaker of the House of Representatives.

22 (3) One member appointed by the General Assembly upon the
23 recommendation of the President Pro Tempore of the Senate.

24 (4) Two members appointed by the Commissioner of Agriculture, one of
25 whom shall be a dairy farmer engaged in the production of milk at the
26 time of appointment or reappointment.

27 (b) Members must be registered to vote in the State.

28 (c) Members shall serve a term of four years and may be reappointed, but no
29 member shall serve more than three consecutive terms. Members shall serve until their
30 successors are duly appointed. Any appointment to fill an unexpired term shall be for the
31 balance of the unexpired term and shall be made by the appropriate appointing authority.
32 A member may be removed by the appointing authority, in accordance with G.S. 143B-
33 13. The Commissioner of Agriculture shall designate one member of the delegation to
34 serve as chair, at the pleasure of the Commissioner.

35 (d) Members of the delegation shall receive per diem and necessary travel and
36 subsistence expenses in accordance with G.S. 138-5.

37 (e) A majority of the delegation shall constitute a quorum for the transaction of
38 business.

39 (f) All clerical and other services required by the delegation shall be provided by
40 the Commissioner of Agriculture."

41 Section 2. There is appropriated from the General Fund to the Southern Dairy
42 Compact Commission, as established by Article III of the compact, as enacted in Section
43 1 of this act, the sum of twenty-five thousand dollars (\$25,000) for the 1997-98 fiscal

- 1 year and the sum of twenty-five thousand dollars (\$25,000) for the 1998-99 fiscal year to
2 be used by the Commission to conduct its activities pursuant to this act.
3 Section 3. This act becomes effective July 1, 1997.